January 2012

# European Social Charter (revised)

European Committee of Social Rights

Conclusions 2011
(ARMENIA)

Articles 7, 8, 17,19 and 27
of the Revised Charter

*This text may be subject to editorial revision.*

## Introduction

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts "conclusions" and in respect of collective complaints, it adopts "decisions".

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.[1]

*The Revised European Social Charter was ratified by Armenia on 21 January 2004. The time limit for submitting the 5th report on the application of this treaty to the Council of Europe was 31 October 2010 and Armenia submitted it on 7 February 2011. On 27 May 2011, a letter was addressed to the Government requesting supplementary information regarding Article 19. The Government submitted its reply on 14 July 2011.*

This report concerned the accepted provisions of the following articles belonging to 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 right of workers with family responsibilities to equal opportunity and treatment (Article 27),
- the right to housing (Article 31).

Armenia has accepted all the Articles from this group with the exception of Articles 16 and 31.

The reference period was 1 January 2005 to 31 December 2009.

The present chapter on Armenia concerns 32 situations and contains:

- 8 conclusions of conformity: Articles 7§4, 7§6, 7§8, 8§1, 8§3, 8§5, 19§9 and 27§2;
- 11 conclusions of non-conformity: Articles 7§1, 7§3, 7§7, 8§2, 8§4, 17§1, 17§2, 19§10, 19§11, 19§12 et 27§3.

In respect of the other 13 situations concerning Articles 7§§2, 5, 9, and 10, as well as 19§§1 to 8 and 27§1, the Committee needs further information in order to assess the situation. The Government is therefore invited to provide this information in the next report on the articles in question.

The next Armenian report deals with the accepted provisions of the following articles belonging to the first thematic group "Employment, training and equal opportunities":

- the right to work (Article1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

The deadline for the report was 31 October 2011.

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[1] *The conclusions as well as state reports can be consulted on the Council of Europe's Internet site (www.coe.int/socialcharter).*

**Article 7 - Right of children and young persons to protection**

*Paragraph 1 - Prohibition of employment under the age of 15*

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

The Committee takes note of the legislative framework in place regulating the minimum age of employment.

Article 32 of the Constitution lays down the prohibition of admission to permanent employment for children under 16 years of age. According to Article 15 of the Labour Code, upon reaching the age of 16, a person has full legal capacity to work and be employed, except in cases provided for in the Labour Code and other laws. According to Article 17 and 89 of the Labour Code, concluding an employment contract with citizens under the age of 14 or engaging them in work is prohibited; as regards children at the age of 14 to 16, they may be admitted to employment only in case of the existence of the written consent of one of the parents or their legal guardian.

According to Section 19 of the Rights of the Child Act, every child has, according to his or her age capacities, development specificities and abilities, the right to acquire a profession and engage in occupations not prohibited by law. This Act also provides that children under the age of 16 may be admitted to temporary employment with the written consent of one of the parents or legal guardian, if this does not hinder their education. It is also prohibited to engage a child for the production, use or sales of alcoholic beverages, narcotic and psychotropic substances, tobacco, literature and video tapes with erotic and horror content, as well as in such work that may harm their health, physical and mental development, or hinder their education.

The Committee recalls that, pursuant to Article 7§1, the prohibition on the employment of children under the age of 15 applies to all economic sectors, including agriculture, and all places of work, including work within family enterprises and in private households. It also extends to all forms of economic activity, irrespective of the status of the worker (employee, self-employed, unpaid family helper or other). The Committee asks whether there are any economic sectors or forms of economic activity which are exempt from the general rules concerning minimum age of employment.

The Committee recalls that Article 7§1 allows for an exception concerning light work, i.e. work which does not entail any risk to the health, moral welfare, development or education of children. States are required to define the types of work which may be considered light, or at least to draw up a list of those who are not. Work considered to be light ceases to be so if it is performed for an excessive duration. The Committee notes form the report that child work is allowed starting from age of 14 and it asks that next report specifies whether this entails only what is considered as "light work". For this purpose, it asks that the next report describe the types of work which are allowed to be performed by children between the age of 14 to 16 and its duration.

The report states that Article 140 of the Labour Code allows children of 14 years of age to work up to 24 hours per week. The duration of the daily uninterrupted rest for children at the age of 14 may not be less than 14 hours, which means that they can work up to 10 hours per day.

The Committee considers that the daily and weekly working time for children under the age of 15 is excessive to be qualified as light work and thus, not in conformity with Article 7§1 of the Charter.

The Committee recalls that the effective protection of the rights, guaranteed by Article 7§1, cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised. The Labour Inspectorate has a decisive role to play in this respect.

The report states that the Labour Inspectorate undertakes planned inspections as well as *ad hoc* inspections on the basis of alerts in cases of obvious violations of labour legislation. It controls whether the guarantees established by labour legislation for persons under the age of 18 are respected.

According to Article 41 of the Code of Administrative Offences, a violation of the requirements of labour legislation and of other regulatory legal acts containing of labour law standards will result in warnings being issued against those having committed the violation. A repeated violation within

one year following an administrative sanctions will lead to a fine being imposed on the employer, in the amount of 50-fold the prescribed minimum salary.

The report also states that, for the purpose of implementing the legal framework, the Labour Inspectorate has published guides (booklets) and regularly organised seminars on the implementation of labour legislation for employers and representatives of labour groups.

The Committee notes that no violations of the provisions regarding the employment age of children have been identified. It asks that the next report indicate whether the Labour Inspectorate carries out regular controls in enterprises employing children.

Regarding work done at home, States are required to monitor the conditions under which it is performed in practice. The Committee asks how the situation regarding work done at home is monitored in practice.

*Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 7§1 of the Charter on the ground that the daily and weekly working time for children under the age of 15 is excessive and cannot qualify as light work.

## Article 7 - Right of children and young persons to protection

*Paragraph 2 - Prohibition of employment under the age of 18 for dangerous or unhealthy activities*

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

The Committee recalls that, in application of Article 7§2, domestic law must set 18 as the minimum age of admission to prescribed occupations regarded as dangerous or unhealthy. There must be an adequate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise in the course of work.

The Committee takes note of the legislative framework in place regulating work considered dangerous and unhealthy for young workers under the age of 18.

According to Section 19 of the Rights of the Child Act, children have the right to more favourable working conditions. The requirements for admission of a child to employment are established by the Labour Code. Thus, it is prohibited to employ a child for the production, use or sales of alcoholic beverages, narcotic and psychotropic substances, tobacco, literature and video tapes with erotic and horror content, as well as in such work that may harm their health, physical and mental development, or hinder their education.

According to Article 257 of the Labour Code, persons under the age of 18 may not perform hard work; work involving exposure to toxic, carcinogenic factors or those dangerous for health; work involving possible exposure to ionising radiation; work involving a high risk of accidents or occupational diseases, as well as work, the safe performance of which, requires major attention or experience.

The list of the different types of work regarded as hard and harmful appears in Decision of the Government No. 2308-N, 29 December 2005, “on approving the list of works regarded as hard and harmful for persons under the age of eighteen, pregnant women and women taking care of a child under one year of age”. This list defines work regarded as harmful for persons under the age of 18 due to chemical, physical, biological factors, industrial aerosols, as well as hard work, work involving “sensuous, emotional, tension and risk factors” for persons under the age of 18.

The Committee asks the next report to provide the complete list of the types of work which are considered dangerous or unhealthy.

