



European
Social
Charter

Charte
Sociale
Européenne



COUNCIL
OF EUROPE

CONSEIL
DE L'EUROPE

January 2013

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2012

(ARMENIA)

Articles 1, 15, 18, 20 and 24
of the Revised Charter

This text may be subject to editorial revision.

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" 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 European Social Charter (revised) was ratified by Armenia on 21 January 2004. The time limit for submitting the 6th report on the application of this treaty to the Council of Europe was 31 October 2011 and Armenia submitted it on 26 June 2012. On 14 June 2012, a letter was addressed to the Government requesting supplementary information regarding Article 1§2. The Government submitted its reply on 24 September 2012. On 2 October 2012, a letter was addressed to the Government requesting supplementary information regarding Article 18§3. The Government submitted its reply on 16 October 2012.

This report concerned the accepted provisions of the following articles belonging to the thematic group "Employment, training and equal opportunities":

- the right to work (Article 1),
- 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).

Armenia has accepted all Articles from this group with the exception of Articles 9, 10, 15§1 and 25.

The reference period was 1 January 2007 to 31 December 2010.

The present chapter on Armenia concerns 12 situations and contains:

- 4 conclusions of conformity: Articles 1§4, 18§§1,3 and 4;
- 5 conclusions of non-conformity: Articles 1§§1 and 2, article 15§§2 and 3, 18§2 and 24.

In respect of the other 2 situations concerning Articles 1§3 and 20, the Committee needs further information in order to assess the situation. The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Armenia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

The next Armenian report deals with the accepted provisions of the following articles belonging to the second thematic group "Health, social security and social protection":

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),

- the right of elderly persons to social protection (Article 23),
- the right to protection against poverty and social exclusion (Article 30).

The deadline for the report was 31 October 2012.

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

Article 1 - Right to work

Paragraph 1 - Policy of full employment

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

Employment situation

The Committee notes from World Bank Development Indicators that GDP growth rate in Armenia decreased from 13.7% in 2007 to 2.1% in 2010.

Figures from the National Statistical Service of the Republic of Armenia show an employment rate of 45% in 2008, which is by international comparison very low.

The unemployment rate in 2008 reached 23.2% (mainly as a result of female unemployment and that of people in rural areas). As regards young people (16-30 years old) they remained a vulnerable group in the labour market with a high rate of unemployment reaching 36.7% in 2008.

Long-term unemployment (1 or more years) likewise persisted to be high and comprised 58.2% of total unemployment in 2008.

The Committee notes that the situation in Armenia has not improved since the previous reference period. The employment rate remains low, and unemployment levels have generally increased.

Employment policy

The report states that the aim of state policy is to create conditions for ensuring full employment of the population, enhancing the competitiveness of jobseekers, promoting job creation and the recruitment of high quality professionals.

Amendments to the Law “on employment and social protection in cases of unemployment” were adopted on 22 December 2010, with the aim of promoting the implementation of active labour policies. The Committee asks the next report to provide information on the new programmes introduced following this amendment.

The state programmes on employment implemented during the 2008-2010 period included vocational training, re-training, job fairs and public works. The report also mentions unemployment benefits and other financial assistance measures. In the absence of any information in the report, the Committee asks again if any specific measures have been taken to improve the employment prospects of long-term unemployed persons.

The Committee notes the number of persons that participated in some of the above-mentioned programmes, for instance in 2010, 1,513 persons received vocational training and 6,254 participated in public works. The report states that 38.6% of jobseekers were involved in employment programmes. The Committee nevertheless notes that this figure also includes those persons receiving unemployment benefits and other forms of financial assistance. It therefore asks the next report to provide the activation rate only in respect of unemployed persons participating in an active measure.

According to the report, public expenditure on active labour market policies amounted to 0.025% of GDP in 2010, which is by international comparison very low.

Finally, the Committee recalls that labour market measures should be targeted, effective and regularly monitored. It asks the next report to indicate whether employment policies are monitored and how their effectiveness is evaluated.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

Article 1 - Right to work

Paragraph 2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

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

1. Prohibition of discrimination in employment

The previous conclusion was deferred on the grounds that there was insufficient information provided. A substantial number of questions were therefore asked.

