

Submission to the CESCR

**Submission by the German Trade Union Confederation
(Deutscher Gewerkschaftsbund – DGB)**

**addressed to the Committee on Economic, Social and Cultural Rights
(CESCR) related to the**

**Seventh Periodic Report of Germany during the Committee’s 78th
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1 INTRODUCTION

- 1 The German Trade Union Confederation (Deutscher Gewerkschaftsbund - DGB) and its affiliated unions welcome the opportunity to provide the Committee on Economic, Social and Cultural Rights (CESCR) with additional information for its examination of the 7th Report of the German Government on the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹ (the 'Report').
- 2 The DGB is the German trade union umbrella organisation composed of eight branch unions which cover all sectors of employment and represent about 5,6 million members all together. At international level, the DGB is affiliated to the International Trade Union Confederation (ITUC), the global union confederation, and at European level to the European Trade Union Confederation (ETUC).
- 3 This submission will address some issues which appear most important for the DGB to be included in the 'List of Issues' (LoI) bearing in mind
 - the Report,
 - the last 'Concluding Observations' by the Committee on Economic, Social and Cultural Rights (CESCR) in relation to Germany,²
 - the CESCR's pertinent 'General Comments', in particular the [General comment No. 23](#) (2016) on the right to just and favourable conditions of work (Article 7)³ and
 - the new coalition agreement of the new German Federal Government.⁴
- 4 The DGB reserves its right to provide the CESCR with further information, in particular in the preparation of the full examination of the Report by the CESCR (in one of its following sessions).

2 GENERAL ISSUES

- 5 From the outset, the DGB would like to express its special appreciation that Germany has – finally – ratified the **Optional Protocol**. It thus followed a long-

¹ Seventh periodic report submitted by Germany under articles 16 and 17 of the Covenant, due in 2023, submitted by 21 December 2023, made public 12 June 2024, E/C.12/DEU/7; https://tbinter-net.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FDEU%2F7&Lang=en.

² CESCR, Concluding observations on the sixth periodic report of Germany, 27.11. 2018, E/C.12/DEU/CO/6, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=LSrhbxXXxJ7c3Mz%2F2kquGQMVq169QtXNPWEYQta7q6j0Mq48gTDxj2P3svHBHmz-HaB4HB5iYWxoaeZX%2FndOVVg%3D%3D>.

³ CESCR, 27.04.2016, E/C.12/GC/23. Articles without further indication refer to the ICESCR unless the context clearly provides otherwise.

⁴ Koalitionsvertrag für die 21. Legislaturperiode zwischen CDU, CSU und SPD "Verantwortung für Deutschland"; available here: https://www.koalitionsvertrag2025.de/sites/www.koalitionsvertrag2025.de/files/koav_2025.pdf.

standing trade union demand. It will have to be seen how this avenue will work in practice given the high admissibility requirements, in particular the exhaustion of domestic remedies.

- 6 The CESCR has recommended in an overarching way: i.a.

that the State party undertake further steps with a view to enabling all people, regardless of their place of residence, to enjoy the rights covered by the Covenant in order to reduce existing disparities, including through close monitoring of the implementation of those rights by the federal Government. (para. 6)

- 7 As regards dissemination of the previous 'Concluding Observations' the CESCR recommends far reaching measures:

The Committee requests that the State party disseminate the present concluding observations widely at all levels of society, including at the national, provincial and municipal levels, in particular among parliamentarians, public officials and judicial authorities, and that it inform the Committee in its next periodic report about the steps taken to implement them. (para. 65)

- 8 In the DGB's view the Federal Government has not responded sufficiently to these recommendations.

3 SPECIFIC ARTICLES

- 9 In addressing main problems in relation to the general provisions (Articles 2 and 3) on the one side as well as in relation to the individual rights (mainly Articles 6 to 8) the DGB would like to contribute to the drafting of the 'List of issues'. It will start with previously expressed concerns and recommendations elaborated by the CESCR in its previous 'Concluding Observations' ('Previous concerns and recommendations') by commenting on their follow-up and refer afterwards to new problems ('New concerns') which should be additionally addressed by the CESCR sometimes proposing possible questions.

3.1 Article 2 – Non-discrimination

3.1.1 Previous concerns and recommendations

- 10 Concerning '**Discrimination in church-run institutions**' the CESCR found in its previous 'Concluding Observations' para. 22 and 23 no changes in the General Equal Treatment Act have been introduced by the Federal Government. The problem remains the same. We would like to propose to continue asking questions concerning that issue.
- 11 Concerning '**Family reunification of refugees and persons under subsidiary protection**' the CESCR the problems addressed in its previous 'Concluding Observations' para. 28, 29 have not been solved.

