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European Social Charter

European Committee of Social Rights

Conclusions 2016

GEORGIA

This text may be subject to editorial revision.

The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

The following chapter concerns Georgia, which ratified the Charter on 22 August 2005. The deadline for submitting the 9th report was 31 October 2015 and Georgia submitted it on 9 November 2015.

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

Georgia has accepted all provisions from the above-mentioned group except Articles 9, 10§1, 10§3, 10§5, 15§§1 and 2, 24 and 25.

The reference period was 1 January 2011 to 31 December 2014.

In addition, the report contains also information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to just conditions of work – public holidays with pay (Article 2§2),
- the right to just conditions of work – weekly rest period (Article 2§5),
- the right to just conditions of work – night work (Article 2§7),
- the right to organise (Article 5),
- the right to bargain collectively – negotiation procedures (Article 6§2),
- the right to bargain collectively – collective action (Article 6§4),
- the right to dignity in the workplace – moral harassment (Article 26§2).

The conclusions relating to Georgia concern 19 situations and are as follows:

–4 conclusions of conformity: Articles 18§1, 18§2, 18§3 and 18§4;

–14 conclusions of non-conformity: Articles 1§1, 1§2, 1§3, 1§4, 2§2; 2§5, 2§7, 5; 6§2, 6§4, 10§2, 10§4, 20 and 26§2.

In respect of one other situation related to Article 15§3 the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Georgia under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

Article 1§2

- Law on the Elimination of All Forms of Discrimination, which was enacted by the Georgian parliament on 2 May 2014 and entered into force on 7 May 2014. Its purpose is to eliminate discrimination on various grounds including health and

disability (Article 1). The law prohibits all discrimination, both direct and indirect (Articles 2 §2 and 2 §3), and also introduces the notion of positive action in the context of promoting gender equality and in certain specific cases involving, *inter alia*, disability

The next report will deal with the following provisions of the 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 report should also contain information requested by the Committee in Conclusions 2015 in respect of its findings of non-conformity due to a repeated lack of information:

- the right of children and young persons to protection – fair pay (Article 7§5),
- the right of children and young persons to protection – regular medical examination (Article 7§9),
- the right of employed women to protection of maternity – prohibition of dangerous, unhealthy or arduous work (Article 8§5),
- the right of children and young persons to social, legal and economic protection – assistance, education and training (Article 17§1),
- the right of migrant workers and their families to protection and assistance – assistance and information on migration (Article 19§1),
- the right of migrant workers and their families to protection and assistance – co-operation between social services of emigration and immigration states(Article 19§3),
- the right of migrant workers and their families to protection and assistance – equality regarding employment, right to organise and accommodation(Article 19§4),
- the right of migrant workers and their families to protection and assistance – family reunion (Article 19§6),
- the right of migrant workers and their families to protection and assistance – teaching language of host state (Article 19§11),
- the right of workers with family responsibilities to equal opportunity and treatment – participation in working life (Article 27§1),
- the right of workers with family responsibilities to equal opportunity and treatment – parental leave (Article 27§2).

The deadline for submitting that report was 31 October 2016.

Conclusions and reports are available at 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 Georgia.

Employment situation

The Committee notes from the National Statistics Office of Georgia that GDP growth rate decreased from 6.7% in 2012 to 1.7% in 2014.

According to Eurostat the overall employment rate increased during the reference period from 59.3% in 2011 to 62.2% in 2014.

The male employment rate increased from 66.7% in 2011 to 69.7% in 2014. The female employment rate also increased from 52.8% to 55.3%. The employment rate of older workers likewise increased from 69.2% to 72.2%.

The National Statistics Office of Georgia shows that the unemployment rate decreased from 15.1% (2011) to 12.4% (2014).

As in the previous Conclusions, the Committee asks to provide information in the next report on youth unemployment and long-term unemployment.

The Committee notes that the economy declined tremendously during the reference period. The Committee recognises that despite this economic decline the employment indicators show a positive trend.

Employment policy

The Committee deplores that the report again provides very scarce information on the matters to be examined under Article 1§1.

The report does not indicate what active labour market measures are available in general to job seekers. It also fails to provide complete information on the number of beneficiaries in the different types of active measures, and on the overall activation rate, i.e. the average number of participants in active measures as a percentage of total unemployed. Likewise, it contains no data as regards expenditure on active labour market policies (as a percentage of GDP).

The Committee recalls that in order to assess the effectiveness of employment policies it requires information on the above indicators. As the report contains no information on these matters, the Committee considers that employment policies have been adequate in tackling unemployment and job creation.