As regards the prohibition of discrimination in employment none of these questions have been satisfactorily answered by the report. The Committee recalls once again that it wishes to receive information on the following issues:

- Whether and how discrimination on grounds of sexual orientation is prohibited in employment;
- How indirect discrimination is defined;
- Whether there are exceptions to the prohibition on discrimination for genuine occupational requirements;
- Judicial procedure in discrimination cases, whether there is a shift in the burden of proof;
- Remedies in discrimination cases; whether there are limits to the amount of compensation that may be awarded in discrimination cases;
- Whether foreign nationals have full access to employment and whether there are jobs in the Armenian civil service reserved for nationals.

The Committee further wishes to receive information on the role of the Human Rights Defender in discrimination cases and the number of discrimination cases dealt with by the courts or Human Rights Defender.

It also wishes to receive information on any measures taken to eliminate discrimination in employment.

The Committee notes that if the above requested information is not forthcoming in the next report there will be nothing to demonstrate that the situation is in conformity with the Charter in this respect.

2. Prohibition of forced labour

The Committee recalls that forced labour is prohibited under Article 32 of the Constitution and Article 3§2 of the Labour Code. Under Article 3§2 of the Labour Code, employment rights may be restricted, but only by law and if this is necessary for the protection of public security, public order, public health and morals, the rights and interests of others, or persons' honour and good reputation. The Committee asked how these provisions were applied and interpreted, and what penalties may be imposed.

The Committee found no such information in the report, therefore it concludes that it has not been established that the exceptions to the prohibition on forced labour are in conformity with the Charter.

Prison work

The information provided in the report is not directly relevant. The Committee again requests the required information and refers to its statement of interpretation and to its questions in the General Introduction.

Coercion in connection with domestic work

The Committee found no information in response to the general question put previously. The Committee refers to its statement of interpretation and question in the General Introduction.

3. Other aspects of the right to earn one's living in an occupation freely entered upon ***Requirement to accept offer of a job or training***

According to the report pursuant to Article 8 of the Law of the Republic of Armenia "On population employment and social protection in case of unemployment", the status of unemployed shall be terminated where he or she has turned down different job and vocational training offers, save for unemployed persons who are parents taking care of a child under three. The definition of a "suitable job" is provided in Article 9 of this Law, according whereof the job shall be deemed suitable where it is consistent with the persons' vocational education and qualification, taking into account the amount of remuneration and accessibility of the workplace. The Committee refers to its interpretative statement in the General Introduction in this respect and asks that the next report include updated information on this issue.

Service alternative to military service

Military service in Armenia lasts for 2 years. Article 2 of the Law on alternative service provides for two different alternative services: alternative military service and alternative labour service. Article 5 of the Law states that the term for alternative military service is 36 months and the term for alternative labour service is 42 months (Venice Commission Opinion On The Draft Law On Amendments and Additions to the Law On Alternative Service in Armenia December 2011). The Committee finds that 42 months for alternative labour service amounts to an excessive restriction on the right to earn one's living in an occupation freely entered upon and is therefore not in conformity with the Charter.

Minimum periods of service in the armed forces

The Committee notes the information submitted on minimum periods of service in the professional armed forces. It highlights that any minimum period must be of a reasonable duration and in cases of longer minimum periods due to education or training that an individual has benefitted from, the length must be proportionate to the duration of the education and training. Likewise any fees/costs to be repaid on early termination of service must be proportionate.

Privacy at work

The information provided in the report is not relevant to the question previously posed by the Committee. The Committee refers to its statement of interpretation and to its questions in the General Introduction and asks that the next report provide all necessary information.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 1§2 of the Charter on the grounds that:

- the duration of alternative labour service replacing military service amounts to an excessive restriction on the right to earn one's living in an occupation freely entered upon;
- it has not been established that the exceptions to the prohibition on forced labour are in conformity with the Charter.