- 12 Conversely, the new Government intends to implement a much more restrictive migration policy including more rejections at national borders and the drastic reduction of family reunification.⁵ As one of the first measures, on June 27th a legislation was passed changing the Residence Act (Aufenthaltsgesetz) changing the objective of the Act to again “limit” immigration. One main element of the legislation is the aim to limit any family reunification for people with a status of subsidiary protection except in severe cases (*Härtefälle*) for two years which is being discussed in the Parliament at the moment.⁶ The DGB and its member unions criticise the deteriorations in migration policy, such as the temporary suspension of family reunification or the deportation of refugees to crisis areas and are of the opinion that this is difficult to reconcile with the claim of the country being committed to human rights and humanity.

The DGB would like to recommend that the Committee asks the State Party:

- How is it ensured that hardship cases are considered?
- What are the plans for future measures in the migration policies?

3.1.2 New concerns

- 13 In relation to non-discrimination it should be recalled that the CEACR has recently (having examined the implementation of the ILO [Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\)](#)) urged the Federal Government to strengthen its efforts to effectively address discrimination of persons with an **ethnic minority or migration background**.

In light of the persistent disparities in access to education, training and employment of persons with an ethnic minority or migration background, the Committee urges the Government to strengthen its efforts to effectively address discrimination and ensure equality of opportunity and treatment for these persons, in particular Sinti and Roma people, Muslim communities, people of African descent and migrant workers.⁷

- 14 The Federal Government promotes equal opportunities in the labour market, but not to its full potential. In addition to GAPS, the ‘MY TURN’ programme deserves special mention, as it focuses on the specific needs of (low-skilled) women with a migrant background. The barriers to language acquisition and labour market integration are particularly high for women with a migrant

⁵ See the coalition agreement of the new government (pp. 9), available here: https://www.koalitionsvertrag2025.de/sites/www.koalitionsvertrag2025.de/files/koav_2025.pdf.

⁶ See the homepage of the Federal government available here: <https://www.bundesregierung.de/breg-de/aktuelles/kabinett-familiennachzug-2349196> and an article on tagesschau.de available here: <https://www.tagesschau.de/inland/innenpolitik/familien-nachzug-abstimmung-100.html>.

⁷ Observation (CEACR) - adopted 2024, published 113rd ILC session (2025) [Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\)](#) - Germany (Ratification: 1961), https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4416061,102643:NO.

background⁸, which is why more tailored support measures are needed for this target group. It is regrettable that the predecessor project ‘Stark im Beruf’ (Strong at Work) is not being continued, even though it was very successful in helping mothers with a migrant background to enter the labour market and the needs remain high. The project had become well established during its seven-year funding period, and given the long start-up times required for new projects, the DGB criticises the fact that successful projects supporting women with a migrant background in integrating into the labour market are not being made permanent through regular funding.

- 15 Concerning the ‘**rights of transgender persons and violence against them**’ the DGB welcomes the replacement of the Transsexuals Act with the Self-Determination Act (*Selbstbestimmungsgesetz – SBGG*)⁹ which came into force on November 1, 2024. The act removes previously mandatory psychological assessments in court proceedings and the requirement for intersex persons to obtain medical certificates in order to change their gender marker and/or given names in the civil status register. This reform represents a long-overdue step toward respecting the dignity and autonomy of trans and intersex persons. The DGB and its member unions see the necessity of additionally amending Article 3§3 of the Basic Law to include “sexual identity” and reforming the General Equal Treatment Act (AGG).
- 16 The DGB and its member unions would like to draw attention to the following issues: The Act includes a clause that explicitly preserves private parties’ domiciliary rights and contractual freedom, stating: “Das Hausrecht und die Vertragsfreiheit bleiben unberührt.” This provision allows private actors — such as gym operators, healthcare providers, shelters, or sports clubs — to deny access to trans and inter persons even after legal gender recognition. This creates a legally sanctioned pathway for exclusion and discrimination, undermining the law’s stated purpose and violating international obligations to ensure effective protection against discrimination, including in the private sphere.
- 17 The DGB and its member unions are also deeply concerned by the drastic increase in anti-LGBTIQ hate crimes in Germany. According to official police data for 2024 hate crimes based on sexual orientation increased by 17.75 per cent, hate crimes based on gender diversity increased by 34.89 per cent and overall hate crimes motivated by group-related misanthropy rose by 28 per cent to over 21,000 cases.
- 18 Moreover, a 2024 study by the European Union Agency for Fundamental Rights found that only about 11 per cent of such crimes are reported, indicating a large