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 Georgia is not in conformity with Article 1§1 of the Charter on the ground that employment policy efforts have not 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 Georgia.

1. Prohibition of discrimination in employment

The Committee previously asked a significant number of important questions in order to be able to assess the situation with regard to the prohibition of discrimination in employment (Conclusions 2008 and 2012). None of the previous reports provided the requested information. Thus, the Committee concluded previously that the situation in Georgia was not in conformity with Article 1§2 of the Charter on the ground that it has not been established that there is adequate protection against all forms of discrimination in employment.

The current report does not provide the information which was previously requested by the Committee. The Committee therefore maintains its conclusion of non-conformity.

The Committee notes from the European Commission Report on Georgia that in May 2014 the Anti-Discrimination Law (No. 2391) was adopted which covers all grounds for discrimination and provides for embedding an anti-discrimination mechanism in the Public Defender's Office (PDO) (European Commission, Joint Communication: Implementation of the European Neighbourhood Policy in 2014, Brussels, 25.03.2015).

The Committee asks updated and detailed information with regard to the current legal framework and its implementation in the next report. The information provided should address the questions previously raised in Conclusions 2008 with reference, but not limited to:

- Whether the legislation prohibits indirect discrimination and, if so, how the ban is implemented;
- Whether there are exceptions to the prohibition on discrimination for genuine occupational requirements;
- Judicial procedure in discrimination cases and examples of cases where employees who considered themselves victims of discrimination in employment complained to courts; with regard to remedies, the Committee previously noted that the legislation provides no upper limit and the amount of compensation are determined by the courts on a case-by-case basis (Conclusions 2008). The Committee asks for examples of compensation awarded by courts in cases dealing with discrimination in employment. It also asks whether sanctions are imposed against employers in cases of discrimination in employment.
- Whether domestic legislation expressly provides for a shift in the burden of proof and what the legal basis is;
- Whether there are specialised, independent bodies to promote and monitor equal treatment in employment and which are their competences with regard to prohibition of discrimination in employment;
- Whether foreign nationals have access to employment in both private and public sector and whether there are jobs in the Georgian civil service reserved only to nationals.

The Committee notes that the Labour Code was amended so as to cover discrimination at the recruitment and selection stage – "any and all discrimination in a labour and/or pre-contractual relations due to race, skin colour, language, ethnic or social belonging, nationality, origin, material status or title, place of residence, age, sex, sexual orientation, marital status, handicap, religious, social, political or other affiliation, including affiliation to trade unions, political or other opinions shall be prohibited (Section 2 (3) of the Labour

Code). The Committee asks confirmation that the current Labour Code covers discrimination at the recruitment and selection stage as well.

The Committee takes note from a Direct Request of ILO-CEACR of the low representation of ethnic minorities in state institutions and the public administration, as well as their lack of sufficient knowledge of the Georgian language which affected their ability to enter the labour market (Direct Request (CEACR) – adopted 2013, published 103rd ILC session (2014), Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – Georgia). The Committee asks whether measures/actions have been taken to promote the employment of members of ethnic minorities in the public and private sectors.

With regard to supervision, the Committee notes that the Public Defender's Office monitors the observance of the principle of non-discrimination in general, on the basis of complaints or ex officio. However, further to the abolition of the Labour Inspection Service in 2006, there is no longer a labour supervisory body. The same source indicates that the labour supervisory body to be established will be responsible for enforcing only occupational safety and health provisions (Direct Request (CEACR) – adopted 2013, published 103rd ILC session (2014), Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – Georgia).

The Committee takes note of the Public Defender's statements that under the current law, private agencies are not obliged to provide information to the Public Defender in case of revealing an alleged fact of discrimination. In order to improve the anti-discrimination legislation and increase its efficiency, the Public Defender has already addressed the Parliament of Georgia with a legislative proposal. The Parliament's Human Rights Committee is now drafting a bill on the basis of the proposal (Public Defender's website, On Combating against Discrimination, Its Prevention and State of Equality). The Committee asks information on any developments concerning this matter.

The Committee asks that the next report provide information on the manner in which the authorities ensure effective enforcement of the anti-discrimination legislation in employment, and to indicate whether the future labour supervisory body will be entrusted with ensuring the application of such legislation. It also asks information on any discrimination cases concerning specifically employment examined by the Office of the Public Defender and the courts, including sanctions imposed and remedies provided.