Article 1 - Right to work

Paragraph 3 - Free placement services

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

In its previous conclusion the Committee noted the main responsibilities of the State Employment Service, and that all the services it provided were free of charge (Conclusions 2008).

The report indicates that the number of registered jobseekers reached 93,230 persons in 2010. The number of vacancies notified to the State Employment Service was 1,404 in 2010, whereas the placement rate (measured as the percentage of placements in relation to vacancies notified) increased from 51.5% in 2008 to 67.2% in 2010. The Committee asks the next report to also indicate the average time taken to fill a vacancy.

It also asks for information on the number of persons working in the State Employment Service, the number of counselors involved in placement services, and the ratio of placement staff to registered jobseekers.

The report states that the work of private employment agencies is neither subject to licensing nor to any supervision by the Ministry of Labour and Social Affairs. Steps are nevertheless underway to regulate the activities of private employment agencies. The Committee asks to be kept informed on the adoption of regulations in this area.

The Committee defers its conclusion pending receipt of confirmation that a legal basis for the operation of private employment agencies has been adopted.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Armenia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

Article 1 - Right to work

Paragraph 4 - Vocational guidance, training and rehabilitation

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

As Armenia has not accepted Articles 9, 10§3 and 15§1 of the Charter, measures relating to vocational guidance, to vocational training and retraining of adult workers, and to guidance and vocational training for persons with disabilities are dealt with under this provision.

Vocational guidance

The Committee refers to the description in its previous conclusion of the regulations under which vocational guidance is provided free of charge to young persons and jobseekers (Conclusions 2008). The present report gives updated figures on the number of persons which received vocational guidance during the reference period. In 2010, 21,599 persons were provided with some type of advice.

Continuing vocational training

In its previous conclusion the Committee noted the Labour Code provisions which regulated arrangements for continuing training and special educational leave (Conclusions 2008). The current report however fails to provide any information on this matter. The Committee asks the next report to include updated information on the number of employees attending continuing training and reiterates the question raised in the previous conclusion on whether training costs are covered by companies or the employees themselves.

Guidance, education and training for persons with disabilities

The report confirms that within the scope of state employment programmes vocational guidance is also provided to disabled persons.

It also mentions that a draft law "on the protection of the rights of disabled persons and their social inclusion" was prepared in 2010. The Committee asks to be kept informed on the adoption and implementation of this new law.

A programme on "Vocational training and development of working skills of disabled persons" has been in place since 1995. The aim is to assist participants in finding a suitable job through the acquisition of new abilities or the carrying out of entrepreneurial activities. The Committee asks the next report to indicate the different types of training available for persons with disabilities and the number of participants.

The Committee has previously found the situation to be in conformity with the Charter as regards equal treatment of nationals of other States Parties (see most recently Conclusions 2008), however it asks that the next report contain up-dated information in this respect, including on the specific legal basis for the equal treatment guarantee.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Armenia is in conformity with Article 1§4 of the Charter.

Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community

Paragraph 2 - Employment of persons with disabilities

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

Armenia signed on 30 March 2010 the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol. The Convention was ratified on 22 September 2010.

Employment of persons with disabilities

According to the report, in 2011 some 5.8% of the total population had disabilities, i.e. around 185,000 persons, including around 119,800 people of working age (from 18 years old to pensionable age).

The Committee notes that the employment rate of disabled people remains particularly low: only 9% of disabled people are employed, i.e. 0.9% of the working population (the proportion decreased from 2009, when it was 1.6%, as a result of the economic crisis). As of 1/01/2011, there were 93,200 job seekers, of which 1,170 disabled people, i.e. only 1% of unemployed disabled people of working age. Those of them finding a job through the state employment service passed from 125 in 2008 (including 70 following specific programmes) to 110 in 2010 (including 96 following specific programmes). The number of disabled people finding employment as a result of vocational training increased from 14 in 2008 (out of 90 participants) to 20 in 2010 (out of 81 participants).

