Joint Committee on Human Rights

Human Rights at Work: The United Kingdom, the ILO and the European Social Charter

Submission 1
on behalf of
The Institute of Employment Rights

by
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Introduction

1 The Institute of Employment Rights welcomes this opportunity to provide evidence about the United Kingdom's compliance with a number of international treaties designed to protect human rights at work and the human rights of workers. In this overview we address specifically the United Kingdom's failure effectively to comply with ILO Conventions, as well as the European Social Charter, which is often overlooked. Along with ILO Conventions, the latter is influential in the interpretation of Convention rights. The primary sources referred to below are available on the websites of the ILO and the European Committee of Social Rights respectively.[1]

ILO Conventions

2 So far as the ILO is concerned, the United Kingdom has ratified 53 Conventions and Protocols currently in force. It has ratified all of the eight core Conventions relating to the original ILO four fundamental rights. The United Kingdom's ratification level is neither exceptionally high nor exceptionally low compared to other Member States. That said, a majority (15) of EU Member States have ratified more Conventions and Protocols currently in force than the United Kingdom, the UK being near the top of the bottom half of the table of 28.[2]

3 The ILO Committee of Experts is the supervisory body principally concerned with the interpretation of ILO Conventions and their application by Member States. As a body of independent jurists, the authoritative role of the ILO Committee of Experts has been acknowledged by the European Court of Human Rights: *RMT v United Kingdom* [2014] ECHR 366. The ILO Committee of Experts has since 1989 expressed concern about the extent to which the United Kingdom complies with its obligations under various ratified Conventions.[3]

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[1] We are happy to supply any materials referred to in the pages below, should it be desired.
[2] The countries were lower levels of ratification are Austria (44), Croatia (46), Cyprus (50), Estonia (27), Greece (51), Hungary (51), Ireland (47), Latvia (43), Lithuania (42), Malta (48), and Romania (38). Denmark has also ratified 53 of those currently in force.
[3] For a fuller account, see K D Ewing, 'EU-UK Trade and Co-operation Agreement: Implications for ILO Standards and the European Social Charter in the United Kingdom' (2021) 32 *King's Law Journal* 306-343.

ILO Convention 87

4 Beginning with ILO Convention 87, there have been multiple issues of concern to the Committee of Experts, not all of which have been addressed by the United Kingdom. The unaddressed concerns, first identified in 1989, include:

- The prohibition on trade unions from indemnifying members and officials who incur legal penalties because of their trade union activities (now Trade Union and Labour Relations (Consolidation) Act 1992, s 15);

- The restriction on the freedom of trade unions to discipline members who refuse to participate in lawful strikes and other grounds (now Trade Union and Labour Relations (Consolidation) Act 1992, ss 64-67); and

- The erosion of the protection of trade unions from civil liability for industrial action and the restraints on the right to strike which this entailed (now Trade Union and Labour Relations (Consolidation) Act 1992, ss 219-246).

5 In relation to the last of these matters, the Committee examined the restrictions in some detail, focusing first on the narrowed definition of 'trade dispute', giving rise to limitations which the Committee thought were 'excessive'. In British law, unless industrial action is taken in 'contemplation or furtherance of a trade dispute', it does not enjoy protection from civil liability.[4] As noted by the Committee that protection had been significantly narrowed since 1980:

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[4] The position in English law is aptly described by Elias LJ giving the judgment of the Court of Appeal in the seminal case of *London& Birmingham Rly v ASLEF*. At [2]-[4] the Court held:

> 2. The common law confers no right to strike in this country. Workers who take strike action will usually be acting in breach of their contracts of employment. Those who organise the strike will typically be liable for inducing a breach of contract, and sometimes other economic torts are committed during the course of a strike. Without some protection from these potential liabilities, virtually all industrial action would be unlawful. Accordingly, ever since the Trade Disputes Act 1906 legislation has been in place to confer immunities on the organisers of strikes from certain tort liabilities provided, to put it broadly, that the purpose of the action is to advance an industrial rather than a political objective. This is achieved by a requirement that the industrial action must be "in contemplation or furtherance of a trade dispute". The current protection is afforded by section 219 of the 1992 Act. The legislation therefore secures a freedom rather than conferring a right as such.
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> 3. More recent legislation has removed the immunities where the industrial action is designed to achieve what Parliament deems to be an improper purpose or if it involves secondary action (see sections 222—225 of the 1992 Act). If torts are committed for which no immunity is conferred, or if for some reason the immunity is inapplicable, then tort liability arises in the usual way. However, there is a cap on the damages that can be awarded against a trade union itself (section 22).
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> 4. Ever since the Trade Union Act 1984 the law has also prescribed procedures which the union must comply with before it can claim the bene———————————t of the immunities. The relevant provisions are now found in the 1992 Act and have been further amended since then. They apply to all forms of industrial action but hereafter I will only focus on strikes.

At [8] the Court held:

> Although the common law recognises no right to strike, there are various international instruments that do: see for example article 6 of the Council of Europes Social Charter and International Labour Organisation Conventions 98 and 151. Furthermore, the European Convention on Human Rights and Fundamental Freedoms has in a number of cases con———————————rmed that the

- ‘the definition now requires that the subject-matter of a dispute must relate ‘wholly or mainly’ to one or more of the matters set out in the definition - formerly it was sufficient that there be a ‘connection’ between the dispute and the specified matters. This change appears to deny protection to disputes where unions and their members have ‘mixed’ motives (for example, where they are pursuing both ‘industrial’ and ‘political’ or ‘social’ objectives). The Committee also considers that it would often be very difficult for unions to determine in advance whether any given course of conduct would, or would not, be regarded as having the necessary relation to the protected purposes’;

- ‘the fact that the definition now refers only to disputes between workers and ‘their’ employer could make it impossible for unions to take effective action in situations where the ‘real’ employer with whom they were in dispute was able to take refuge behind one or more subsidiary companies who were technically the ‘employer’ of the workers concerned, but who lacked the capacity to take decisions which are capable of satisfactorily resolving the dispute’; and

- ‘disputes relating to matters outside the United Kingdom can now be protected only where the persons whose actions in the United Kingdom are said to be in contemplation or furtherance of a trade dispute relating to matters occurring outside the United Kingdom are likely be affected in respect of one or more of the protected matters by the outcome of the dispute. This means that there would be no protection for industrial action which was intended to protect or to improve the terms and conditions of employment of workers outside the United Kingdom, or to register disapproval of the social or racial policies of a government with whom the United Kingdom has trading or economic links’.

6 Since these concerns were raised, additional legislation has denied all forms of secondary or solidarity action protection from civil liability, even when undertaken in furtherance of the narrowed definition of a trade dispute. Responding to these developments in 1995, the Committee of Experts pointed out that a general prohibition on sympathy strikes could lead to abuse and that workers should be able to take such action, provided the initial strike they are supporting is itself lawful.

7 At the same time, the Committee also considered restrictions on industrial action taken in defence of workers dismissed for taking part in unofficial action.[5] This was said by the Committee in 1995 to fall into ‘the category of protest strikes the exercise of which should not be excessively limited by unrestricted tort proceedings’. Along with the violations first identified in 1989, these latter infringements have frequently been drawn to the government’s attention, and indeed since 1989 there have been 21 occasions on which the Committee has reported on Convention 87 in relation to the United Kingdom.

8 Fresh concerns were expressed about the compatibility of the Trade Union Bill and the subsequent Trade Union Act 2016 with Convention 87 on a number of grounds. These

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right to strike is conferred as an element of the right to freedom of association conferred by article 11(1) of the Convention which in turn is given e›ect by the Human Rights Act 1998. The right is not unlimited and may be justi————————————ably restricted under article 11(2). …

In [9] the Court expressed this important conclusion: ‘The statutory immunities are simply the form which the law in this country takes to carve out the ability for unions to take lawful strike action.’