⁸ For example, an evaluation by the German Institute for Economic Research (2023) based on data from the IAB-BAMF-SOEP survey shows that there are significant gender-specific differences among refugees in terms of acquiring the German language: in 2020, more than half of men but only a quarter of women stated that they had a high level of language proficiency. See: [DIW Berlin: Erwerbschancen geflüchteter Frauen in Deutschland verbessern sich trotz ungünstiger Ausgangslage](https://www.diw.de/en/Erwerbschancen-gefluechteter-Frauen-in-Deutschland-verbessern-sich-trotz-unguenstiger-Ausgangslage).

⁹ Available here: <https://www.gesetze-im-internet.de/sbogg/>.

unaddressed dark field. This climate of violence has had tangible effects: in 2025, Pride events in cities such as Gelsenkirchen, Regensburg, and Schönebeck were cancelled or disrupted due to security threats. The state has not yet ensured full protection of queer people's freedom of assembly and safety in public space.

- 19 The DGB regrets that the Government's National Action Plan "Queer Living", though politically adopted in 2022, has yet to produce concrete and verifiable results. Stakeholders have reported significant delays, a lack of transparent implementation structures, and unclear funding commitments. Furthermore, there is still no nationwide, binding system for documenting and prosecuting hate crimes based on gender identity.

The DGB would like to recommend that the Committee asks the State Party:

- Please provide information on what steps are being taken to ensure that gender identity is protected also in access to privately operated gendered services and spaces?
- Please provide information on what actions the Federal Government is taking to address the documented rise in anti-LGBTIQ hate crimes and to ensure the safety of LGBTIQ persons in public life, including at Pride events?
- Please provide information on what concrete results have been achieved in the implementation of the "Queer Living" Action Plan since its adoption in 2022?

3.2 Article 3 – Equality between men and women

3.2.1 Previous concerns and recommendations

- 20 Concerning '**Women's representation in decision-making positions**' the CESCR the previous 'Concluding Observations' para. 30, 31 have not been addressed for the legal situation has not changed. In 2024 the proportion of women in management positions in the highest federal authorities was 44.3 per cent. This is an increase of 1.7 percentage points compared to the previous year.¹⁰ Accordingly, the problem remains relevant as criticised by the CESCR.

The DGB would like to recommend that the Committee asks the State Party:

Please provide information on the measures that are taken to enhance the proportion of women. Specifically, is part-time (even close to full-time) in management positions possible and promoted?

- 21 Concerning '**Gender pay gap**' the CESCR found in its previous 'Concluding Observations' para. 38, 39: Although there might have been some improvements, the over-all situation remains the same. In particular, tax policies have not been

¹⁰ Statistisches Bundesamt (Federal Statistical Office) (2025), available here: [Gleichstellungsindex 2024](#).

reviewed and any measures taken were not sufficient to prevent high incidence of poverty among older women.

22 Generally, even according to the official statistics the gender pay gap remains at a high level:

- Women earn 16 per cent less
- Women earned on average 16 per cent less per hour than men in 2024. The adjusted pay gap stagnated at 6 per cent. The differences in western Germany (and Berlin), amounting to 17 per cent, were markedly larger than those in the eastern part of Germany (5 per cent).¹¹

23 Moreover, it should be taken into account that the CEACR in examining the compliance of Germany with ILO [Equal Remuneration Convention, 1951 \(No. 100\)](#) has ‘urged’ the Government to strengthen its efforts to eliminate the ‘gender pay gap’:

The Committee therefore urges, once again, the Government to strengthen its efforts to eliminate the gender pay gap, including by addressing the differences in remuneration that may be due to gender discrimination. It asks the Government to provide information on: (i) the specific measures implemented to that end as well as to address gender disparity in pensions; (ii) any assessment made of the impact of such measures and any initiative undertaken as a follow-up, including in collaboration with the social partners; and (iii) statistical information on the earnings of men and women, disaggregated by economic activity and occupation, both in the public and private sectors.