A survey carried out in 2007 with the assistance of the World Bank pointed out a number of shortcomings, detailed in the report (under Article 1), explaining why the proportion of disabled people applying for jobs is so small and what are the obstacles to the employment of disabled people. These results were confirmed by a smaller scale survey in 2009.

Definition of disability

According to the Government Decision No.780-N of 13 June 2003: "On Approval of the Classifiers and Criteria for Assigning Disability Groups during Medico-Social Expertise", disability is "a social insufficiency, appeared as a result of constant disorder of organism functions conditioned by sicknesses, injuries or defects, which brings to restriction of life activity and the need of social protection." Medico-Social Expert Commissions assess the level of disability and acknowledge the status of "disabled person". People with disabilities are divided into three groups, depending on the level of their impairments. Group one includes people with the most severe disabilities, group two refers to those with average-level functional limitations and group three includes people with minor disabilities.

Replying to the question raised by the Committee in its Conclusions (2008), the report indicates that, as a follow up to the ratification of the UN Convention on the Rights of Persons with Disabilities, a draft law is being prepared to put the definition of disability in conformity with the social model, referred to in the WHO International Classification of Functioning, Disability and Health – ICF 2001. The Committee requests information on the follow up given to this draft law.

Anti-discrimination legislation

General anti-discrimination provisions are included in the Constitution (Article 14.1), the Labour Code (Article 3.3) and the Law « on employment of population and social protection in case of unemployment ». Furthermore, the 1993 Law on the Social Protection of People with Disabilities stipulates that "people with disabilities have the same rights, freedoms and obligations as other persons" and covers rehabilitation, education, vocational training, labour rights, accessible environment and social care. The current anti-discrimination provisions are however not effectively implemented, as acknowledged by a survey cited in the report (as well as the NGO "Unison"). A new draft law explicitly prohibiting all discrimination on the basis of disability was to be submitted to the government end 2011. The Committee requests

information in this respect and wishes to know in particular what judicial and non-judicial redress is provided in cases of discrimination on the basis of disability, including relevant case-law.

The Labour Code provides for some guarantees for disabled workers and, under its Article 141, persons with disabilities may require to benefit from a flexible schedule (based on medical examination). In response to the Committee's request of clarifications on Article 17 of the Law on Social Protection of Disabled Persons, the report informs that the law covers both the public and the private sector. This provision prohibits all employers to dismiss or refuse to hire a disabled person, to promote or redeploy him/her to another workplace, except when a medical-social expertise concludes that the disabled person's health hinders the performance of occupational duties or threatens the health and occupational safety of other persons. The report indicates that this provision will be amended, once a social model of disability is introduced. The Committee asks the next report to provide information on the amendments and their implementation as well as on how the legal obligation to ensure reasonable accommodation, i.e. to adjust the workplace to the needs of disabled people, is implemented in practice, to provide any relevant data on compliance and relevant examples and whether it has prompted an increase in employment of persons with disabilities in the open labour market. In the light of the information available on the current situation, the Committee does not find it established that people with disabilities are guaranteed effective protection against discrimination in employment.

Measures to encourage the employment of persons with disabilities

The report indicates a number of programmes aimed at promoting the employment of disabled persons, which include:

- vocational guidance;
- compensation of the costs related to the transfer of disabled workers to a different workplace;
- financial assistance to self-employment of disabled people;
- wage subsidies to employers recruiting disabled people;
- traineeships and apprenticeships allowing disabled people to gain work experience;
- reasonable accommodation in the workplace.

The two latter measures have been implemented as from 2011 (outside the reference period).

Other programmes aimed at promoting the employment of disabled people are implemented through the assistance of different international organisations. The report presents some of them, also involving employers' unions and labour unions (these are also involved, together with the government in a tripartite commission set up in 2009 to deal with employment issues). A programme of 2009 aims at assessing the competences of disabled people and the reasonable accommodation needed, providing training and raising awareness. Another one, launched in 2006, provides wage subsidies to employers when recruiting uncompetitive workers, including disabled people: 471 disabled people were employed in 2008 in active employment programmes, 391 in 2009 and 431 in 2010. The budget devoted to these programmes has been constantly increased. As from 2011, disabled people will be included in 3 new programmes, one of which aims in particular at providing reasonable accommodation. In 2009 and 2010, 4 and 8 disabled people respectively became individual entrepreneurs, following a programme promoting self-employment. Since 2009, distance learning courses have been made available to disabled people.