2. Prohibition of forced labour

Work of prisoners

The Committee notes that the report does not answer the questions on prison work put in its Statement of Interpretation on Article 1§2 in the General Introduction to Conclusions 2012. Consequently, the Committee repeats its request for relevant information in the next report on the matters raised in this Statement of Interpretation, in which it stated that "prisoners' working conditions must be properly regulated, particularly if they are working, directly or indirectly, for employers other than the prison service. In accordance with the principle of non-discrimination enshrined in the Committee's case law, this supervision, which may be carried out by means of laws, regulations or agreements (particularly where companies act as subcontractors in prison workshops), must concern pay, hours and other working conditions and social protection (in the sphere of employment injury, unemployment, health care and old age pensions)" (Conclusions 2012).

Domestic work

The Committee notes that the report does not answer the questions it put on domestic work in its Statement of Interpretation on Article 1§2 in the General Introduction to Conclusions

2012. Consequently, the Committee repeats its request for relevant information in the next report on the matters raised in this Statement of Interpretation, in which it drew attention to the existence of forced labour in the domestic environment and in family businesses, particularly information on the laws enacted to combat this type of forced labour or on the steps taken to apply such provisions and monitor their application.

In the absence of any relevant information on the various issues relating to forced labour, the Committee considers that the situation is not in conformity with the Charter because it has not been established that the rights of workers in this respect are properly protected.

3. Other aspects of the right to earn one's living in an occupation freely entered upon

Minimum periods of service in the Armed Forces

In its previous conclusion (Conclusions 2012), the Committee pointed out that any minimum period of service in the armed forces had to be of a reasonable duration and in cases of longer minimum periods due to any education or training that an individual had attended, the length had to be proportionate to the duration of the education and training. Likewise any fees/costs to be repaid on early termination of service had to be proportionate. As the report does not provide any information on the situation in Georgia in this respect, the Committee asks for up-to-date information on the subject in the next report.

Requirement to accept the offer of a job or training

The Committee understands that no unemployment benefits scheme exists in Georgia.

Privacy at work

The Committee reiterates that the right to undertake work freely includes the right to be protected against interferences with the right to privacy. As the report does not provide any information in this respect, the Committee asks for information in the next report on measures taken by the state to ensure that employers give due consideration to workers' private lives in the organisation of work and that all interferences are prohibited and where necessary sanctioned (Statement of Interpretation on Article 1§2, Conclusions 2012).

In the absence of any relevant information on the various issues relating to other aspects of the right to earn one's living in an occupation freely entered upon, the Committee considers that the situation is not in conformity with the Charter because it has not been established that the rights of workers in this respect are properly protected.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 1§2 of the Charter on the grounds that: it has not been established that:

- there is adequate protection against all forms of discrimination in employment;
- the prohibition of forced labour is properly guaranteed;
- the right of workers to earn their living in an occupation freely entered upon are properly guaranteed.

Article 1 - Right to work

Paragraph 3 - Free placement services

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

While deferring its previous conclusions due to lack of information (Conclusions 2012), the Committee considered that the absence of the information required amounts to a breach of the reporting obligation entered into by Georgia under the Charter and that the Government consequently has an obligation to provide the requested information in the next report on this provision.

In reply to the Committee's request in the last conclusions, the report indicates that the Social Service Agency provides free employment services for jobseekers through a well developed infrastructure, with a central office located in Tbilisi, and 69 municipal centers. It further indicates that labour market management information system (worknet.gov.ge) for jobseeking has been launched and the registration of jobseekers in the system started on 25 December 2013. At present, the electronic system keeps record of 55,139 job seekers, out of which only 667 are registered in the labour market management information system. The program is free of charge. The Committee asks for the next report to explain what is the difference between the two systems keeping record of the jobseekers.

The report does not reply to the Committee's questions on quantitative indicators necessary to assess the effectiveness of employment service. The Committee asks that the next report contains information on the following indicators: a) total number of registered jobseekers and unemployed persons in the Public Employment Service (PES) b) number of vacancies notified to PES; c) number of persons placed via PES; d) placement rate (i.e. percentage of placements compared to the number of notified vacancies); e) placements by PES as a percentage of total employment in the labour market and the respective market shares of public and private services. Market share is measured as the number of placements effected as a proportion of total hirings in the labour market. Data concerning the abovementioned indicators are to be provided for the different years of the reference period.

In addition, it also asks what is the number of persons working in the different public employment centres across the country, the proportion of the staff concerned with placement activities, the number of jobseekers per placement counsellor and the average time to fill a vacancy.