The identification of children employed for the above-mentioned types of work is carried out by the Labour Inspectorate. The list of the types of work concerned is reviewed as necessary. This list has been considered and approved by the representatives of employers and trade unions. The report states that the Labour Inspectorate undertakes planned inspections as well as ad-hoc inspections on the basis of alerts in case of obvious violations of labour legislation. The Labour

Inspectorate controls whether guarantees established by labour legislation for persons under the age of 18 are respected. According to Article 41 of the Code of Administrative Offences, a violation of the requirements of labour legislation and of other regulatory legal acts containing labour law standards results in a warning being issued against those having committed the violation. A repeated violation within one year following administrative sanctions, leads to a fine being imposed on the employer, in the amount of 50-fold the prescribed minimum salary. The report states also that, for the purpose of implementing the legal framework, the Labour Inspectorate has published guides (booklets) and regularly organised seminars related to implementation of the labour legislation for employers, representatives of labour groups.

The Committee notes that no violations of the provisions regarding employment of young persons in dangerous or unhealthy work have been identified. It asks that the next report indicate whether the Labour Inspectorate carries out regular controls in enterprises where potentially dangerous or unhealthy work is performed.

The Committee recalls that, however, if such work proves absolutely necessary for their vocational training, young workers may be permitted to perform it before the age of 18, but only under strict, expert supervision and only for the time necessary. The Labour Inspectorate must monitor these arrangements. The Appendix to Article 7§2 also permits exceptions in cases where young persons under the age of 18 have completed their training for performing dangerous tasks and, thus, received the necessary information.

The report states that the above-mentioned Government Decision stipulates that exception from work regarded as harmful for persons under the age of 18 due to chemical, physical factors, is work performed in chemical laboratories set up for educational purposes in secondary, general education, secondary vocational and higher education institutions, work performed in research (non production and experimental) laboratories of scientific organisations, work with sources of ionising radiation in the course of education (X-ray technician, X-ray laboratory assistant) of persons at the age of 16 to 18 in secondary vocational education institutions and organisations. The types of work which are performed in special conditions are also defined as exceptions in the list, such as office and/or support work outside production premises in optimal working conditions, or work performed with compulsory use of individual protective means, or work with potential biological factors subject to the required sanitary-epidemiological regime; scheduled work related to seasonal sanitary cleaning and collection of wild berry in forestry may constitute exceptions from work in conditions of potential tension and risk. Involvement of children under the age of 18 in professional sport, stage dance and circus are defined as exceptions in the list of difficult types of work for young workers under the age of 18.

The Committee asks that the next report provide information on the rules that apply to vocational training in dangerous or unhealthy occupations, particularly with the issues raised above concerning expert supervision of such work.

*Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

## Article 7 - Right of children and young persons to protection

*Paragraph 3 - Prohibition of employment of children subject to compulsory education*

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

The Committee recalls that Article 7§3 guarantees the right of every child to education by safeguarding its capacity to learn. Only light work is permissible for schoolchildren under this provision. The notion of “light work” is the same as under article 7§1. In the case of states that have set the same age, which is over 15 years, for admission to employment and the end of compulsory education, questions related to light work are examined under Article 7§1. However, since Article 7§3 is concerned with the effective exercise of the right to compulsory education, matters relating thereto are assessed under that article.

The Committee takes note of the primary and secondary education system in Armenia. It notes from the report that, according to General Education Act, a child may have completed compulsory education by the age of 15 or 16.

The Committee recalls that adequate safeguards must be in place to allow the authorities (labour inspectorate, social and education services) to protect children from work which could deprive them of the full benefit of their education. During school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework. Allowing children to work before school begins in the morning is, in principle, contrary to Article 7§3. Allowing children aged 15 years still subject to compulsory education to deliver newspapers from 6 a.m. for up 2 hours per day, 5 days per week before school is not in conformity with the Charter.

The report states that Article 140 of the Labour Code establishes a shorter working time for young workers at the age of 14 to 16, up to 24 hours per week. The duration of the daily uninterrupted rest for employees at the age of 14 to 16 may not be less than 14 hours, which means that they can work up to 10 hours per day. The Committee makes reference as a minimum framework to Council Directive 94/33/EC of 22 June 1994 on protection of young people at work which establishes that working time of children must be limited in 2 hours on a school day and 12 hours a week for work performed in term-time outside the hours fixed for school attendance, provided that this is not prohibited by national legislation and/or practice and that in no circumstances may the daily working time exceed 7 hours.

The Committee considers, therefore, that the daily and weekly working time for children subject to compulsory education is excessive and thus, not in conformity with Article 7§3 of the Charter.

As regards work during school holidays, the Committee refers to its interpretative statement on Article 7§3 in the General Introduction. It asks the next report to indicate whether the situation in Armenia complies with the principles set out in this statement. In particular, it asks whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday. It also asks what are the rest periods during the other school holidays. Meanwhile, it reserves its position on this point.

*Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 7§3 of the Charter on the ground that the daily and weekly working time for children subject to compulsory education is excessive.

## Article 7 - Right of children and young persons to protection

*Paragraph 4 - Working time for young persons under 18*

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

The Committee recalls that under Article 7§4, domestic law must limit the working hours of persons under 18 years of age who are no longer subject to compulsory schooling. The limitation may be the result of legislation, regulations, contracts or practice. For persons under 16 years of age, a limit of eight hours a day or forty hours a week is contrary to the article. However, for persons over 16 years of age, the same limits are in conformity with the article.

The report states that Article 140 of the Labour Code establishes for workers younger than 16, a shorter working time of up to 24 hours per week; while for young workers at the age of 16 to 18, up to 36 hours per week.

The Committee asks whether this rule applies to all young workers.

It recalls that the situation in practice should be regularly monitored and asks that next report provide information on the activity of the Labour Inspectorate.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Armenia is in conformity with Article 7§4 of the Charter.

**Article 7 - Right of children and young persons to protection**

*Paragraph 5 - Fair pay*

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

In application of Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentices appropriate allowances. This right may result from statutory law, collective agreements or other means. The "fair" or "appropriate" character of the wage is assessed by comparing young workers' remuneration with the starting wage or minimum wage paid to adults (aged eighteen or above).

In accordance with the methodology adopted under Article 4§1, wages taken into consideration are those after deduction of taxes and social security contributions.

***Young workers***

The Committee recalls that young worker's wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly. For fifteen/sixteen year-olds, a wage of 30% lower than the adult starting wage is acceptable. For sixteen/eighteen year-olds, the difference may not exceed 20%. The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker's wage which respects these percentage differentials is not considered fair. Since Armenia has not accepted Article 4§1, the Committee makes its assessment on the adequacy of young workers wage under Article 7§5. For this purpose, the ratio between net minimum wage and net average wage is taken into account.

The report states that the minimum hourly wage for a 40-hour week (an adult worker) is AMD 179 (€ 0.35), while for the 36-hours week (16-18 years olds) it is AMD 199 (€ 0.39) and for the 24-hour week (young workers below 16 years of age) it is AMD 298 (€ 0.58). The report does not specify whether this is net hourly wage. The report also fails to provide information on the net average wage.

The Committee asks that the next report provide this information and defers its conclusion on this issue.

***Apprentices***

The Committee recalls that apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period: starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end.

The report provides no information as to the allowances of apprentices.

The Committee asks therefore that the next report provide information with regard to the issues raised above.

*Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

**Article 7 - Right of children and young persons to protection**

*Paragraph 6 - Inclusion of time spent on vocational training in the normal working time*

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

The Committee recalls that in application of Article 7§6, time spent on vocational training by young people during normal working hours must be treated as part of the working day. Such training must, in principle, be done with the employer's consent and be related to the young person's work. Training time must thus be remunerated as normal working time, and there must be no

obligation to make up for the time spent in training, which would effectively increase the total number of hours worked.

This right also applies to training followed by young people with the consent of the employer and which is related to the work carried out, but which is not necessarily financed by the latter.

The report states that according to Article 138 of the Labour Code, the period necessary for the improvement of qualification at workplace or educational institutions is included in the working time. According to Article 178 of the Labour Code, salary is the remuneration paid to an employee for performing the work envisaged by the employment contract. Thus, being included in the working time, the time for the improvement of qualification at workplace or educational institutions is regarded as a part of the working day and is remunerated as working time.