A special centre provides since 2010 vocational rehabilitation, professional training and advice services to some 700-800 disabled jobseekers. Its activities are detailed in the report.

As regards sheltered employment, two pilot structures have been set up, which employ respectively 16 and 5 disabled persons.

The Committee requests the next report to provide updated information on the progress made, through the different measures and programmes enacted, in effectively increasing the level of employment of disabled people.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that persons with disabilities are guaranteed effective protection against discrimination in employment.

Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community

Paragraph 3 - Integration and participation of persons with disabilities in the life of the community

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

Anti-discrimination legislation and integrated approach

The Committee reiterates that the right of persons with disabilities to social integration provided for by Article 15§3 requires the removal of barriers to communication and mobility to give disabled persons access to road, rail, sea and air transport, public, social and private housing, and cultural activities and leisure, such as social and sporting activities. For this purpose, Article 15§3 requires the following to be established:

- anti-discrimination legislation covering both the public and private spheres in fields such as housing, transport, telecommunications, culture and leisure, as well as effective remedies for those who have been treated unlawfully;
- a coherent policy for the disabled, and positive action measures to achieve the aims of social integration and full and comprehensive participation by people with disabilities. These measures must be co-ordinated and based on clear legal foundations.

While the report contains some information on the legal framework providing for the removal of barriers to mobility and for ensuring disabled people participation to cultural and sport activities, it is not clear whether all the different fields mentioned above are adequately covered. The Committee accordingly asks the next report to indicate whether anti-discrimination legislation in conformity with the requirements of Article 15§3 exists and how it is implemented, including as regards the remedies available. In the absence of such information, the Committee considers that it is not established that the situation is in conformity with Article 15§3.

Consultation

A National Commission on Issues of Persons with Disabilities was set up in 2008 and serves as a coordination mechanism on disabilities issues. The Commission is chaired by the Minister of Labour and Social Issues and includes other governmental members as well as heads of 8 disability NGOs.

Forms of financial aid to increase the autonomy of persons with disabilities

The 1995 Law on State pensions provides pension benefits to persons with disabilities. An insurance (contributory) pension is granted to people who had been working before becoming disabled while a social (non-contributory) disability pension is granted in other cases (see also Conclusions 2008).

Measures to overcome obstacles

Technical aids

Under Government decision N453-N of 2007, as amended in 2010, persons with disabilities are entitled to free prosthetic, orthotic and rehabilitation technical aids, on the basis of detailed individual rehabilitation programmes developed by the medical and social expert examination commissions. The report points out the efforts made to improve the quality of the aids provided and their variety. For example, programmes aimed at providing visually impaired people with ocular prosthesis and sound-generating devices were implemented as from 2008.

As regards personal assistance, care and social services are provided free of charge at four state nursing homes and at some private nursing homes (some of which benefit from state

contributions compensating the salaries of their employees). Since 2007, the provision of social services is delegated to state supported NGOs.

Communication

Braille books and "talking books" are available and, in two provinces, library home services are provided to mobility impaired people. A programme aimed at providing computer access to visually impaired people is implemented since 2008.

Several sources¹ point out that, although the Broadcasting Law makes it compulsory to provide television programmes accessible to hearing impaired people, only one private television channel provides sign language interpretation for some of its programmes. Other television channels only offer subtitles, which however are not easily accessible to people with hearing problems as they are often not literate enough to be able to follow them. Furthermore, hearing impaired people do not have access to teleprinters, videophones or relay operators. The Committee asks next report to comment on these remarks and to indicate the measures taken to improve access to communication and media services to disabled people. It furthermore asks what is the legal status of sign language.