With regards to private agencies, the Committee asks the next report for information on the conditions under which private agencies operate and co-ordinate with public services. Furthermore, the Committee asks also for information on participation of trade union and employers' organisations in the running of the employment services.

Considering the information provided on quantitative indicators to assess the effectiveness of free employment service, the Committee considers that the public employment services do not operate in an efficient manner in Georgia.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 1§3 of the Charter on the ground that the public employment services do not operate in an efficient manner.

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 Georgia.

Article 1§4 guarantees the right to vocational guidance, continuing vocational training for employed and unemployed persons and specialised guidance and training for persons with disabilities. It is complemented by Articles 9 (right to vocational guidance), 10§3 (right of adult workers to vocational training) and 15§1 (right of persons with disabilities to vocational guidance and training), which contain more specific rights to vocational guidance and training. However, as Georgia has not accepted these provisions, the Committee assesses the conformity of the situation under Article 1§4.

Equal treatment

In its previous conclusion (Conclusions 2012), the Committee asked whether nationals of other States Parties lawfully resident or working regularly in Georgia enjoyed equal treatment regarding all aspects considered under Article 1§4. The report does not contain any information in this respect. The Committee accordingly reiterates its question and holds that if such information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this issue.

Vocational guidance

The report refers to the adoption, by the Ministry of Labour, Health and Social Affairs, of a strategic document on professional counselling and career planning, and of an Action Plan elaborated in cooperation with the Ministry of Education and Science, the Ministry of Sport and Youth Affairs, social partners and other NGOs. It states that a professional orientation, career planning service standard, and professional orientation and career planning standard procedure projects for job seekers are being developed, within the framework of the Technical Assistance Programme of Employment and Vocational Educational Reform. According to the report, the aim of these measures is to ensure universal access to continuous professional counselling and career planning services for every Georgian citizen. The Committee asks the next report to provide information on the implementation of these measures.

The Committee also notes from the report that free group and individual counselling services are provided by the Social Service Agency and its 69 municipal centres available in each municipality. The report does not provide however details of how these services are operated, whether they are addressed both at employed and unemployed people, what are their funding, their staffing and the number of beneficiaries. The Committee asks that comprehensive and updated information on these points be included in the next report. In the meantime, it considers that it has not been established that the right to vocational guidance is guaranteed.

Continuing vocational training

The report does not reply to the questions raised in the previous conclusion (Conclusions 2012), where the Committee found that it had not been established that the right to continuing vocational training for workers was guaranteed. In this respect, the report refers to the adoption by the Government of a state programme on professional training/retraining and qualification raising of job seekers. The programme's aims are to offer vocational training and internships for job seekers in the labour market, to support them in developing their professional skills and to promote their employment. The Committee notes however that the programme was adopted on 21 August 2015, out of the reference period, and that its development and implementation are planned to take place in the upcoming years. It asks

the next report to provide updated information on the implementation of this programme and reiterates its request for information on what types of vocational training and education are available in the labour market, the overall participation rate in such training, what percentage of companies provide in-house training or other types of vocational training to employees, and on what conditions. It furthermore asks the next report to clarify whether continuing vocational training is available both to employed and unemployed adult workers. In the meantime, the Committee considers that the right to continuing vocational training for workers is not guaranteed.

Guidance and vocational training for persons with disabilities

In its previous conclusion (Conclusions 2012) the Committee found that it had not been established that specialised guidance and training for persons with disabilities was guaranteed. It requested information on whether there is a domestic legal framework ensuring the right of persons with disabilities to education, guidance and vocational training, what type of training is available and the number of participants. As the report does not contain any information on these issues, the Committee reiterates its questions and maintains in the meantime its finding that the situation is not in conformity with Article 1§4 of the Charter.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 1§4 of the Charter on the following grounds:

- it has not been established that the right to vocational guidance is guaranteed;
- continuing vocational training for workers is not guaranteed;
- it has not been established that specialised guidance and training for persons with disabilities is guaranteed.

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on conclusions of non-conformity for repeated lack of information in Conclusions 2014.

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that work performed on a public holiday was adequately compensated (Conclusions 2014, Georgia).

Under Article 2§2 work should as a rule be prohibited during public holidays. However, work can be carried out on public holidays under specific circumstances set by law or collective agreements. Work performed on a public holiday entails a constraint on the part of the worker, who should be compensated. Considering the different approaches adopted in different countries in relation to the forms and levels of such compensation and the lack of convergence between States Parties in this regard, States Parties enjoy a margin of appreciation on this issue, subject to the requirement that all employees are entitled to an adequate compensation when they work on a public holiday (Conclusions 2014, Andorra).