[5] Now Trade Union and Labour Relations (Consolidation) Act 1992, s 237.

concerns related to (i) ballot restrictions, (ii) ballot thresholds, (iii) obligations and liabilities relating to peaceful picketing, and (iv) the investigatory powers of the government's Certification Officer. Particularly notable are the Committee's concerns about (ii) and (iv) that:

- The 2016 Act introduced new industrial action ballot thresholds: not only a 50% participation threshold, but in some sectors also a support threshold, requiring 40% support for action on the part of the entire constituency of those eligible to vote.[6] The latter applies to six sectors designated as important public services (health, fire, border security, nuclear decommission, education, and transport), the Committee concluding in 2016 that '*the Government should review the restrictions and 'take the necessary measures so that the heightened requirement of support of 40 per cent of all workers for a strike ballot does not apply to education and transport services'*. The restrictions remain in force.

- Turning to the government's Certification Officer, the Committee expressed '*concern*' about the significant expansion of her 'investigatory and enforcement powers'. As a result, the Government was asked to review the impact of these provisions with the social partners 'with a view to ensuring that workers' and employers' organizations can effectively exercise their rights to organize their administration and activities and formulate their programmes without interference from the public authorities'. In 2021, however, the government announced that it was invoking powers to introduce a levy of trade unions to pay for the expanded powers of the Certification Officer by which they will be investigated.

In 2022 the Committee again 'urge[d]' the Government 'to review section 3 of the Trade Union Act with the social partners without further delay in order to ensure that the support of 40 percent of all workers is not required for a strike ballot in the education and transport services'.

9 Also in 2022, the Committee has most recently renewed two direct requests to the government, one with its origins in the Trade Union Act 2016, and the other with its origins in the Employment Relations Act 1999 (as amended in 2004). The former is concerned with the time limits introduced by the Trade Union Act 2016, ss 8 and 9: the requirement that the union gives 14 days' strike notice, and the latter provision that a ballot mandate expires after six months. It held:

> The Committee notes with ***concern*** that the Government does not consider it necessary to carry out a review of sections 8 and 9 of the Act as it is satisfied that the measures in place relating to 14 days' notice to be given to employers of industrial action are reasonable, proportionate and based on a balanced approach. The Government states that it already extended the notice period from seven to 14 days to give the employer and trade union more time to negotiate a settlement of the dispute, and which may help parties to avoid industrial action. Furthermore, the Government affirms that the notice period of 14 days for industrial action gives time for the employer and public to prepare for a strike, if it proves unavoidable, which will enable some employers to find a way to continue providing their services to the public. With regard to section 9, the Government affirms that the aim of it is to ensure

[6] Trade Union Act 2016, ss 2, 3.

> that employers will no longer be subject to strike threats for which the original balloting took place some years before, besides encouraging disputes to be resolved earlier and where possible via dialogue, and not industrial action. The Committee notes that the TUC once again raises its concerns about the 14-day strike notice established by the Act and refers to the conclusions of the European Social Rights Committee which found that the notice requirements are excessive. The Committee recalls that the notice requirement of 14 days for the taking of industrial action is to be added to the seven-day notice requirement for balloting, along with the time for carrying out the ballot, which at present remains a postal ballot. It further recalls TUC's concerns that the ballot mandate is now declared to come to an end after six months, regardless of whether the dispute has been resolved, and that in order to continue industrial action, the balloting process will have to begin anew. According to the TUC, continuous industrial action would be complicated by the above notice requirements which, in its view, with a postal ballot, could take up to as much as 42 days meaning that the balloting process would have to begin again shortly after its conclusion. The Committee reiterates its position that workers and their organizations should be able to call a strike for an indefinite period if they so wish (see 2012 General Survey on the fundamental Conventions, paragraph 146).