Mobility and transport

In response to the Committee's request of information on the practical implementation of the provisions aimed at improving transport for the disabled people (Government Decree N392-N of 16 February 2006), the report acknowledges that, despite some progress (two out of 36 trolley-buses as well as certain streets, underground passages and building entrances have been adapted), much remains to be done. A draft law "on protection of rights of the disabled persons and their social inclusion" would provide for transportation means adapted for disabled persons and for ensuring accessible environment in view of their social inclusion. The Committee asks next report to provide updated information on the progress made in making transport accessible to disabled people, also as regards rail transport.

Housing

The Committee refers to its previous Conclusion (2008), indicating that the law, at least since 2006, sets standards for accessibility of buildings for mobility impaired people, which are obligatory for all construction companies. The Committee requests information on how these provisions are applied in practice and what remedies are available. Furthermore, it reiterates its question as to whether financial assistance is provided for adapting existing housing. The Committee also notes from another source² that access to polling stations is reported not to be adequately available to disabled people and requests clarifications in this respect.

Culture and leisure

Under Article 26 of the Law "on social protection of rights of disabled persons and their social inclusion", disabled persons should be ensured participation in cultural and sport events. The report indicates that state assistance is provided to some NGOs, ensuring the participation of around 600 disabled people to sport activities. Creative education, free instruction of arts and crafts are available to disabled children in Yerevan and Vanadzor. A source³ indicates that while several schools in Yerevan are equipped with ramps, most of their facilities (including bathrooms) are inaccessible for people with mobility problems.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 15§3 of the Charter on the ground that it has not been established that there is legislation ensuring people with disabilities effective protection against discrimination in the fields of housing, transport, telecommunications, culture and leisure activities.

¹ArmeniaNow.com article of 06/05/2011 "Rights of disabled people in Armenia highlighted on International

Disability Day" ; UNISON NGO website ; About.com - Deafness, article of 28/04/2009

²*Global accessibility news, 12/04/2012 Persons with disabilities to gain access to Armenia's polling stations in 40 years, NGO says*

³*UNISON NGO website - <http://unison.am/en/faq>*

Article 18 - Right to engage in a gainful occupation in the territory of other States Parties

Paragraph 1 - Applying existing regulations in a spirit of liberality

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

Work permits

In reply to the Committee's question asked in the previous conclusion (Conclusions 2008) the report states that the body authorised to issue work permits has not yet been recognised by the Government. Therefore, foreign nationals can work without work permits.

The Committee asks whether the temporary and permanent residence permits automatically confer the right to engage in a gainful occupation.

Relevant statistics

According to the report in the course of 2010-2011 271 temporary residence permits and 58 permanent residence permits were granted. The Committee asks whether there were any refusals for residence permits and for what reasons.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Armenia is in conformity with Article 18§1 of the Charter.

Article 18 - Right to engage in a gainful occupation in the territory of other States Parties

Paragraph 2 - Simplifying existing formalities and reducing dues and taxes

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

Administrative formalities

In its previous conclusion (Conclusions 2008) the Committee asked whether formalities for obtaining residence permit could be completed already in the foreign worker's country of origin. In this connection it notes that the decision concerning the granting of temporary or permanent residence status is adopted by the Passport and Visa Department of the Government within 30 days following the receipt of the necessary documents.

The Committee noted in its conclusion on Article 18§1 that there is no system of work permits in Armenia. It asks what are the grounds on which residence permit can be refused as envisaged by the Law on Foreigners.

Self-employment

The Committee asks what rules apply to the self-employment of foreign nationals.

Chancery dues and other charges

In its previous conclusion the Committee noted that the fees charged for obtaining temporary and permanent residence permits, as well as for their renewal, were high.

The Committee now notes that certain categories of persons may be exempted from the payment of such fees, but however, their level has remained the same in the reference period (€ 281 for a temporary permit and €321 for a permanent permit). The Committee recalls that chancery dues and other charges for permits must not be excessive and in any event, must not exceed the administrative cost incurred in issuing them.