In assessing whether the compensation for work performed on public holidays is adequate, levels of compensation provided for in the form of increased salaries and/or compensatory time off under the law or the various collective agreements in force are taken into account, in addition to the regular wage paid on a public holiday, be it calculated on a daily, weekly or monthly basis (Conclusions 2014, France).

The report confirms that public holidays are paid as part of monthly remuneration and that following a 2013 amendment to the Labour Code work performed during public holidays shall be deemed to be overtime and accordingly be remunerated at an increased rate of hourly pay. Furthermore, the parties can also agree to compensate work on public holidays by additional time off.

The Committee considers that the relevant legal provisions as described by the Georgian authorities are not sufficiently precise so as to ensure that work performed during public holidays is compensated in an adequate manner and the situation is therefore in breach of the Charter. While acknowledging the provision for an increased pay rate the Committee recalls that an increase is not in itself sufficient to satisfy the requirements of Article 2§2: the increase must in any event not fall below 100% (on top of the regular wage rate).

The Committee asks that the next report contain information on the situation in practice, including examples of the level of the increased pay rate in different sectors and branches, both public and private.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 2§2 of the Charter on the ground that Georgian law does not ensure that work performed during public holidays is adequately compensated.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on conclusions of non-conformity for repeated lack of information in Conclusions 2014.

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that the right to a weekly rest period was sufficiently guaranteed (Conclusions 2014, Georgia).

Article 2§5 guarantees a weekly rest period, which insofar as possible shall coincide with the day traditionally or normally recognised as a day of rest in the country or region concerned. Although the rest period should be "weekly", it may be deferred to the following week, as long as no worker works more than twelve days consecutively before being granted a two–day rest period. The right to weekly rest periods may not be replaced by compensation and workers may not be permitted to give it up.

The report states that under the Labour Code provision of rest time is an essential feature of a labour agreement, however the conditions of rest time may be defined according to the preferences of the parties. The report further states that Article 14 of the Labour Code stipulates a daily rest period of 12 hours. In the public sector the Law on Public Service provides for a five-day working week for public servants with Saturday and Sunday considered as days off work.

The Committee considers that the question of the weekly rest period cannot be left to "the preferences of the parties" and while noting the information on the daily rest period and on the situation in the public sector (which appears to satisfy the Charter's requirements) it therefore holds that the situation is in breach of Article 2§5.

The Committee asks that the next report contain information on the situation in practice as regards provision for a weekly rest period in collective agreements and/or in indivdual contracts as the case may be.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 2§5 of the Charter on the ground that the right to a weekly rest period is not adequately guaranteed in the whole labour market.

Article 2 - Right to just conditions of work

Paragraph 7 - Night work

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on conclusions of non-conformity for repeated lack of information in Conclusions 2014.

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that night workers were effectively subject to compulsory regular medical examination (Conclusions 2014, Georgia).

Article 2§7 guarantees compensatory measures for persons performing night work. Domestic law or practice must define what is considered to be "night work" within the context of this provision, namely what period is considered to be "night" and who is considered to be a "night worker" (Conclusions 2014, Bulgaria).The measures which take account of the special nature of the work must include regular medical examinations, including a check prior to employment on night work; the provision of possibilities for transfer to daytime work; continuous consultation with workers' representatives on the introduction of night work, on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work (Conclusions 2003, Romania).

The report refers to the regulation of night work, in particular Article 18 of the Labour Code as well as to Order No. 147/N of the Minister of Labour, Health and Social Affairs, 2007 on harmful and hazardous work and Order No. 215 of the Minister of Labour, Health and Social Affairs, 2007, on obligatory periodic medical examination at the expense of the employer. Unfortunately, however, the report once again does not indicate whether and to what extent night workers are subject to regular medical examination and the Committee can therefore only reiterate its conclusion that it has not been established that night workers are effectively subject to compulsory regular medical examination.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 2§7 of the Charter on the ground that it has not been established that night workers are effectively subject to compulsory regular medical examination.

Article 5 - Right to organise

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on conclusions of non-conformity for repeated lack of information in Conclusions 2014

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that the requirement as to minimum number of members presents no obstacle to the founding of organisations; it had not been established that the legal framework allowing restrictions on the right to organise that may be included in employment contracts is not detrimental to the right to organise; it had not been established that trade unions are entitled to perform and indeed perform their activities without interferences from authorities and/or employers*;* it had not been established that the conditions regarding the representativeness of trade unions are not detrimental to the right to organize, and it had not been established to that the right to organise applied to staff of law enforcement bodies and the prosecutor's offices (Conclusions 2014).