The Committee therefore 'once again' asked the Government 'to review sections 8 and 9 of the Trade Union Act in consultation with the social partners, and to provide information on any developments in this regard'.

10 The other issue raised again in 2022 related to the protection for trade union members who take lawful industrial action, which extends unequivocally only to 12 weeks, with no guarantee of reinstatement and no prohibition on hiring replacements. In revisiting this question, the Committee noted the government's removal of a prohibition on the supply of workers by employment agencies as temporary or permanent replacements for striking workers, before reporting as follows:

> The Committee notes with ***regret*** that the Government reiterates its previous position that the existing measures in place to protect striking workers are sufficient. The Government explains that a balanced legal system cannot ensure that striking workers are not dismissed under any circumstances for taking industrial action, considering that protracted industrial action threatens the existence of businesses and the livelihood of non-striking employees. The Committee once again recalls that making the return-to-work conditional on time limits and on the employer's consent constitute obstacles to the effective exercise of the right to strike, essential for workers to promote and defend the interests of their members. ***The Committee therefore urges the Government to review the legislation in question, in full consultation with workers' and employers' organizations, with a view to strengthening the protection available to workers who stage official and lawfully organized industrial action and to provide information on steps taken in this regard.***

It is notable that none of these recommended reviews of the legislation in consulation with the social partners has ever taken place.

11 There is an additional important point to stress. Much of the foregoing relates to the limited circumstances in which industrial action may take place, the conditions which must be satisfied before industrial action may lawfully take place within these limited

circumstances, and the prohibitions (for example on secondary action) that exist even where the action is in furtherance of a trade dispute that complied with the different procedural obligations imposed by statute. Breach of or failure to comply with these limitations, conditions and prohibitions will expose the trade union to liability by way of an injunction and/or damages (the statutory limit having recently been increased). The point to stress, however, is that if the industrial action falls foul of these limitations, conditions and prohibitions, not only does the union lose all protection for its freedom to organize industrial action, but every worker taking part in the action will typically have no protection from unfair dismissal, in view of the provisions of TULRCA 1992, s 228A. The scope of worker protection from dismissal is expressly tied to the limited protection of the trade union from liability in tort. This feature is accentuated by the fact that in most situations the individual worker will have little or no knowledge of the extent to which the union has managed to comply with all its statutory obligations in relation to the calling of the strike.

Other ILO Conventions

12 ILO Convention 98 deals with the Right to Organise and Collective Bargaining. It deals with three principal questions. The first is the protection of workers from acts of anti-union discrimination by their employers (art 1); the second is the prohibition of employer sponsored or dominated trade unions (art 2); and the third is the promotion of collective bargaining (art 4). The last provides that

> Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

We deal more fully with aspects of ILO Convention 98 in an accompanying submission dealing more specifically with the compatibility of the pay review body phenomenon in the United Kingdom with the government's international legal obligations. Here we are concerned with a wider range of issues that have been specifically identified by the Committee of Experts.

13 The Committee of Experts dealt only briefly with Convention 98 in its 1989 Report referred to above, though two issues were covered (anti-union discrimination, and the determination of teachers' pay). The Committee has, however, made Observations on the UK in relation to C98 on 15 occasions between 1989 and 2014, covering a wide range of topics, by no means all of which have been resolved. The issues addressed include

- Discrimination against trade unionists at the point of hiring, notably the 'blacklisting' of trade union members;
- The lack of legal support for trade unions seeking to bargain collectively for their members where the union does not have majority support amongst the employees in the enterprise;
- The denial of collective bargaining over pay and other conditions to school teachers, a pay review body having been introduced in lieu of collective bargaining procedures.