According to Article 18§2 of the Charter, with a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, States Parties are under an obligation to reduce or abolish chancery dues and other charges paid either by foreign workers or by their employers. The Committee observes that in order to comply with such an obligation, States must, first of all, not set an excessively high level for the dues and

charges in question, that is a level likely to prevent or discourage foreign workers from seeking to engage in a gainful occupation, and employers from seeking to employ foreign workers.

The Committee holds that the fees are too high and therefore, the situation is not in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 18§2 of the Charter on the ground that the level of fees for residence permits is excessive.

Article 18 - Right to engage in a gainful occupation in the territory of other States Parties

Paragraph 3 - Liberalising regulations

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

Access to the national labour market

As regards the Committee's question asked in the previous conclusion whether certain jobs are closed to foreign nationals and on what grounds, the Committee refers to its conclusion under Article 1§2.

Exercise of the right of employment / Consequences of job loss

In its previous conclusion the Committee asked whether a foreign worker could remain in the country after having lost his job with a view to looking for another job.

In his connection, the Committee noted in its conclusion under Article 18§1 that foreign nationals can be employed without work permits. It notes from the additional information provided by the Government that in case the foreign worker loses his/her job, the residence permit is not automatically revoked, therefore the worker is not obliged to leave the country.

Conclusion

The Committee concludes that the situation in Armenia is in conformity with Article 18§3 of the Charter.

Article 18 - Right to engage in a gainful occupation in the territory of other States Parties

Paragraph 4 - Right of nationals to leave the country

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

The Committee notes that there have been no changes to the situation which it has previously considered to be in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Armenia is in conformity with Article 18§4 of the Charter.

Article 20 - Right to equal opportunities and equal treatment in employment and occupation without sex discrimination

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

Equal rights

The Committee recalls that the Constitution *inter alia*, prohibits discrimination on grounds of gender. The Labour Code further provides that gender discrimination in employment is prohibited.

The Committee asked previously whether there is express legislation governing equal pay for work of equal value. Further it asked whether there were appropriate methods of pay comparison enabling employees to compare the respective values of different jobs, and whether pay comparisons beyond a single employer were possible. According to the report Article 178 of the Labour Code provides that equal remunerations shall be paid to men or women for the same or equal (amount of) work. The collective agreement signed in 2009 between the Government, Confederation of Labour Unions and the Association of employers requires all parties to ensure gender equality in all issues of employment, including remuneration. No information is provided on equal pay comparisons across companies. The Committee refers to its interpretative statement in the General Introduction on this issue and asks the next report to provide the necessary information. The Committee underlines that should this information not be provided there will be nothing to show that the situation is in conformity with the Charter.

Persons who believe that they have been discriminated on grounds of sex in employment may take the matter before the courts. Further trade unions may act on behalf of individuals who believe that they have been discriminated against.

As regards remedies the report states that an individual who has been discriminated against may seek restitution, reinstatement (if dismissed) compensation for damage etc. Compensation is available for economic loss. The Committee asks whether there are upper limits to the amount of compensation that may be awarded.

The Committee asks again whether there are occupations reserved for one sex, i.e. exceptions to the principle of equality due to genuine occupational requirements.

The Committee notes that new equal opportunities legislation; On Ensuring Equal Rights and opportunities for Women and Men has been approved by the Government. It asks for the next report to provide details of the new law in the next report.

The report confirms that there is no discrimination in social security matters.

Specific protection measures

The Committee recalls that measures relating to the protection of maternity and family responsibilities are examined under Article 8 and 27 of the Charter (see Conclusions 2011).

Position of women in employment and training and Measures to promote equal opportunities

The Committee notes from both the report and other sources (ILO Work and Family Relations in Armenia) that the female employment rate is fairly close to that of men. However the overall employment rate is low, further a large gender disparity exists in relation to wages, with women earning approximately 60% of the value of men's wages.

The Committee notes that the Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW report on Armenia 2011) expressed concern about the persistence of both vertical and horizontal gender segregation within the labour market, as well as concern at the persistence of the wage gap and lack of understanding of the concept of wage gap, as well as the low representation of women in top management positions.