As regards the minimum number of members needed to found a trade union, the Committee notes that in 2012 the Law on Trade Unions was amended in order to reduce the minimum number of members needed to 50. The Committee finds the situation to be in conformity on this point.

The Committee previously noted that according to Section 46§§1 and 2 of the Labour Code, an employee's right – including the right to organise – may be restricted by the employer in the employment contract. In this respect, the Committee considered job applicants may be forced to accept restrictions on their right to establish, to join or not to join a trade union in order to obtain employment

The Committee asked to be informed on the specific provision in domestic law establishing that the rights that can be limited by an agreement between employer and employee cannot refer to the right to organise. In the absence of such a provision it asked for confirmation that the right to organise is specifically recognised as a fundamental human right or freedom by a statutory act. Moreover, as employers are not required to substantiate their decision for not recruiting a candidate (cf. Labour Code, Section 5§8), the Committee asked to be informed on any judicial or administrative decision(s) declaring a limitation of the right to organise agreed by an employer and an employee in the framework of an employment contract void.

The current report states that in 2013 Chapter IX on Freedom of Association was included in the Labour Code (as a result of Georgia 's ratification of ILO Convention No 87 on Freedom of Association) which provides increased protection of employees from discrimination on grounds of trade union activities- Article 40 provides it shall be prohibited to discriminate against employees for being members of an employees association or for participating in the activities of a similar association, including when hiring employees.

The Committee asks to be kept informed of any cases before the courts concerning discrimination on grounds of trade union membership. Meanwhile it reserves its position on this issue.

The Committee previously concluded that it had not been established that trade unions are entitled to perform and indeed perform their activities without interferences from authorities and/or employer.

The current report again refers to the new Chapter of the Labour Code on Freedom of Association and more specifically Article 40 which provides increased protection to against discrimination on grounds of trade union membership and specifically in paragraph 2 prohibits interference in trade union activities: "For the purposes of this article, interfering in

the activities of an association implies any act aimed at impeding the association activities through financial or other means for exercising control over it."

The Committee asks the next report to provide information on the right to trade unions to access to the workplace and to hold meetings, as well as any information on cases involving interference in trade union activities. Meanwhile it reserves its position on this issue.

The Committee previously asked whether any form of representativeness existed in Georgia and, as no information was found in the report with respect to the issue of representativeness, the Committee considered that the information provided in the report was not sufficient to establish that the conditions possibly established with respect to representativeness of trade unions are not such as to infringe the right to organise.

The current report provides information on *representation* by trade unions as opposed to representativeness. Therefore the Committee asks whether participation in certain consultation or collective bargaining procedures are restricted to certain trade unions-deemed the most "representative".

Meanwhile it again concludes that it has not been established that there are conditions regarding the representativeness of trade unions which do not infringe the right to organize.

Section 2 para 4 of the Law on trade Unions provides that special rules may be laid down regarding the establishment of trade unions in the sectors of defense, internal affairs, state security , customs and taxation, in judicial bodies and the office of the public prosecutor .

According to the Constitution of Georgia;"A person who is enrolled in the personnel of the armed forces or the forces of the bodies of internal affairs or a person having been designated as a judge or a prosecutor shall cease his/her membership of any political association."

The report further states that the Law on the Status of Military Servants, Article 5, Paragraph 1 provides a right of a military servants to participate in the activities of non-entrepreneur (non-commercial) legal persons, though paragraph 2 of the prohibits millitary servants from organising or participating in assemblies and manifestations.

As for the police, Police Law of Georgia, Section 36, Paragraph 2 establishes that a police officer may not go on strike or participate in meetings and demonstrations.

The Committee asks the next report to confirm that trade unions are deemed to be non-commercial legal persons and not political associations, and to indicate clearly whether, members of the military and police officers may establish and join trade unions, even with restrictions. It also wishes to be informed of the restrictions on the right to organize applicable to those employed in internal affairs, customs and taxation, in judicial bodies and the office of the public prosecutor.

Meanwhile it again concludes that has not been established to what extent the right to organise applies to staff of law enforcement bodies and the prosecutor's offices

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 5 of the Charter, on the grounds that:

- it has not been established that the conditions regarding the representativeness of trade unions are not detrimental to the right to organise;
- it has not been established that the right to organise applies to staff of law enforcement bodies and the prosecutor's offices.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

The Committee takes note of the information contained in the report submitted by Georgia.In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on conclusions of non-conformity for repeated lack of information in Conclusions 2014.