24 In conclusion, Germany is continuing to violate Article 3 (and 7(a)(i)).

3.2.2 New concerns

25 The DGB and its member unions would like to address the **ignorance to pregnant and breastfeeding women at the workplace**. The Maternity Protection Act (*Mutterschutzgesetz* – MuSchG) of 2018 aims to ensure that pregnancy or the desire to breastfeed and working life are not mutually exclusive. However, there are considerable gaps in the practical implementation of maternity protection provisions at company level. This is indicated by the results of the DGB study on the implementation of maternity protection in companies.¹²

26 Pregnant and breastfeeding women are still far too often unable to exercise their legal rights automatically and naturally without encountering surprise, ignorance or conflicting expectations at work – or even being told that they should ‘voluntarily’ waive the protective rights to which they are entitled.

¹¹ Available here: https://www.destatis.de/EN/Themes/Labour/Labour-Market/Quality-Employment/Dimension1/1_5_GenderPayGap.html (under 2.3).

¹² Available here: [Mutterschutz – Zwischen Anspruch und Wirklichkeit klafft erhebliche Lücke | Frauen im Deutschen Gewerkschaftsbund](#).

- 27 Due to the increasing participation of women in the labour market, pregnancy will become an even more common part of the working world in the future. For this reason alone, pregnancy and childbirth must become a normal part of everyday working life, shaped by those responsible within the company in accordance with the provisions of the Maternity Protection Act and accompanied and supported by all stakeholders involved in the company. Companies must (learn to) accept this phase of life much more than they have done so far as a natural part of their workers' lives. The corporate culture must be open to such phases of physical and emotional change in women's lives, value them and support them confidently without endangering the health of the woman or the child.

3.3 Article 6 – Right to work

3.3.1 Previous concerns and recommendations

- 28 Concerning '**Ecclesiastical Labour Law**' the DGB would like to inform the CESCR that the coalition agreement referred to in para. 56 of the German report is not applicable anymore. Changes envisaged in the report were not made. The new coalition agreement does not contain any comments to this topic. The DGB would like to propose to address this as an issue for the report.
- 29 Concerning the '**Citizen's Benefit Act**' the DGB wants to inform the Committee that the new federal government has agreed to partially reverse the Citizen's Benefit Act (*Zweites Buch Sozialgesetzbuch – SGB II*, the so called 'Bürgergeld') in the new coalition agreement. For the DGB and its member unions it is important that the progressive elements of the reform are retained. These include in particular the cooperative working methods of the labour administration and the opportunity for the unemployed to catch up on a vocational qualification. In addition, the constitutionally protected right to a secure livelihood must be safeguarded in the planned reorganisation of sanctions.
- 30 Concerning '**Employment of persons with disabilities**' the CESCR found in its previous 'Concluding Observations' para. 34, 35: In accordance with the UN Convention on the Rights of Persons with Disabilities the right of persons with disabilities to accessibility and reasonable accommodation for their participation should be enshrined. The definition of 'reasonable accommodation' should be based on Art. 2 UN Convention on the Rights of Persons with Disabilities. It should be made clear that not providing such accommodation constitutes a discrimination based on disability. In particular, the DGB calls for training and workplaces to be barrier-free in order to improve the participation of people with disabilities in the labour market.

3.3.2 New concerns

- 31 The DGB also believes that there is an urgent need for a reform of sheltered workshops that creates more alternatives in the general labour market for this target group and at the same time also improves the income situation of people in the workshops.

3.4 Article 7 – Right to just and favourable conditions of work

3.4.1 Previous concerns and recommendations

- 32 Concerning '**Minimum wage**' the CESC found in its previous 'Concluding Observations' para 36, 37: The DGB and its member unions acknowledge the important improvements achieved by the adoption of the Act Regulating a General Minimum Wage (*Mindestlohngesetz – MiLoG*).¹³ We want to bring to your attention that the independent minimum wage commission has just agreed last Friday, June 27, on a higher minimum wage. It will rise to 13,90 euro as of January 1, 2026. In a second step it will increase another 70 cents to 14,60 euro beginning January 1, 2027. Nevertheless, the DGB would like to express:
- 33 Concerning the personal scope there are still important exclusions for certain categories of interns and workers following a long-term unemployment.¹⁴ Second, enforcement is still lacking efficiency.¹⁵
- 34 Accordingly, the minimum wage legislation and practice is not in conformity with Article 7(a)(ii).
- 35 Concerning '**Occupational safety and health**' the CESC found in its previous 'Concluding Observations' para. 40, 41: Generally speaking, there is no indication that labour inspection has been strengthened generally or in the agricultural sector in particular. On the contrary, we have signals that labour inspection fails to fulfil the minimum visitation rates. From the ILO perspective, it should be noted that the CEACR has referred to important implementation problems in relation to the ILO [Labour Inspection Convention, 1947 \(No. 81\)](#) and [Labour Inspection \(Agriculture\) Convention, 1969 \(No. 129\)](#).¹⁶
- 36 Concerning '**Domestic workers**' the CESC found in its previous 'Concluding Observations' para. 42, 43: The problem referred to above still exists. The majority of those working in private households - and these are mainly women - have