The Committee asks whether this rule applies to all young workers.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Armenia is in conformity with Article 7§6 of the Charter.

**Article 7 - Right of children and young persons to protection**

*Paragraph 7 - Paid annual holidays*

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

The Committee recalls that in application of Article 7§7, young persons under 18 years of age must be given at least four weeks' annual holiday with pay. The arrangements which apply are the same as those applicable to annual paid leave for adults (Article 2§3). For example, employed persons of under 18 years of age should not have the option of giving-up their annual holiday with pay; in the event of illness or accident during the holidays, they must have the right to take the leave lost at some other time.

The report states that young workers under the age of 18 are entitled to choose the time of the annual leave after 6 months of uninterrupted work. According to Article 159 of the Labour Code, the duration of the minimum annual leave is 28 days. The annual leave of part-time employees is not reduced. A young worker enjoys the right to an annual leave; the duration of the minimum annual leave is 28 days. Annual leave is paid at the average wage (Article 169 of the Labour Code). The report states that it is not allowed to replace the minimum annual leave by a monetary compensation. However, where the annual leave may not be provided to an employee due to the rescission of the employment contract, or in case when the employee does not wish for it to be provided, he or she is paid a monetary compensation (Article 170 of the Labour Code).

The Committee considers that the option of giving-up the annual holiday for financial compensation is not in conformity with Article 7§7 of the Charter.

The Committee asks whether young workers have the possibility to take the leave lost, due to illness or accident, at some other time.

It recalls that the situation in practice should be regularly monitored and asks that next report provide information on the activity of the Labour Inspectorate.

*Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 7§7 of the Charter on the ground that young workers have the option of giving-up the annual holiday for financial compensation.

### Article 7 - Right of children and young persons to protection

*Paragraph 8 - Prohibition of night work*

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

The Committee recalls that, in application of Article 7§8, domestic law must provide that under–18 year olds are not employed in night work. Laws or regulations must not cover only industrial work. Exceptions can be made as regards certain occupations specified in national laws or regulations.

The report states that according to Article 148 of the Labour Code, night time is the period between 10 p.m. and 6 a.m.. Young workers under the age of 18 are not allowed to be engaged in night work.

The Committee asks whether the prohibition of night work applies to all young workers.

It recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activity of the Labour Inspectorate in this respect.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Armenia is in conformity with Article 7§8 of the Charter.

### Article 7 - Right of children and young persons to protection

*Paragraph 9 - Regular medical examination*

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

The Committee recalls that the obligation entails a full medical examination on recruitment and regular check-ups thereafter. The intervals between check-ups must not be too long. In this regard, an interval of three years has been considered to be too long by the Committee. The check-ups must be adapted to the specific situation of young workers and the particular risks to which they are exposed.

According to Article 249 of the Labour Code, young workers under the age of 18 are obliged to undergo a medical examination upon admission to employment, whereas until reaching the age of 18, with a prescribed periodicity. The periodic medical examination of young workers under 18 is conducted at the expenses of the employer.

The report states that the Decision of the Government No 347-N of 27 March 2003 specifies the procedure for compulsory preliminary and periodic medical examination, the list of activities, persons engaged who are subject to compulsory medical examination, as well as the list of the scope of medical examination but it does not provide more detailed information on these issues.

The Committee wishes to be informed on the periodicity and scope of the medical examinations: how often are the young workers checked, are all young workers covered by this rule and in what do the medical examinations consist.

It recalls that the situation in practice should be regularly monitored and asks that next report provide information on the activity of the Labour Inspectorate.

*Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

**Article 7 - Right of children and young persons to protection**

*Paragraph 10 - Special protection against physical and moral dangers*

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

***Protection against sexual exploitation***

The Committee recalls that under Article 7§10 of the Charter, States must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular children's involvement in the sex industry. This prohibition must be accompanied by an adequate supervisory mechanism and sanctions. The following are the minimum obligations:

- as legislation is a prerequisite for an effective policy against the sexual exploitation of children, Article 7§10 requires that all acts of sexual exploitation be criminalised. In this respect, it is not necessary for a Party to adopt a specific mode of criminalisation of the activities involved, but it must rather ensure that criminal proceedings can be instituted in respect of these acts. Furthermore, States must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent. Child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation;

- an effective policy against commercial sexual exploitation of children should cover primary and interrelated forms: child prostitution (offer, procurement, use or provision of a child for sexual activities for remuneration or any other kind of consideration), child pornography (procurement, production, distribution, making available and simply possession of material that visually depicts a child engaged in sexually explicit conduct) and trafficking in children (the recruiting, transporting, transferring, harbouring, delivering, selling or receiving children for the purposes of sexual exploitation).

The Committee notes that according to Article 132 of the Criminal Code recruiting, transporting, transferring, hiding or receiving a person for the purpose of exploitation, which has been committed against a person under the age of 18, is punished by imprisonment for a term of seven to twelve years, with or without confiscation of property. According to Article 132.1 of the Criminal Code, involving a person in prostitution or other forms of sexual exploitation, forced labour or services, or keeping in slavery or practices similar to slavery is punished by imprisonment for a term of five to ten years, with or without confiscation of property. The same act which has been committed against a person under the age of eighteen, is punished by imprisonment for a term of twelve to fifteen years. According to Article 168 of the Criminal Code trafficking in children, unless there are elements of crimes provided for in Articles 132 and 132.1 of this Code, is punished by imprisonment for a term of two to five years.

According to the report, the police carries out activities to prevent and reveal cases of sexual exploitation. The police closely cooperates with those non-governmental organisations which deal with issues on combating sexual abuse and violence, including with the Women's Rights Centre which established a shelter for the victims of abuse, the objective of which is to help girls subjected to violence and sexual abuse. The latter are provided with free accommodation and food, psychological and legal consultancy, social and medical assistance. For minors subjected to violence and sexual abuse, the Children's Assistance Centre operates on 24-hour basis, where police officers, a psychologist, a physician and a social worker provide assistance to minors.

For the prevention of prostitution among minors, police officers carry out numerous operative preventive measures, including inspection visits, meetings with school teachers and members of parent committees. A special attention is paid to minors brought up in socially vulnerable families. The Committee asks whether child victims of prostitution can be prosecuted. It also asks what is the legislation on child pornography and whether a simply possession of child pornography is a criminal offence.

The Committee notes from the reply of the Armenian Government to the GRETA (Council of Europe's Group of Experts on Action against Trafficking in Human Beings) questionnaire[1] that 5 child victims of trafficking were identified in 2009 of whom all were the victims of forced labour and none of sexual exploitation.

The Committee wishes to be informed of the incidence of sexual exploitation, including child pornography and child prostitution.

***Protection against the misuse of information technologies***

In light of the fact that new information technologies have made the sexual exploitation of children easier, States parties must adopt measures in law and in practice to protect children from their misuse. As for example the Internet is becoming one of the most frequently used tools for the spread of child pornography, States parties must take measures to combat this, such as by providing that Internet service providers be responsible for controlling the material they host, encouraging the development and use of the best monitoring system for activities on the net (safety messages, alert buttons, etc) and logging procedures (filtering and rating systems, etc.). The Committee wishes to be informed about the applicable legislation in this regard as well as the measures taken to implement the legislative framework.

According to the report, in the context of the right of the child to protection against misuse of information technologies, importance is attached to ensuring safe mobile communication. The Children's Support Foundation Centre of the Fund for Armenian Relief have implemented "Safe Mobile Connection, Pupils' Capacity Building" programme.