14 Most of these issues appear either to have been dropped in the intervening years, or to have been resolved to the satisfaction of the Committee, which is not the same as saying that they have been satisfactorily resolved. Some – notably the determination of pay and conditions of employment – have also been considered by the ILO Freedom of Association

Committee, as explained in the accompanying submission. In 2022, however, two additional concerns have been raised by the Committee. The first relates to Article 1 (protection against anti-union discrimination), specifically in the context of the notorious dismissal of 786 seafarers by P&O Ferries in March 2022 'in contravention of the statutory obligations regarding due notice and consultation'. The Committee of Experts' referred to 'the TUC's allegation that the existing legislation does not deter employers from dismissing union members benefitting from better terms and conditions of employment under a collective agreement, provided they pay the compensation required by law for cases of unfair dismissal'. The Committee recalled that 'under Article 1 of the Convention, the legislation must provide for dissuasive sanctions in case of anti-union discrimination', and requested 'the Government to reply to these comments'.

15 That said, it is not clear that the action was taken against the seafarers because of their trade union status. But regardless of the article 1 issue, there is also an issue under ILO Convention 98, article 4, as appears to have been highlighted by the TUC. Article 4 requires member states to take steps to encourage and promote the full development of collective bargaining machinery. Here, however, we have an egregious example of an employer permitted by British law to instantaneously dismiss all its workers engaged under collective agreements to be replaced by agency workers who were not so engaged. It is difficult to see how the circumstances of the P&O Ferries affair, and the constraint on resistance by the seafarers' unions, are compatible with the government's positive duty to promote collective bargaining: first because British law permitted collective agreements to be traduced by the employer; secondly because it allowed this to be done without any enforceable obligation on the employer to inform, consult and negotiate before its decision was taken to replace the staff in question; and thirdly because the prohibition on secondary action precluded the unions from taking any industrial action against the employer.

16 The other issue raised by the Committee in 2022 had previously been raised in 2018. This relates to the abolition of the Agricultural Wages Board (AWB) in England, the Board being a tripartite statutory body which set terms and conditions of employment for all agricultural workers by collective agreement. The Committee made it very clear that it was unimpressed by the government's justification, namely that 'independent trade unions can be recognized by employers for the purpose of collective bargaining through the procedures laid down in the Employment Relations Act and that [without the AWB] 14 per cent of workers in the agriculture, forestry, and fishing industries had their pay determined by collective agreement'. 'Observing the low level of collective bargaining coverage in the agricultural sector and recalling the obligation, under Article 4 of the Convention to promote collective bargaining at all levels', the Committee concluded by requesting the Government 'to inform on the specific measures taken to promote collective bargaining in the agricultural sector as well as to provide details on the number of collective agreements in force and the percentage of workers covered by them in the sector'.

17 So far as other ratified ILO Conventions are concerned, we are aware that questions have been raised about the United Kingdom's compliance with a number of these. We understand that in the ten years from 2011-2020 concerns have also been expressed about the following three fundamental ratified Conventions, and the following eight non-fundamental ratified Conventions:

- Forced Labour Convention, 1930 (ILO Convention No. 29)
- Equal Remuneration Convention, 1951 (ILO Convention No. 100)

- Discrimination and Occupation Convention, 1958 (ILO Convention No. 111)
- Workmen's Compensation (Accidents) Convention, 1925 (No. 17)
- Migration for Employment Convention (Revised), 1949 (No. 97)
- Labour Inspection Convention, 1947 (No. 81)
- Radiation Protection Convention, 1960 (No. 115)
- Employment Policy Convention, 1964 (No. 122)
- Labour Relations (Public Service) Convention, 1978 (No. 151)
- Social Security (Minimum Standards) Convention, 1952 (No. 102)
- Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

It is important to emphasise that not all of the Observations of the Committee of Experts have been critical or that they necessarily deal with mainstream concerns. Nevertheless, it is clear that there have been long-standing concerns about obligations in a number of Conventions, concerns which have been ignored by successive British governments.[7] It is also clear that some of the concerns appear to strike at the heart of major public policy developments which appear directly to contradict treaty obligations.