¹³ See https://www.gesetze-im-internet.de/englisch_milog/englisch_milog.html, the translation includes the amendments to the Act by Article 2 of the Act of 28 June 2023 (Federal Law Gazette 2023 I No. 172).

¹⁴ See *ibid*, Section 22 - Personal scope.

¹⁵ 'The evidence points to a small compliance-enhancing effect of the enforcement measures. The gains in compliance are not offset by more pronounced employment losses in those industries subject to stricter enforcement.' Bossler, M., Jaenichen, U. & Schächtele, S. (2022): How effective are enforcement measures for compliance with the minimum wage? Evidence from Germany. In: *Economic and Industrial Democracy*, Vol. 43, No. 2, p. 943-971. DOI:10.1177/0143831X20962193.

¹⁶ Direct Request (CEACR) - adopted 2024, published 113rd ILC session (2025), Germany, Labour Inspection Convention, 1947 (No. 81) (Ratification: 1955), Labour Inspection (Agriculture) Convention, 1969 (No. 129) (Ratification: 1973); https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4414310,102643:NO.

hardly any access to the law and are therefore not protected.¹⁷ Around 90% of domestic workers in Germany work undocumented and are not covered by social security legislation (i.a. in the event of an accident or illness).

- 37 In order to establish effective labour protection for domestic workers irregular employment in this sector must be reduced and replaced by employment subject to social insurance contributions.
- 38 Reference should also be made to the “Direct request” by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) with various questions on the ratified ILO [Domestic Workers Convention, 2011 \(No. 189\)](#), which are also relevant with regard to Article 7.¹⁸

3.4.2 New concerns

- 39 The protection of health and safety is particularly important in relation to **non-standard employment** or any other vulnerable group of workers. The most important are referred to in General Comment No. 23 the CESCR.¹⁹
- 40 Several groups of workers have already been addressed (at least to a certain extent) above in relation to health and safety:
- (f) *Domestic workers*,²⁰
 - (h) *Agricultural workers*.²¹
- 41 Other categories or groups who are referred to above but not specifically in relation to health and safety are:
- (a) *Female workers*,²²
 - (c) *Workers with disabilities*.²³

The DGB and its member unions would like to bring to your attention that one major problem is the poor working conditions in many female-dominated sectors. Due to staff shortages, the intensity of work is enormous, especially in the care and education sectors. Absenteeism due to illness is above average. Many workers are reducing their working hours or leaving their jobs altogether due to physical and mental overload. In the representative employment survey DGB-Index Gute Arbeit 2024, 70 per cent of workers in nursing and over 61 per cent of workers in education stated that they would probably not be able to continue

¹⁷ A specific problem is the exclusion of domestic workers in private households from the personal scope of the main Work Protection Law Act (Arbeitsschutzgesetz) pursuant to its Section 1(2).

¹⁸ Direct Request (CEACR) - adopted 2020, published 109th ILC session (2021) Domestic Workers Convention, 2011 (No. 189) - Germany (Ratification: 2013), https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID%2CP13100_COUNTRY_ID:4059758%2C102643.

¹⁹ See n 3, para. 47. The following small letters in ()-brackets refer to this paragraph.

²⁰ See paras. 36 seq.

²¹ See paras. 35 seq.

²² See above under 3.2.

²³ See paras. 30 seq.

working in their jobs until retirement.²⁴ Effective countermeasures are needed here, such as statutory staffing levels to ensure the quality of work, maintain the long-term health of workers and make the professions more attractive.