The results of the programme were summarised in a "Safe Mobile Connection" forum of specialists working with children, which was held in March 2010. The absence of the legal framework as well as the fact that the society is currently in the process of development of the culture to use Internet and mobile connection facilities were stressed, and in this respect provision of information to parents is especially emphasised, taking into account the increase in the number of users, anonymity of use, access, the treat of sexual exploitation and other threats for children through those means.

The Committee observes that the draft Charter on Ethics of Mobile Connection Use has also been elaborated. It asks to be informed whether this draft becomes law.

***Protection from other forms of exploitation***

The Committee recalls that under Article 7§10 States must prohibit the use of children in other forms of exploitation following from trafficking or being on the street, such as among, others, domestic exploitation, begging, pickpocketing.

The Committee asks what the incidence of street children is, and what measures are taken to protect and assist them.

*Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

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[1] *http://www.coe.int/t/dghl/monitoring/trafficking/Source/Public_R_Q/GRETA_2011_23_RQ_ARM_en.pdf*

## Article 8 - Right of employed women to protection of maternity

*Paragraph 1 - Maternity leave*

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

***Right to maternity leave***

In its last conclusion the Committee found that the situation regarding the length of maternity leave to be in conformity (Conclusions 2007). From another source[1], the Committee notes that the Labour Code still provides for a standard period of 140 days, divided into 70 days before birth and 70 days after birth, which is extended in case of complications or multiple births. The Committee asks whether the period before childbirth, i.e. 70days, is compulsory or if part of it can be relinquished. It also asks whether the same regime also applies to women employed in the public sector.

***Right to maternity benefits***

The report focuses solely on childcare benefits. From another source[2], the Committee notes that maternity benefits are equal to the employee's average salary over the three months preceding maternity leave. If the employee has had no income during the last three months before maternity leave, then the minimum salary is considered as average gross salary. Maternity benefits are paid during the whole maternity leave. They are destined for employees and self-employed persons, and the only qualifying condition is to be in insured employment. The Committee asks whether the same regime also applies to women employed in the public sector.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Armenia is in conformity with Article 8§1 of the Charter.

[1] *MISSCEO, Mutual Information Systems on Social Security in Council of Europe Member States, Comparative tables on social protection systems, 18th edition (2010).*
[2] *ibid.*

## Article 8 - Right of employed women to protection of maternity

*Paragraph 2 - Illegality of dismissal*

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

***Prohibition of dismissal***

Article 117 of the Labour Code, which was amended in 2006, provides that employment contracts cannot be terminated during pregnancy and until one month after childbirth. This provision refers to the following exceptions where dismissal is possible: (i) liquidation of the company; (ii) bankruptcy of the employer; (iii) the employer's loss of trust in the employee; (iv) criminal judgment preventing the employee from continuing her work. The Committee considers that while misconduct can in certain cases justify breaking off the employment relationship (Conclusions 2005, Estonia), the exception relating to the loss of trust in the employee is couched in terms that are too vague and can potentially lead to abuse.

The Committee asks whether the same regime applies to women employed in the public sector.

***Consequences of unlawful dismissal***

Pursuant to Article 241 of the Labour Code, damage compensation includes "real losses" and "lost benefit". According to Article 265, an employee can contest the termination of his or her employment contract before the courts within one month from the day of notification of dismissal. If the courts find that dismissal was unlawful, the employee will be reinstated. However, if for any reason reinstatement is not possible (e.g. the employee does not wish it, or the undertaking has ceased operating), the courts will order the employer to pay compensation equal to the amount of salary the employee should have received until the civil judgment becomes enforceable. The employment contract will also be considered terminated.

The Committee underlines that domestic law must not prevent courts from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal. It therefore asks whether there is a ceiling on compensation for unlawful dismissals. If so, it asks whether this upper limit covers compensation for both pecuniary and non-pecuniary damage or whether unlimited compensation for non-pecuniary damage can also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation). It also asks whether both types of compensation are awarded by the same courts, and how long it takes on average for courts to award compensation. The Committee asks more specifically whether additional compensation can be sought under Article 241 of the Labour Code (in addition to that provided for under Article 262) and whether the amount of such compensation is limited or not. Should the next report not provide the requested information, there will be nothing to establish that the situation is conformity in this respect.

The Committee asks whether the same regime applies to women employed in the public sector, in particular those on temporary contracts.

*Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 8§2 of the Charter on the ground that the exception to the prohibition of dismissal of pregnant women and women on maternity leave based on the employer's loss of trust in the employee is too vague.

**Article 8 - Right of employed women to protection of maternity**

*Paragraph 3 - Time off for nursing mothers*

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

The Committee has previously found the situation to be in conformity (Conclusions 2007) but asked for how long women are entitled to breastfeeding breaks. The report states that women are entitled to paid breastfeeding breaks until their child is 18 months old. This is therefore in conformity with the requirement of Article 8§3.

The Committee asks whether women employed in the public sector enjoy breastfeeding breaks in the same way.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Armenia is in conformity with Article 8§3 of the Charter.

**Article 8 - Right of employed women to protection of maternity**

*Paragraph 4 - Regulation of night work*

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

Pursuant to Article 148 of the Labour Code work performed between 10.00 pm and 6.00 am is considered to be night work. Work which includes at least three hours during this period is considered as night work. Pregnant women and women with a child under three years of age may only be assigned to night work with their consent. However, where night work has or may affect their health they must be transferred to daytime work.

In reply to the Committee's query concerning safeguards, the report indicates that Article 249 of the Labour Code provides that employees working at night and working shifts must undergo a pre-entry medical examination and periodical medical examinations afterwards according to a predetermined schedule agreed by the employer. The Committee asks for confirmation that the compulsory medical examination has to take place not only upon recruitment but whenever an employee, in particular a pregnant woman, a woman having recently given birth or who is breastfeeding her child, is assigned to night work, and that frequent medical check ups are also compulsory thereafter. Until such information is provided, the Committee cannot consider that it

has been established that regulations on night work offered sufficient protection for the employed women covered by Article 8 of the Charter.

The Committee asks whether this protection also applies to women employed in the public sector.

*Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 8§4 of the Charter on the ground that it has not been established that regulations on night work afford sufficient protection for pregnant women, women having recently given birth and women breastfeeding their child.

## Article 8 - Right of employed women to protection of maternity

*Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

According to Article 258 of the Labour Code employers must determine the duration and nature of the potential impact of dangerous activities on pregnant women and women taking care of a child under the age of one. This is done on the basis of the list of activities considered as dangerous for these categories of employees that is established in a Decision of the Government. According to Decision of the Government No. 2308-N of 29 December 2005 are considered as hazardous for pregnant women and women taking care of a child under the age of one activities which involve chemicals (benzol and its derivatives, halogen derivatives, chlorobenzylidene, lead and lead derivatives), physical agents (ionising radiation, radioactive substances, vibration, noise, high temperature, extremes of cold and heat), biological factors, activities considered strenuous for this category of workers (underground work, work involving lifting weights, heights, explosives agents, etc.).

After determining the danger that represent a certain type of work, the employer must take measures to ensure the elimination of the detrimental impact by adapting the working conditions of the employee concerned, transferring her to another post or granting her paid leave.

The Committee asks whether this protection also applies to women employed in the public sector.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Armenia is in conformity with Article 8§5 of the Charter.

## Article 17 - Right of children and young persons to social, legal and economic protection

*Paragraph 1 - Assistance, education and training*

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

***Status of the child***

In its previous conclusion (Conclusion XVII-2) the Committee asked for confirmation that children born out of wedlock had the same inheritance rights as children born within marriage. It also asked whether there were any restrictions to the right of adopted children to know their origin. The Committee reiterates these questions and holds that should this information not be provided in the next report, there will be nothing to establish that the situation is in conformity.

The Committee notes from the report that the failure to register childbirths continues to be a problem. Delay in registering or failure to register childbirth is an obstacle for exercising person's full legal capacity, and failure to comply with the requirements of procedural norms is an obstacle for fulfilling the requirement of the substantive law rule, resulting in the possible impairment of the rights of a person.