18 The point is illustrated by Convention 102 (Social Security (Minimum Standards) Convention, 1952) which has been the subject of seven critical observations since 1995. These make uncomfortable reading, the Committee noting in 2016 that the statutory sick pay rate of between 26.50% and 33.62% of the reference wage of an 'ordinary labourer'. This fell 'much below' the minimum rate of 45% guaranteed by the Convention, leading the Committee to conclude that 'social security benefits in case of sickness, as they are understood and conceived by the Government, do not permit the United Kingdom to fulfil its obligations under Part III of the Convention as regards the level of benefit'.

19 Similar concerns were raised about unemployment benefits and survivors' benefits, both of which fell below the minimum standards in Convention 102, in the former case by a significant distance. In a stinging criticism, the Committee responded in the following terms to what it saw as a clear intention of the United Kingdom not to comply its 'obligation to maintain social security benefits at least at the minimum level guaranteed by these international instruments':

> In appraising the Government's position from a legal point of view, the Committee is bound to recall some basic rules of conduct of the Contracting Parties with respect to their international obligations freely assumed under [ILO Conventions]. Thus, the Vienna Convention on the Law of Treaties 1969 stipulates, in particular, that 'every treaty in force is binding upon the parties to it and must be performed by them in good faith' (Article 26: *Pacta sunt servanda*), and that 'a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty' (Article 27: Internal law and observance of treaties). With regard to the internal provisions to incentivize sick or unemployed workers moving into work as soon as possible invoked by the Government to justify its failure to guarantee the minimum benefits prescribed by [ILO Convention No 102], the Committee considers that the policy of keeping the basic standard of living of those who are on benefits and not in work below the absolute poverty line results in using social security as a means of economic compulsion to labour. While such policies were indeed common in Europe in the nineteenth century, in the twenty-first century the international community believes that

[7] As for example in the case of ILO Convention 17 which requires prescription drugs to be provided free of charge to the victims of industrial injury. See Ewing, above, pp 326-7.

> ‘basic income security should allow life in dignity’ and ‘secure protection aimed at preventing or alleviating poverty.

The Committee continued further in this vein by pointing out that the policy of keeping the rates of welfare benefits below the poverty line ‘stands in direct contradiction to such objectives’ of the Convention as ‘harmonising social charges in member countries’, and ‘facilitating their social progress’. The United Kingdom was accused of being ‘deaf to the common European and international objectives of social protection’.

20 Related also to the resources the United Kingdom is now prepared to direct to the protection of workers and their families are the concerns about labour inspection and the standards required by ILO Convention 81. This is an issue that has arisen specifically in the context of health and safety. Thus the Committee of Experts expressed concern in 2019 that the ‘the number of labour inspectors decreased from 1,432 to 990 between 2011–12 and 2018–19’, these official figures under-estimating the steep decline in view of the fact that ‘managers and technical experts are included in the Government’s figures’. The anxiety here related to the government’s obligation under ILO Convention 81 to ensure that ‘the number of labour inspectors shall be sufficient to secure the effective discharge of their duties’.

21 This and other concerns about health and safety were reinforced by the Covid-19 pandemic, which led the Committee of Experts to address again the system of HSE funding. The latter included the Fee for Intervention (FFI) cost recovery scheme, whereby employers are required to meet HSE costs in ‘identifying, investigating, rectifying and/or enforcing relevant violations’. According to the Health and Safety Executive itself, this leads to problems for the ‘effective management of the financial resources’, caused by ‘the uncertain nature of FFI income on budgeting’. In what was a direct challenge to the funding model for health and safety enforcement, the Committee of Experts reminded the United Kingdom that **‘**labour inspection is a vital public function, at the core of promoting and enforcing decent working conditions’, insisting that the Government must ‘take the necessary measures to ensure that sufficient budgetary resources are allocated for labour inspection’.