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that it has not been established that an employer may not unilaterally disregard a collective agreement; and that it has not been established that the legal framework allows for the participation of employees in the public sector in the determination of their working conditions (Conclusions 2014, Georgia).

Under Article 5 public officials always retain the right to participate in any processes that are directly relevant to the determination of the procedures applicable to them (Conclusions III (1973) Germany, European Council of Police Trade Unions (CESP) v. Portugal, complaint No. 11/2011, decisions on the merits of 21 May 2002, §58).

The report provides no information on these specific issues, therefore the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 6§2 of the Charter on the grounds that:

- it has not been established that an employer may not unilaterally disregard a collective agreement;
- it has not been established that the legal framework allows for the participation of employees in the public sector in the determination of their working conditions.

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on conclusions of non-conformity for repeated lack of information in Conclusions 2014.

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that the right to collective action of workers and employers, including the right to strike, is adequately recognized (Conclusions 2014, Georgia).

Under Article 6§4 the decision to call a strike can be taken only by a trade union provided that forming a trade union is not subject to excessive formalities (Conclusions 2004, Sweden). Limiting the right to call a strike to the representative or the most representative trade unions constitutes a restriction which is not in conformity with Article 6§4 (Conclusions XV-1 (2000), France).

Subjecting the exercise of the right to strike to prior approval by a certain percentage of workers is in conformity with Article 6§4, provided that the ballot method, the quorum and the majority required are not such that the exercise of the right to strike is excessively limited (Conclusions II (1971), Cyprus, Conclusions XIV-1 (1998), United Kingdom).

The right to strike may be restricted provided that any restriction satisfies the conditions laid down in Article G which provides that restrictions on the rights guaranteed by the Charter that are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals (Conclusions X-1 (1987), Norway (regarding Article 31 of the Charter)).

Prohibiting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health (Conclusions I (1969), Statement of Interpretation on Article 6§4, Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" and European Trade Union Confederation (CES) v. Bulgaria, Complaint No. 32/2005, Decision on the merits of 16 October 2006, §2)

However, simply banning strikes even in essential sectors – particularly when they are extensively defined, i.e. "energy" or "health" – is not deemed proportionate to the specific requirements of each sector. At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4 (Conclusions XVII-1 (2004), Czech Republic).

The requirement to notify the duration of the strike to the employer prior to strike action is contrary to the article 6§4 of the Charter, even for essential public services (Conclusions 2006, Italy).

The Committee previously sought information on a number of issues pertaining to the right to strike in Georgia namely

- who has the right to call a strike and whether this right is reserved to trade unions;
- which are the categories of workers that are denied the right to strike, in order to assess that the restrictions are in accordance with Article G of the Charter;
- what sectors the relevant legislation is intended to cover when banning the right to strike of employees whose work is related to human life and health or which, due to its technological mode, cannot be suspended;

- whether strikes of the above-mentioned workers are totally banned or whether provision is made for a minimum service;
- the practical circumstances in which courts actually postpone or suspend a strike;
- the meaning of the provision providing that the maximum duration of a strike can be 90 days;
- what happens in the event a strike has not been resolved within the above-mentioned 90 days period;
- further procedural requirements, for example on those subjecting the exercise of the right to strike to prior approval by a certain percentage of workers.

  The report states that the Constitution recognizes the right to strike. According to the newly revised Labour Code there is no limit put on the duration of a strike and further a strike cannot constitute grounds for terminating a contract of employment. Article 51 of the amended Labour Code provides that the right to strike cannot be exercised by employees whose work/activity involves the safety of human life or health or if the activity cannot be suspended due to the nature of the work process.

  The Committee notes that the report fails to provide much of the information previously requested.

  The Committee asks whether the list of activities where it is prohibited to strike is still in force, and whether any provision is made for a minimum service. In addition, is seeks information on the procedural requirements that must be respected prior to a strike being called.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 6§4 of the Charter, on the ground that it has not been established that the right to collective action of workers and employers, including the right to strike, is adequately recognised.

Article 10 - Right to vocational training

Paragraph 2 - Apprenticeship

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

The Committee recalls that Article 10§2 guarantees the right to access to apprenticeship and other training arrangements. Apprenticeship means training based on a contract between the young person and the employer, whereas other training arrangements can be based on such a contract but also be school-based vocational training. This education should combine theoretical and practical training and close ties must be maintained between training establishments and the working world. Under this paragraph the Committee principally examines apprenticeship arrangements within the framework of an employment relationship between the employer and the apprentice, leading to a vocational education.