42 However further groups who are specifically vulnerable and need additional protection remain unaddressed:

- (d) *Workers in the informal economy,*
- (e) *Migrant workers,*
- (g) *Self-employed workers,*
- (i) *Refugee workers,*
- (j) *Unpaid workers.*

43 Part of the 'informal economy' in Germany is the digitalised work leading to completely new patterns of work, the so-called 'platform work'. While the legal framework might be seen as covering most forms of workers by the respective legislation (Working Hours Act - *Arbeitszeitgesetz* - ArbZG)²⁵ it is in many respects unclear how the rights of those workers can be made effective including the difficulties concerning the election of works councils.

44 In conclusion, much more efforts are necessary in order to comply with the requirements deriving from Article 7(b).

45 In relation to '**limitation of working hours**' (Article 7(d)) the new coalition agreement announces the discontinuation of the 100-years principle of the maximum working limit of 8 hours per day, the extension of sunday work and – this is the only positive aspect - time recording with extensive exceptions. The DGB and its member unions have strongly criticised this move. Details are still to be discussed. In the worst case scenario this could mean that it would then be possible to work 12 hours and 15 minutes a day and up to 73 hours and 30 minutes a week if then balanced out in a certain period of time.

46 In contrast, the CECSR had expressed the specific requirements deriving from the ICESCR already in its General Comment No. 23 as follows:

Working days spent in all activities, including unpaid work, should be limited to a specified number of hours. While the general daily limit (without overtime) should be eight hours, the rule should take into account the complexities of the workplace and allow for flexibility, responding, for example, to different types of work arrangements such as shift work, consecutive work shifts, work during emergencies and flexible working arrangements. Exceptions should be strictly limited and subject to consultation with workers and their representative organizations. Where legislation permits longer working days, employers should compensate for longer days with shorter working days so that the average number of working hours over a period of weeks does not exceed the general

²⁴ DGB Index Gute Arbeit Report 2024, p. 21; available here: https://www.dgb.de/fileadmin/download_center/Studien/DGB-Index-Gute-Arbeit_2024_Report_Fachkr%C3%A4fte_sicherung_web.pdf.

²⁵ For the exception of domestic workers, see n 17.

principle of eight hours per day. Requirements for workers to be on-call or on standby need to be taken into account in the calculation of hours of work.²⁶

- 47 According to the Working Hours Act (*Arbeitszeitgesetz* - ArbZG) it is possible for employers not bound by a collective agreement to apply these rules even though there hasn't been any collective bargaining concerning the specific situation at the workplace. This way a collective agreement which was bargained for a specific situation is "taken over". The DGB and its member unions are of the opinion that this situation does not guarantee the workers' protection sufficiently.

The DGB would like to recommend that the Committee asks the State Party:

- Please provide detailed information on the measures taken to guarantee sufficient rest and break periods as well as reasonable limitation of working hours. How is it guaranteed that longer hours are not simply 'bought off' of the workers but that measures are taken to maintain the health of the workers?
- Please provide information on the existence and efficiency of time recording and control mechanisms.
- Please provide detailed information on the possible deviations from 8 hours a day.
- Is it possible to deviate from the Working Hours Act without consulting workers or workers' representative organisations? What measures are taken to maintain the health of the workers in this situation?

3.5 Article 8 – Freedom of association

3.5.1 Previous concerns and recommendations

- 48 Concerning the '**Right to strike of civil servants**' the CESCR found in its previous 'Concluding Observations' para. 44, 45: This long-standing violation of Article 8(1)(d)²⁷ is very serious and still exists. Any attempt to justify this prohibition by referring to the judgment of the European Court of Human Rights (ECtHR) in the *Humpert* case which declared the total ban for civil servants to go on strike as not violating Article 11 of the European Convention on Human Rights (ECHR)²⁸ is legally not pertinent.
- 49 There are at least two main reasons why any impact of this judgment is legally excluded in relation to other international supervisory bodies' (i.e. here the CESCR's) case law:

²⁶ See n 3, para. 35.

²⁷ And of Article 22 ICCPR; see for more details the DGB submission to the CCPR (10.09.2020), https://ccprcentre.org/files/documents/INT_CCPR_CSS_DEU_43260_E.pdf.

²⁸ ECtHR, 14.12.2023, Nos. 59433/18 e.a., *Humpert e.a. v. Germany*.