European Social Charter

22 The European Social Charter was signed and ratified by a Conservative government in the early 1960s. The Charter is an instrument of the Council of Europe (not the European Union), and contains 72 provisions, of which the United Kingdom has agreed to be bound by 59 (having, post-Brexit, denounced Article 18(2)). A Revised Social Charter with additional provisions was introduced in 1996, but it has not been ratified by the United Kingdom, which continues to be bound by the (still extant) 1961 Charter. The latter covers a wide range of social rights, including workers’ rights. In proposing that the United Kingdom sign and ratify the Charter in 1961, the Foreign Secretary (the responsible minister at the time) did so on the understanding that domestic law satisfied its requirements by a ‘wide margin’. That is not the case today.

23 The Social Charter applies differently in different countries. Some members of the Council of Europe have ratified the Revised Social Charter, while others have not. Some have accepted the Collective Complaints Protocol, while others have not. In addition, it is possible to ratify either the Social Charter or the Revised Social Charter without accepting all of their provisions. So far as we understand, most EU Member States have accepted more provisions than the United Kingdom. Those which have accepted fewer include Croatia (43),

Czech Republic (55), Denmark (49), Hungary (51), and Poland (58). Although the United Kingdom had previously accepted 60 provisions of the Social Charter, Article 18(2) was denounced in 2021 without any clear explanation.[8] It was nevertheless a rare example of governmental concern about its obligations under the Charter, though not one that led to an improvement in standards.

24 Compliance with the undertakings made in the Social Charter is supervised by the European Committee of Social Rights, a specialist body of independent jurists from different countries in the Council of Europe, who are elected by the Parliamentary Assembly. There is not currently a British nominated lawyer serving on the Committee. The Committee monitors compliance with Charter undertakings by reviewing government reports and responses (if any) received from bodies such as the TUC and the CBI. Monitoring takes place on a regular basis, with different groups of rights examined at different times in the monitoring cycle. The Committee also deals with Collective Complaints of non-observance from countries which permit such complaints. The United Kingdom has not ratified the Collective Complaints Protocol.

25 In a study in 2022 of the United Kingdom's compliance with Social Charter obligations at that time, the United Kingdom was found to have been in conformity with 22 out of 54 obligations examined in the previous four cycles of supervision, and to be in breach of 19 (in some cases for multiple reasons), with there being insufficient information to be able to reach a Conclusion in the other 13 cases.[9] Each cycle has concentrated on Social Charter provisions dealing with with one of four thematic groups contained in the Charter. These are resepectively 'employment, training and equal opportunities'; 'children, families and migrants'; 'labour rights'; and 'health, social security and social protection'. Since that study was conducted, there have been new reports from the Social Rights Committee. However, the position in relation to the United Kingdom does not appear to have changed much if at all. In the case of employment rights the level of non conformity is almost identical today as it was four years ago, with no signs of improvement.

26 So far as 'labour rights' specifically are concerned, these were reported again on 22 March 2023. This report covers the period 1 January 2017 to 31 December 2020. So far as the United Kingdom is concerned the category 'labour rights' covers

- **Article 2** (right to just conditions of work);
- **Article 4** (right to a fair remuneration);
- **Article 5** (right to organize);
- **Article 6** (right to bargain collectively).

27 The conclusions relating to the United Kingdom were said to cover **13 specific obligations**. The Committee reached **three Conclusions of conformity** (Articles 2(3), 6(1)

[8] Article 18(2) reads: 'With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Contracting Party, the Contracting Parties undertake: …; 2 to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;'

[9] K D Ewing, 'The 'Manifestation' of Social Rights and the Marginalisation of the European Social Charter in the United Kingdom' (2022) 12(2) *Lex Social, Revista De Derechos Sociales* 1–27: https://doi.org/10.46661/lexsocial.7367

and 6(3)), and **10 Conclusions of non-conformity** (Articles 2(2)(4),(5), 4(1),(2),(4),(5), 5, 6(2)(4)). The cases of non-conformity were as follows:

- **Article 2(2)** (paid public holidays), breached on the ground that the right of all workers to public holidays with pay is not guaranteed;
- **Article 2(4)** (elimination of risks in dangerous or unhealthy occupations), breached 'on the ground that workers exposed to residual occupational health risks are not entitled to appropriate compensatory measures';
- **Article 2(5)** (weekly rest period), breached '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(1)** (decent remuneration), breached at the time on the ground that 'the minimum wage does not ensure a decent standard of living'. Under the Charter, the rate should not be below 60% the national average wage.
- **Article 4(2)** (overtime rates), breached on the ground that on the ground that 'workers have no adequate legal guarantees to ensure them increased remuneration for overtime'. The statutory minimum wage is based on a flat hourly rate and does not have overtime rates.
- **Article 4(4)** (notice of termination), breached on the ground that 'notice periods are manifestly unreasonable for workers with less than three years of service'. This is a strengthening of the language used in previous conclusions.
- **Article 4(5)** (deductions from wages), breached 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 organize), breached 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[s] an unjustified incursion into the autonomy of trade unions'. A breach of Article 5 was also said to arise because the right to organize is not guaranteed to members of the armed forces.
- **Article 6(2)** (collective bargaining), breached 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'. Only a worker who has been directly induced may bring a claim, a right denied to other workers affected or to the union itself.
- **Article 6(4)** (right to strike), breached on multiple grounds, undermining the scope for workers to defend their interests through lawful collective action, which is 'excessively circumscribed' by reason that:
    - 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.

These conclusions are virtually identical to the conclusions published by the Committee following the previous cycle of supervision on labour rights, to which the government has failed to respond with remedial measures.

28 It is to be noted that Article 3 (right to safe and healthy working conditions) also deals with workers' rights. However, this was covered in a separate cycle of supervision as part of the thematic group 'health, social security and social protection'. Reporting in 2022, the Committee found that the United Kingdom was not in conformity with Article 3(1) (duty to issue health and safety regulations) because not all self-employed and domestic workers are covered by the occupational health and safety regulations. The Committee deferred its conclusion on Article 3(2) (enforcement of safety and health regulations) pending the receipt of information.

Conclusion

29 The JCHR's inquiry into human rights at work is long overdue. The foregoing provides some indication of the nature and range of the United Kingdom's shortcomings, and the extent to which the United Kingdom has fallen far behind minimum international standards. The extent of the criticisms of the United Kingdom by international supervisory bodies is extraordinary. So too has been the failure to do anything about it, to the extent of not even conducting a review of the relevant legislation in consultation with the social partners. This raises again the sincerity of the commitment to human rights by successive governments. These are problems which governments of different political parties have been aware of for many years, and to which governments of the three main United Kingdom political parties have failed to respond. While it might be said fairly that some governments have been more responsible than others for creating the problem, it might equally be said that other governments did not make enough of their opportunities to deal with the problem.

30 Yet despite the obvious lack of respect for human rights of workers suggested by the foregoing, we continue to assert our commitment to the rule of law, defined famously by Lord Bingham to require 'compliance by the state with its obligations in international as well as national laws'. Not only that: we continue to enter into legally binding free trade agreements proclaiming our commitment to ILO standards, with which we appear not to comply and which we continue by legislation to violate. Indeed, in the recent EU-UK Trade and Co-operation Agreement, the United Kingdom re-affirmed its commitment to abide by all ratified ILO Conventions, as well as all obligations accepted under the Social Charter.[10] There is no evidence of any steps being taken by government to give effect to this undertaking. On the contrary, the Strikes (Minimum Service Levels) Bill appears to mark yet another violation of human rights obligations, as the JCHR has already pointed out.

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[10] Article 386-7 and 399. Such provisions should not be necessary. Ratified treaties create their own autonomous obligations of compliance. The TCA and other free trade agreement undertakings compound existing obligations. The fact that they had to be included in an agreement between the EU and the UK is telling.