In 2004 the Armenian Government issued a decree launching the 'National Programme of Improving the situation of Women in the Republic of Armenia and Enhancing Their Role in Society for 2004-2010'.^A The programme sought to improve the economic status of women and reduce unemployment by expanding their employment opportunities, including through promoting women's entrepreneurship activities. Another programme was adopted in 2010 – a strategy programme and action plan for a gender policy. The Committee asks for information to be provided in the next report on the results of the Programmes and any further positive action measures taken to promote the employment of women and reduce the gender wage gap.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Armenia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

Article 24 - Right to protection in case of dismissal

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

Scope

The Committee notes that there have been no changes to the situation which it has previously (Conclusions 2008) considered to be in conformity with the Charter.

Obligation to provide a valid reason

The Committee takes note of the cases concerning employment disputes at the courts, regarding satisfaction of claims for unpaid salary, severance pay in case of dismissal, compensation of pecuniary damage, reinstatement etc.

In its previous conclusion the Committee asked whether Armenian law provided for termination of the employment relationship on the ground that an employee had reached a certain retirement age. In this connection the report states that pursuant to Article 113 of the Labour Code the employers have the right to terminate employment prior to the expiry of employment contract when the employee reaches retirement age.

The Committee recalls that according to the Appendix to the Charter, for the purposes of Article 24 the term 'termination of employment' means termination of employment at the initiative of the employer. Therefore, situations where a mandatory retirement age is set by statute, as a consequence of which the employment relationship automatically ceases by operation of law, do not fall within the scope of this provision.

The Committee further recalls that Article 24 establishes in an exhaustive manner the valid grounds on which an employer can terminate an employment relationship. Two types of grounds are considered valid, namely on the one hand those connected with the capacity or conduct of the employee and on the other hand those based on the operational requirements of the enterprise (economic reasons).

The Committee holds that under Article 24 dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age (age when an individual becomes entitled to a pension) will be contrary to the Charter, unless the termination is properly justified with reference to one of the valid grounds expressly established by this provision of the Charter.

The Committee holds that the situation is not in conformity with the Charter as the termination of employment at the initiative of the employer on the sole ground that they have the pensionable age, which is permitted by law, is not justified.

Prohibited dismissals

According to the report, Article 120 of the Labour Code was amended (Law HO-117-N of 15 July 2010) and now stipulates that the deterioration of the health condition of the employee may be a valid ground for termination of employment if it hinders the process of work.

The Committee recalls that under Article 24 temporary absence from work due to illness or injury is a prohibited ground for termination of employment. However, such absence can constitute a valid reason if it severely disrupts the smooth running of the undertaking. A time limit can be placed on protection in case of illness. The Committee asks what time limit is placed on protection in case of illness (temporary incapacity). In the meantime it reserves its position on this issue.

Remedies and sanctions

In reply to the Committee's question, the report states that according to Article 265 of the Labour Code, as amended (HO-117-N of 15 July 2010) if the court decides that the employment contract was dissolved in the absence of lawful grounds or in violation of the procedure defined by the legislation, the employee may be reinstated if the restoration of employment relations between the employer and the employee is possible. If such action is

impossible due to economic, technological or organisational issues, then the employer will be obliged to pay compensation in the amount not less than the double of the average salary but not more than 12 times the average salary.

The Committee recalls that Article 24 of the Revised Charter requires that courts or other competent bodies are able to order adequate compensation, reinstatement or other appropriate relief. In order to be considered appropriate, compensation should include reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body ruling on the lawfulness of the dismissal, the possibility of reinstatement and/or compensation sufficient both to deter the employer and proportionate to the damage suffered by the victim.

The Committee holds that the situation is not in conformity with the Charter as the maximum compensation for unlawful dismissal is inadequate.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 24 of the Charter on the grounds that:

- the termination of employment on the sole ground that the person has reached the pensionable age, which is permitted by law, is not justified;
- the maximum compensation for unlawful termination of employment is inadequate.