To address this problem an inter-agency working group has been set up to identify issues related to the registration of infant mortality, as well as to analyse the relevant legislation and to make amendments or supplements where appropriate. The objective is to create and introduce effective mechanisms in the field concerned, so that the cases of non-registration of childbirths are prevented and that non-registered children and adults, non-registered cases of infant mortality are identified. The Committee asks to be kept informed.

***Education***

As regards the right to accessible and effective education, the Committee refers to its conclusion under Article 17§2.

***Children in public care***

In its previous conclusion the Committee asked for information regarding the total number of institutions caring for children, their nature and the number of children placed in them as opposed to those placed in foster care. It also asked whether there was a procedure for complaining about care and treatment in institutions and under what conditions an institution could interfere with a child's property, mail, personal integrity and the right to meet with persons close to the child.

The Committee notes from the report that the 2004-2015 Programme for deinstitutionalisation of children was launched, which also covers services to return children to their families. This programme is being implemented in cooperation with community organisations. In the framework of this programme 30 children were returned to their families and placement of 120 children from socially disadvantaged families was prevented. Besides, according to the report, as a result of reforms in the child protection system 17 boarding schools were reorganised into 10 general education schools. The "foster family" pilot project was launched in 2006. With this project, 18 children residing in children's homes have been moved to foster families in 2006 and 22 children in 2008.

According to the report, parents may only be deprived of child custody on the basis of a judicial procedure if it has been established that, inter alia, they fail to fulfil their obligations towards the child or in cases of abuse or harmful influence on the children. In this connection, the Committee repeats its request whether the law provides for the possibility to lodge an appeal against a decision to restrict parental rights.

According to the report, Decision of the Government of Armenia No. 1324-N of 2004 establishes criteria for operation of child institutions. The points raised in this Decision cover all aspects of child care in institutions, including education and training of staff, complaints mechanism. There is an internal complaints procedure and the complaints are reviewed by the staff and the Ministry of Labour and Social Issues. The supervision and social monitoring department of the Ministry conducts annual thematic inspections of institutions. As regards the number of children in a single institution, according to the report, in certain age groups there are 6-10 children while 15 or more in others.

The Committee recalls that under Article 17 the long term care of children outside their home should take place primarily in foster families suitable for their upbringing and only if necessary in institutions. The Committee notes that in 2008 of all children placed in public and private institutions 7,3% were children under the age of 1 which the Committee considers to be a very young age for placement in an institution. The Committee further notes that in 2009 there were 853 children in state children's homes and 250 in charity children's homes. In 2010, following the reorganisation of charity homes into protection boarding institutions, there were 701 children in the 7 child care and protection boarding institutions across the country.

Given that the measures to decrease institutionalisation are underway, the Committee asks the next report to provide undated information on these measures, including on their direct impact, i.e. the number of children in foster care as opposed to that in long-term care institutions. In the meantime, it reserves its position on this point.

***Protection of children from ill-treatment and abuse***

In its previous conclusion the Committee held that the situation in Armenia was not in conformity with the Charter as corporal punishment of children was not explicitly prohibited in the home. In this connection the Committee takes note of the information contained in the report of the Governmental Committee of the Social Charter to the Committee of Ministers (TS-G (2009) 4, §250) and also of the information provided in the report.

The Committee notes that in December 2010, the Government undertook to analyse legislation relating to children with a view to harmonising domestic law with international standards. In the same year, the Government accepted the recommendations to prohibit corporal punishment of children made during its Universal Periodic Review by the Human Rights Council. The Committee wishes to be informed of these developments.

The Committee notes from another source[1] that corporal punishment is lawful in the home. The Family Code (2004) states in Article 53 that the ways of children's rearing should exclude ignorant, cruel, violent attitude towards them, humiliating human dignity, offence or exploitation..." Article 9 of the Rights of the Child Act (1996) states that children have a right to protection from all forms of violence and that no person, including parents, must inflict violence on the child or punishment which affects the child's dignity, and article 22 protects the child's right to honour and dignity. But these provisions and others in the Criminal Code (2003) and the Constitution (1995) are not interpreted as prohibiting all corporal punishment in childrearing.

The Committee considers that the situation which it has previously considered not to be in conformity with the Charter has not changed. Therefore it reiterates its previous finding of non-conformity on this point.

***Young offenders***

In reply to the Committee's question, the report states that Chapter 50 of the Criminal Procedure Code governs proceedings regarding juvenile cases. According to Article 443 of the Criminal Procedure Code, the court, when delivering a judgement and arriving at a conclusion that a juvenile may be reformed without criminal punishment measures, may exempt the juvenile from punishment and impose educational coercive measures on him or her. The difference between educational coercive measures and punishment is that the former do not entail a conviction and are applied with regard to minors. As a general rule, educational coercive measures may be applied only with regard to persons not having attained majority (persons between fourteen to eighteen years of age). Educational coercive measures are listed in Article 91(2) of the Criminal Code.

According to the report, imposing remand detention against a juvenile suspect or accused as a measure of restraint is permitted solely where he or she is implicated for committing a crime of medium gravity, grave or particularly grave crimes (Article 442 of the Criminal Procedure Code). The Committee recalls that under Article 17 a prison sentence should only exceptionally be imposed on minors and it should be of reasonable duration. It asks what is the maximum length of a prison sentence.

In its previous conclusion the Committee asked what was the maximum length of pre-trial detention. According to Article 138(3) of the Criminal Procedure Code the detention term in pre-trial criminal proceedings may not exceed two months, except for cases provided for by the Code, while part 4 of the same Article stipulates that the term of keeping the accused in detention in pre-trial proceedings, taking into consideration the particular complexity of the case, may be extended up to six months by court, and in special cases, when the person is charged with grave or particularly grave crime - up to 12 months. The Committee considers that the possibility of imposing a 12 months of pre-trial detention on a minor is excessive and therefore not in conformity with the Charter.

The Committee asks whether young offenders have a statutory right to education.

*Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 17§1 of the Charter on the grounds that:

- corporal punishment of children is not explicitly prohibited in the home;
- young offenders may be held in pre-trial detention for up to 12 months.

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[1] *http://www.endcorporalpunishment.org/pages/frame.html*

**Article 17 - Right of children and young persons to social, legal and economic protection**

*Paragraph 2 - Free primary and secondary education - regular attendance at school*

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

In its previous conclusion (Conclusions 2007) the Committee observed that there were a number of problems in relation to the education system. These included high rate of absenteeism, non-attendance and dropout from primary and secondary education due to the economic and financial situation of families. The Committee asked what measures were taken to overcome these problems.

As regards the number of children dropping out of school, according to the report in 2002, 2003 and 2004, the total number of children not attending schools amounted to 1,531, 4,823 and 7,630 and the index of non-attendance of schools was 0,3%, 1,0% and 1,6% respectively. Having noted from the report the reasons for drop-out still need to be identified and measures to reduce drop-out implemented, the Committee considers the Armenia fails to meet the requirements of this provision due to inadequacy of measures taken to combat school drop out.

The Committee notes from another source[1] that the secondary school gross enrolment rate in 2005-2009 amounted to 86% in males and 90% in females. The Committee considers that the enrolment rate for secondary school is low and there is no evidence that measures taken to counter this fact are sufficient, thus amounting to a violation of Article 17§2.

In its previous conclusion the Committee asked whether the reference to free secondary education in Article 39 of the Constitution also covered the entire compulsory education. It notes from the report that Law on Education of 1999 guarantees free general secondary education and free higher and post-graduate vocational education. The secondary general education covers 12 years of studies and includes high school.