- 50 First, the judgment itself declares that it is not ‘calling into question the analysis carried out by those bodies’:

The competent monitoring bodies set up under the specialised international instruments – notably the CEACR and the ECSR as supervisory bodies for the ILO standards and the European Social Charter, the latter containing a more specific and exacting norm regarding industrial action, but also the CESCR and the HRC – have repeatedly criticised the status-based prohibition of strikes by civil servants in Germany, including, in particular, with respect to teachers with that status (see paragraphs 53, 54, 56 and 60 above). Without calling into question the analysis carried out by those bodies in their assessment of the respondent State’s compliance with the international instruments which they were set up to monitor, ...²⁹

- 51 Second, the most favourable principle contained in Article 53 ECHR applies. It reads as follows:

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party.

Accordingly, Germany having ratified the ICESCR is ‘party’ to this instrument and has to abide by the obligations following therefrom without any (negative) interference by the ECHR (or more concretely by the *Humpert* judgment of the ECtHR).

- 52 Moreover, in the follow-up of the *Humpert* judgment the CEACR has confirmed its case law by declaring this prohibition as contrary to Article 3 of ILO [Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#):

The Committee thus observes that the situation in Germany is still not in line with the Convention in this regard. ***Regretting that it has not yet been possible to find a solution to this long-standing matter, the Committee encourages the Government to continue engaging in a comprehensive national dialogue with representative organizations in the public service with a view to finding possible ways of aligning the legislation with the Convention.***³⁰

- 53 In conclusion, Germany is continuing to violate Article 8(1)(d).

²⁹ Ibid, para. 126.

³⁰ Observation (CEACR) - adopted 2024, published 113rd ILC session (2025), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - Germany (Ratification: 1957); https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4416817,102643:NO.

3.5.2 New concerns

- 54 The **right to access to the workplace** including access to digital channels (i.e. intranet) is of particular importance for trade unions. This is particularly true in the times of digitalisation and increased use of mobile work.
- 55 While the right of physical access is only recognised by case law within certain limits (without specific cause still only twice a year) the digital right of access in the form of trade union information and membership recruitment by email was recognised in principle by a recent decision of the Federal Labour Court. However, this only concerned whether the trade union may use email addresses that it already has. In practice, however, there is uncertainty as to whether e-mail addresses may or must be issued to the trade union if they do not yet have them and whether trade unions can provide information about their work on the intranet. This applies, for example, when trade unions want to provide information about trade union work in companies in which they are not yet represented, in purely digital companies such as delivery services or in companies with increasingly mobile work. However, the Federal Labour Court has denied such a digital right of access.

The DGB would like to recommend that the Committee asks the State Party:

- Please provide detailed information on the measures taken to assure that the right to access to customary digital channels is also guaranteed for trade unions.

- 56 '**Union Busting**' of trade union members for their activities is an important issue for the DGB and its member unions. Freedom of association is seriously affected when workers are deliberately intimidated in companies and kept from participating in trade union activities.
- 57 First, it should be recalled that all legal protection provided against discrimination does not include trade union membership and/or activity as ground for protection. This is the case in the following legislation:
- Anti-discrimination legislation: the General Act on Equal Treatment (*Allgemeines Gleichbehandlungsgesetz – AGG*) limits its protection to the eight grounds mentioned therein not including this ground explicitly,
 - Dismissal protection: this ground is not explicitly recognised as ground for an invalid dismissal in the Dismissal protection Act (although the jurisdiction acknowledges it) (*Kündigungsschutzgesetz – KSchG*).
 - Criminal law: While obstructing the establishment and work of works councils is a criminal offence under Section 119 Works Constitution Act (*Betriebsverfassungsgesetz – BetrVG*) this is not the case for general trade union activities (i.e. not related to works councils).

These important gaps should be eliminated.

- 58 Second and more generally, trade union members should be protected by law from the adverse consequences that membership or activities on behalf of their trade union can have on their employment, particularly in the form of reprisals or discrimination as stated above (para. 57). National law must provide for regulations and compensation that is appropriate and proportionate to the damage suffered by the victim.
- 59 Further to the limitation dealt with above (para. 48) the **right to strike** is moreover limited by case law. The jurisdiction of the labour courts has restricted the right to strike in one very important respect: according to this case law, strikes are only permissible to enforce collective agreements with objectives that can be regulated by collective agreements.
- 60 The permitted objectives are, additionally, defined very narrowly by case law referring i.a. to
- entrepreneurial freedom, which must not be unduly restricted,
 - the necessity that all elements of trade union demands for a collective agreement must be fully lawful (i.e. if only one element is considered not to be lawful the strike is declared unlawful in total).
- 61 These restrictions do not correspond to the function of the right to strike to resolve conflicts of interest.