As regards access to education for children belonging to national minorities, the Committee notes from the report that the ‘model curriculum of general education school for nationals minorities’ is in place, according to which 43 classes weekly are allocated for teaching the native languages and literature. The Committee asks what is the enrolment and drop out rates of children belonging to national minorities.

The Committee recalls that under Article 17 hidden costs such as books or uniforms must be reasonable and assistance must be available to limit their impact on the most vulnerable groups. In this regard The Ministry of Labour and Social Issues of the Republic of Armenia holds the programme “When September Comes” every year for children from vulnerable families included in

the Family Benefit System. Within the framework of the programme, in cooperation with various charitable organisations, stationary, clothing and other accessories are provided to children coming from families with 3 or more children and which are registered with the mentioned System. The ministry conducts relevant analysis based on existing databases, the results of which are also provided to local self-government bodies and various donor organisations. Within the framework of 2009 programme support was rendered to an estimated 12,000 children.

The Committee notes from the report that teacher-pupil ratio in 2008-2009 academic year amounted to 9.7.

As Armenia has not accepted Article 15§1, the Committee considers the issues relating to the integration of children with disabilities into mainstream education under Article 17§2.

In this connection, the Committee recalls that "the underlying vision of Article 15 is one of equal citizenship for persons with disabilities and, fittingly, the primary rights are those of "independence, social integration and participation in the life of the community. Securing a right to education for children and others with disabilities plays an obviously important role in advancing these citizenship rights" (International Association Autism-Europe (IAAE) v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §48). Under Article 15§1, the Committee therefore considers necessary the existence of non-discrimination legislation as an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes. Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education. Legislation may consist of general antidiscrimination legislation, specific legislation concerning education, or a combination of the two.

The Committee asks the next report to provide replies to the following questions:

- whether there is legislation explicitly protecting persons with disabilities from discrimination in education and training;

- whether measures are in place to facilitate the integration of children with disabilities into mainstream education, e.g. adapting schools to make them physically accessible;

- whether general teacher training incorporates special needs education as an integral component;

- whether and how individualised educational plans are crafted for students with disabilities. whether and how individualised educational plans are crafted for students with disabilities;

- whether general teacher training incorporates special needs education as an integral component;

- whether and how individualised educational plans are crafted for students with disabilities. whether and how individualised educational plans are crafted for students with disabilities;

- whether measures are in place to facilitate the integration of children with disabilities into mainstream education, e.g. adapting schools to make them physically accessible.

*Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 17§2 of the Charter on the grounds that :

- measures taken to reduce drop-out from compulsory schooling are not adequate;
- it has not been established that measures taken to increase the enrolment rate in secondary schools are sufficient.

[1] *http://www.unicef.org/sowc2011/pdfs/Table%205%20EDUCATION_12082010.pd*

## Article 19 - Right of migrant workers and their families to protection and assistance

*Paragraph 1 - Assistance and information on migration*

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

### *Migration trends*

Emigration of Armenians, due to various reasons including conflict and natural disaster and economic reasons, has been and continues to be a phenomenon of massive scale. Outflows are both regular and irregular. The last two decades have been characterised by labour migration flows. It is estimated that over 800,000 citizens or more than one-quarter of the total population left Armenia during the 1990s. This trend has continued in recent years. Approximately three-quarters of Armenian emigrants over the last decades have settled in former Soviet Union countries, mainly in the Russian Federation, 15% in various European countries, and 10% in the United States. More than 60% of emigrants are men, of working and reproductive age (20-44), and with average educational level that significantly exceeds the average national standards. Migration to the Russian Federation and Ukraine is mainly of a temporary nature generally for seasonal work purposes, while migration to Europe and the United States is primarily for permanent residence with the emigrants taking their families with them. The high level of emigration has led to a brain drain and contributed to the country's demographic decline. Migrants' remittances constitute the largest source of foreign exchange. Immigration is not large. Armenia is host today to an estimated 235,235 immigrants as of 2005. The majority of them are asylum seekers and refugees, mainly resulting from the conflict in and around the Nagorno Karabakh region of Azerbaijan.[1]

### *Change in policy and the legal framework*

The key policy and legislative documents related to migration are the following: the Government Programme 2008-2012, which specifically addresses the issue of migration; the Concept on State Regulation of Migration of Population in the Republic of Armenia (2004); the Foreigners Act (2006)[2]. The Migration Agency (MA), created in 1999, is currently placed under the Ministry of Territorial Administration. The MA does not deal with every migration-related state responsibility. It designs and implements projects that focus on migration management and refugee issues. The Ministry of Labour and Social Issues / Department of Labour and Employment deals with issues related to labour migration. The Ministry of Foreign Affairs (Legal Department, Consular Department, Migration Desk) is responsible for visa and passport issuance, and relations with Armenians abroad. With respect to international co-operation in the field of migration, the report states that Armenia has concluded almost 25 bilateral agreements with almost 20 countries. The Delegation of the European Union (EU) to Armenia funds a large project by the International Organisation for Migration (IOM) aimed at promoting labour migration. The EU also supports the Armenian Migration Agency to implement a project on Support to Migration Policy Development and Relevant Capacity Building in Armenia.[3]

### *Free services and information for migrant workers*

According to the report, the Foreigners Act stipulates that the State administration is responsible for providing free assistance and services to migrant workers on labour-related issues. The report also states that, in the framework of the State programme on crime prevention, the Police has developed a summary of the legislation on visas and residence permits. Free services and information to foreigners are provided as an implementation of the bilateral agreements concluded by Armenia with a number of foreign States. The Committee notes that some information in Armenian and English on emigration and immigration (legislation, statistics, projects, practical information etc.) can be found on the website of the Migration Agency of the Ministry of territorial administration. It asks that the next report provide a systematic description of the legal provisions relating to free services and information for migrant workers and the measures taken to implement such provisions (administrative arrangements, programmes, action plans, projects, etc.).

### *Measures against misleading propaganda relating to emigration and immigration*

According to the report, the Foreigners Act refers to 'consultations aimed at combating misinformation'. The Committee considers that the information provided in the report is not sufficient to permit it to assess the situation. With this in mind, it asks that the next report provide a

full description of the legal provisions adopted to fight against misleading propaganda relating to emigration and immigration and the measures taken to implement them.

*Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

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[1] *Migration in Armenia : a country profile 2008, International Organisation for Migration - IOM.*
[2] *Official website of the Migration Agency of the Ministry of territorial administration of the Republic of Armenia.*
[3] *Migration in Armenia : a country profile 2008, International Organisation for Migration - IOM.*

## Article 19 - Right of migrant workers and their families to protection and assistance

*Paragraph 2 - Departure, journey and reception*

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

It takes note that according to the report, the laws on 'Social assistance' and on 'State benefits' refer to social assistance of foreign nationals.

***Departure, journey and reception of migrant workers***

The report does not contain specific information on this point. The Committee asks that the next report provide a full description of the legal framework relating to the departure, journey and reception of migrant workers and the measures taken to implement it (administrative arrangements, programmes, action plans, projects, etc.).

***Services for health, medical attention and hygienic conditions during the journey***

The report does not contain specific information on this point. The Committee asks that the next report provide a full description of the legal framework relating to services for health, medical attention and hygienic conditions during the journey and the measures taken to implement it (administrative arrangements, programmes, action plans, projects, etc.).

*Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

## Article 19 - Right of migrant workers and their families to protection and assistance

*Paragraph 3 - Co-operation between social services of emigration and immigration States*

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

According to the report, co-operation with emigration and immigration States is undertaken by Armenian authorities within the framework of bilateral agreements concluded with a number of States.

The Committee considers that the information provided is not sufficient to permit it to assess the situation and, in particular, to determine whether inter-service co-operation allows migrant workers to resolve any personal and family difficulties. With this in mind, the Committee asks that the next report provide a description of the contacts and information exchanges established by social services in emigration and immigration countries.

The Committee recalls that the scope of Article 19§3 "extends to migrant workers immigrating as well as migrant workers emigrating to the territory of any other State. Contacts and information exchanges should be established between public and/or private social services in emigration and immigration countries, with a view to facilitating the life of emigrants and their families, their adjustment to the new environment and their relations with members of their families who remain in their country of origin" (Conclusions XIV-1, Belgium). It also recalls that: "Formal arrangements are not necessary, especially if there is little migratory movement in a given country. In such cases, the provision of practical co–operation on a needs basis may be sufficient. Common situations in which such co-operation would be useful would be for example where the migrant worker, who has left

his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he was employed" (Conclusions XIV-1, Finland).

*Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

**Article 19 - Right of migrant workers and their families to protection and assistance**

*Paragraph 4 - Equality regarding employment, right to organise and accommodation*

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

In this framework, it takes note of the provision of the Constitution concerning the prohibition of discrimination, the provisions of the Labour Code on equality in working relationships regardless national origin and the provision of the Act on "Social protection in case of employment and unemployment of the population" dealing with the right of foreigners to choose between the possibility of being employed and being unemployed.

***Remuneration and other employment and working conditions***

The Committee considers that the information provided in the report is not sufficient to permit it to assess the situation and, in particular, to determine whether a not less favourable treatment of migrant workers than that of nationals is secured. It recalls that: "Under this sub-heading, States are obliged to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service training and promotion. The provision applies notably to vocational training" (Conclusions VII, United-Kingdom). With this in mind, the Committee asks that the next report provide a full description of the applicable legal provisions and the situation in practice, including information on the measures taken at the administrative level.

***Membership of trade unions and enjoyment of the benefits of collective bargaining***

The report does not contain specific information on this point. The Committee recalls that "This sub-heading requires States to eliminate all legal and de facto discrimination concerning trade union membership (Conclusions XIII-3, Turkey) and as regards the enjoyment of the benefits of collective bargaining, including access to administrative and managerial posts in trade unions". The Committee asks that the next report provide a full description of the relevant legal framework and the measures taken to implement it (administrative arrangements, programmes, action plans, projects, etc.).

***Accommodation***

The report does not contain specific information on this point. The Committee recalls that: "The undertaking of States under this sub-heading is to eliminate all legal and de facto discrimination concerning access to public and private housing. There must be no legal or de facto restrictions on home–buying access to subsidised housing or housing aids, such as loans or other allowances" (Conclusions IV, Norway - Conclusions III, Italy). It recalls that: "States are required to prove the absence of discrimination, direct or indirect, in terms of law and practice" (Conclusions III, Italy) and "should inform of any practical measures taken to remedy cases of discrimination. Moreover, States should pursue a positive and continuous course of action providing for more favourable treatment of migrant workers" (Conclusions I, Italy, Norway, Sweden, United Kingdom). The Committee asks that the next report provide a full description of the relevant legal framework and the measures taken to implement it.

It underlines that should the information requested not be provided in the next report, there will be nothing to establish that the situation is in conformity with Article 19§4 of the Charter.

*Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

## Article 19 - Right of migrant workers and their families to protection and assistance

*Paragraph 5 - Equality regarding taxes and contributions*

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

The report does not contain information on the non-discrimination of migrant workers with regard to fiscal contributions.

The Committee asks that the next report provide a full description of the relevant legal framework and the measures taken to implement it (administrative arrangements, programmes, action plans, projects, etc.). It underlines that should the information requested not be provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

*Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

## Article 19 - Right of migrant workers and their families to protection and assistance

*Paragraph 6 - Family reunion*

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

The report does not contain information on this point.

The Committee asks that the next report provide a full description of the relevant legal framework and the measures taken to implement it (administrative arrangements, programmes, action plans, projects, etc.). It underlines that should the information requested not be provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

*Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

## Article 19 - Right of migrant workers and their families to protection and assistance

*Paragraph 7 - Equality regarding legal proceedings*

The Committee takes note of the information contained in the report submitted by Armenia and the replies to the questions put by the Committee.

According to Section 6 of the Advocacy Act the state guarantees legal assistance free of charge in cases prescribed by the Criminal Code and Civil Code. The report states that this applies to all persons present in Armenia irrespective of nationality.

Further the report states that a Bill on Amendments to the Advocacy Act currently before Parliament will expand the free legal assistance scheme and entitlement will be based not on the type of case being taken or defended but on the individual circumstances of the person.

The Committee refers to its interpretive statement in the General introduction and asks that the next report provide a full and up-to-date description of the situation. In particular whether domestic legislation makes provision for migrant workers who are involved in legal or administrative proceedings and who do not have counsel of their own choosing to be advised to appoint counsel and, whenever the interests of justice so require, be provided with counsel, free of charge if they do not have sufficient means to pay the latter, and whether migrant workers may have the free assistance of an interpreter if they cannot properly understand or speak the national language used in the proceedings and have any necessary documents translated. Such legal assistance should be extended to obligatory pre-trial hearings.

The Committee underlines that should the information requested not be provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

*Conclusion*

Pending receipt of the information requested the Committee defers its conclusion

**Article 19 - Right of migrant workers and their families to protection and assistance**

*Paragraph 8 - Guarantees concerning deportation*

The Committee takes note of the information contained in the report submitted by Armenia and the replies to the questions put by the Committee.

Section 30 of the Foreigners Act prescribes the cases when a foreigner must leave Armenia otherwise an expulsion order may be sought from the courts. A decision to expel a foreigner can only be taken by the courts and may be appealed.

It is not possible to expel a foreigner if he/she is under age, and his parents are legally resident in Armenia, or where an individual has custody of an under age child, or is over 80 years of age.

The Committee is unable to assess the situation on the basis of the information provided. Therefore the Committee requests that the next report provide full information on all the grounds on which the expulsion of a foreigner may be ordered, including information on the rights of family members to remain in the territory. The Committee refers to its interpretative statement in the General Introduction in this respect.

The Committee underline that should the information requested not be provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

*Conclusion*

Pending receipt of the information requested the Committee defers its conclusion.

**Article 19 - Right of migrant workers and their families to protection and assistance**

*Paragraph 9 - Transfer of earnings and savings*

The Committee takes note of the information contained in the report submitted by Armenia. It notes that none of it is relevant to Article 19§9 of the Charter

The Committee asks that the next report provide relevant and comprehensive information as required by the Form for reports. The Committee underlines that should the information requested not be provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

*Conclusion*

Pending receipt of the information requested the Committee defers its conclusion.

**Article 19 - Right of migrant workers and their families to protection and assistance**

*Paragraph 10 - Equal treatment for the self-employed*

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

The report contains no information as to whether there is any discrimination between migrant employees and self-employed migrants. The Committee asks the next report to provide this information.

However, even in the case of equal treatment between wage-earners and self-employed migrants and between self-employed migrants and self-employed nationals, a finding of non-conformity under paragraphs 1 to 12 of Article 19 leads to a finding of non-conformity under paragraph 10 since the same grounds for non-conformity as described under the aforementioned paragraphs applies to self-employed workers.

In its conclusions under Article 19§11 and 12 the Committee has considered the situation in Armenia not to be in conformity with the Charter. Accordingly, the Committee concludes that the situation is not in conformity with Article 19§10 of the Charter.

*Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 19§10 of the Charter on the same grounds for which it is not in conformity with paragraphs 11 and 12 of the same Article

**Article 19 - Right of migrant workers and their families to protection and assistance**

*Paragraph 11 - Teaching language of host State*

The Committee takes note of the information contained in the report submitted by Armenia and the replies to the questions put by the Committee.

The addendum to the report states that due to the fact there is little migration to Armenia there are no programmes or activities to enable migrant workers and their families learn Armenian. The Committee must therefore conclude that the situation is not in conformity with the Charter in this respect.

*Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 19§11 of the Charter on the ground that there are no measures in place to enable migrant workers and their families to learn the Armenian language.

**Article 19 - Right of migrant workers and their families to protection and assistance**

*Paragraph 12 - Teaching mother tongue of migrant*

The Committee takes note of the information contained in the report submitted by Armenia and the replies to the questions put by the Committee.

The addendum to the report states due to the fact there is little migration to Armenia there are no programmes or activities for the teaching of the migrant worker's mother tongue to the children of migrant workers. The Committee must therefore conclude that the situation is not in conformity with the Charter in this respect.

*Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 19§12 of the Charter on the ground that there are no programmes for the teaching of the migrant worker's mother tongue to the children of migrant workers.

### Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

*Paragraph 1 - Participation in working life*

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

***Employment, vocational training and guidance***

The Committee recalls that the aim of Article 27 is to promote the reconciliation of professional and family responsibilities. It asks in this respect whether an overall national policy or strategy to enable persons with family responsibilities to exercise employment in a non-discriminatory manner is in place.

In its previous conclusion the Committee noted that vocational training was provided to employees who had been made redundant. It however recalled that Article 27 required States Parties to take specific measures in the field of vocational guidance and training, so as to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities, and asked for information on this matter (Conclusions 2007). As the report contains no information, the Committee asks again if there exist any placement, counselling, or training programmes for workers with family responsibilities.

***Working conditions, social security***

The Committee has previously noted that pursuant to Article 141 of the Labour Code a woman raising a child until the age of one or an employee taking care of a sick family member are entitled to work part-time. Part-time work shall not negatively affect the labour rights of workers, and remuneration shall be proportionate to the actual time spent at work or actual work carried out (Conclusions 2007).

The Committee asks if a man is the parent raising a child or nursing a sick family member if there is also an obligation to grant him part time work when requested or whether this may depend on the employer's discretion.

Article 27§1 requires State Parties to take account of the needs of workers with family responsibilities in terms of social security. The Committee asks in this respect whether such workers are entitled to social security benefits under the different schemes, in particular health care, during periods of parental/childcare leave.

In reply to a question previously put by the Committee, the report states that periods of leave from work due to family responsibilities are taken into account in the calculation of pension schemes.

***Child day care facilities and other childcare arrangements***

The Committee recalls that a core element for the reconciliation of professional and family life is the organisation of child day care services and facilities. Measures to develop and promote child day care facilities are therefore examined under this provision. The report however fails to provide sufficient information on this matter. It merely indicates that there exist 2 state centres in the country, where around 200 children are cared for. The authorities aim at increasing the number of child day care community centres to 25 by 2015.

The Committee recalls that child day care may be arranged in many ways, for example in crèches, kindergartens, family day care or as a form of pre-school. Moreover, day care may be private or public. In all cases, the Committee examines if there is a sufficient provision of childcare places, and whether services are affordable and of high standard (quality being assessed on the basis of the number of children under the age of six covered, staff to child ratios, staff qualifications, suitability of the premises and the amount of the financial contribution parents are asked to make).

The Committee therefore asks the next report to provide information on the coverage rate of children aged 0-6 years, whether services are subsidised or if there is a childcare benefit and how standards of day care are set and monitored.

The report states, in reply to a question by the Committee, that in case of illness of a child or a family member, an employee is entitled to cease his/her professional activity on a temporary basis

(the days allowed will depend on the illness and treatment required) during which a family care benefit is granted.

The Committee recalls that should the information requested under the different sections of this provision not be provided in the next report, there will be nothing to establish that the situation in Armenia is in conformity with Article 27§1 of the Charter.

*Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

## Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

*Paragraph 2 - Parental leave*

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

It recalls that the focus of Article 27§2 are parental leave arrangements which are distinct from maternity leave and come into play after the latter. National regulations related to maternity or paternity leave fall under the scope of Article 8§1 and are examined under that provision.

The Committee further recalls that Article 27§2 requires States to provide the possibility for either parent to obtain parental leave. Consultations between social partners throughout Europe show that an important element for the reconciliation of professional, private and family life are parental leave arrangements for taking care of a child. Whilst recognising that the duration and conditions of parental leave should be determined by States Parties, the Committee considers important that national regulations should entitle men and women to an *individual right* to parental leave on the grounds of the birth or adoption of a child. With a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided on a non-transferable basis to each parent.

All categories of employees are entitled to parental leave. At the request of an employee, leave for childcare is granted until the child reaches the age of three. This leave may also be taken by the father of the child, stepmother, stepfather, or any relative who is in charge of the child (Article 173 of the Labour Code).

As regards payment during parental leave, the report merely states that this is done in the manner prescribed by legislation. The Committee asks for more concrete information on this point, namely, if the employee receives income/wages during the period of parental leave, and if so, how much. The Committee considers in this respect that remuneration of parental leave (be it continuation of pay or via social assistance/social security benefits) plays a vital role in the take up of childcare leave, in particular for fathers or lone parents.

A number of cases of unpaid leave for the father are allowed under Article 176 of the Labour Code. The report states that there are no known collective agreements or contracts of employment containing special provisions on parental leave.

The Committee has previously noted that during the period of parental leave, the employee shall retain his/her job position (Conclusions 2007).

*Conclusion*

The Committee concludes that the situation in Armenia is in conformity with Article 27§2 of the Charter.

## Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

*Paragraph 3 - Illegality of dismissal on the ground of family responsibilities*

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

***Protection against dismissal***

The Committee notes there are several provisions in the Labour Code on protection from a discriminatory dismissal. Under Article 117, the employer is prohibited from terminating the employment contract of an employee raising a child under the age of one. Dismissal is nonetheless permitted in case of liquidation of the enterprise, bankruptcy or loss of confidence in the employee certified by a civil judgment.

Moreover, termination of a contract at the initiative of the employer is also prohibited under a number of circumstances, including when an employee is on leave to take care of a child under the age of three or on unpaid leave (Article 114 of the Labour Code).

The Committee asks whether the protection against dismissal measures in the above-mentioned Articles are equally applicable to female and male employees.

***Effective remedies***

Pursuant to Article 265 of the Labour Code, an employee may claim unlawfulness of the termination of the contract before a court within 1 month from receiving the dismissal notice. When the court finds the dismissal illegal, it will order the employer to pay the employee the average salary covering the entire period from dismissal until the entry into force of the judgment. It may not however order reinstatement of the employee in the previous job given the impossibility of recovering the employment relationship between the employer and the employee.

The Committee recalls that Article 27§3 of the Charter requires that courts or other competent bodies are able to order reinstatement of an employee unlawfully dismissed, or in cases when the employee prefers not to continue or re-enter employment, order compensation that is sufficient both to deter the employer and proportionate to the damage suffered by the victim. When compensation is granted it should not be subject to pre-defined upper limits, as this may preclude damages from being awarded which are commensurate with the actual loss suffered and not sufficiently dissuasive (Conclusions 2005, Estonia).

Noting therefore that legislation does not provide for reinstatement of an employee unlawfully dismissed on account of his/her family responsibilities, and, moreover, limits the compensation payable in such cases, the Committee considers that the situation is not in conformity with the requirements of Article 27§3 of the Charter in this respect.

As regards compensation awarded to an employee unlawfully dismissed on account of his/her family responsibilities, the Commitee asks whether the upper limit mentioned above covers compensation for both pecuniary and non-pecuniary damage or whether unlimited compensation for non-pecuniary damage can also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation). It also asks whether both types of compensation are awarded by the same courts, and how long it takes on average for courts to award compensation. Should the next report not provide the requested information, there will be nothing to establish that the situation is conformity in this respect.

*Conclusion*

The Committee concludes that the situation is not in conformity with Article 27§3 of the Charter on the ground that legislation makes no provision for the reinstatement of workers unlawfully dismissed on account of their family responsibilities.