The Committee notes from the report that since 2005 Georgia started modernising the Vocational Education and Training (VET) system. In 2007 the Georgian Law on Vocational Education came into force and the National Qualifications Framework and occupational standards were approved. The VET development strategy for 2013-2020 was adopted, which is supported by the EU Delegation to Georgia. The Ministry of Education and Science has implemented a number of activities with a view to developing quality insurance mechanisms and teachers' professional development, as well as the infrastructure of VET institutions.

The Committee notes that the draft VET law is being prepared which will formalise the VET system and introduce flexible mechanisms to guarantee the transfer to further levels of education, including the validation of non-formal education.

The Committee takes notes of the VET development Strategy for 2013-2020, which sets out objectives as well as challenges of the system. Among the challenges the Committee notes inadequately funded and poorly managed network of public and private VET providers, lack of relevance of VET programmes for the labour market needs, low and variable quality of VET qualifications awarded and lack of recognition by employers. The need for social partners and employers to actively participate at all stages of VET is also highlighted, which may need to include tax or other incentives for the social partners to commit resources (staff time, provision of work facilities, apprenticeship and other direct job related training, participation in courses, and support for funding) to improve the quality and relevance of VET.

The Committee observes that since Georgia has not accepted Article 10§1 and 10§3 of the Charter, the Committee will not examine whether the VET system that the Government has put in place is in conformity with the Charter.

As regards apprenticeships, in its previous conclusion the Committee asked for information on the selection of apprentices, the selection and training of instructors. It also asked how many apprenticeship places were on offer, approximately how many young people took up apprenticeship-style training and how many completed the training.

In the absence of any information in the report concerning apprenticeships, the Committee concludes that it has not been established that there is a well-functioning system of apprenticeships.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 10§2 of the Charter on the ground that it has not been established that there is a well-functioning system of apprenticeships.

Article 10 - Right to vocational training

Paragraph 4 - Long term unemployed persons

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

In its previous conclusion (Conclusions 2012), the Committee found that the situation in Georgia was not in conformity with Article 10§4 of the Charter on the ground that it has not been established that the right to vocational training is guaranteed for the long-term unemployed. The Committee considered that the information provided on the right to vocational training of long term unemployed was not sufficient. This was already the situation stated in the Committee's 2008 conclusion. The Committee recalled that in accordance with this article states must fight long-term unemployment through retraining and reintegration measures. It asked for information on the specific measures aimed at the long-term unemployed, the number of people who were involved in training measures and the impact of the Governmental programmes on reducing long-term unemployment. In this respect, the Committee recalls that it considers a person who has been without work for twelve months or more to be long-term unemployed (Conclusions 2003, Italy).

In reply to the Committee's request the report indicates that "The State programme for the training and retraining of jobseekers" was approved by the Georgian Government on 21 August 2015. The programme aims to offer vocational training for jobseekers in the labour market and internships. The Committee takes note of the approved programme but recalls that it falls outside the reference period and considers that no measures have been taken for long-term unemployed during the reference period with respect to Article 10§4.

Therefore, the Committee reiterates that the main indicators of compliance with Article 10§4 are: the types of training and retraining measures available on the labour market for long-term unemployed; the number of persons in these types of training; the special attention given to young long-term unemployed; and the impact of the measures on reducing long term unemployment. The Committee requests that the next report provides this information. It also requests to inform the Committee on the definition of long-term unemployed and young long-term unemployed under the domestic legislation.

Moreover, the Committee notes from the European Commission 2015 Country Report (http://eeas.europa.eu/enp/pdf/2015/georgia-enp-report-2015_en.pdf), that unemployment remained high at around 14.1% (14.6% in 2013), with an estimated 30% of 15-24-year-olds remaining outside education, training and employment.

Lastly, in its previous conclusion, the Committee asked whether equal treatment with respect to access to training and retraining for long-term unemployed persons was guaranteed to the nationals of other States Parties lawfully resident in Georgia. The report does not contain any specific information on this issue. Therefore, the Committee reiterates its question.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 10§4 of the Charter on the ground that special measures for the retraining and reintegration of the long-term unemployed have not been effectively provided or promoted.

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 Georgia.

At the end of 2014, the National Statistics Office of Georgia put the number of people with disabilities who were receiving benefits (the State Social Allowance) at 123 722. There are no reliable data on the actual number of people with disabilities. The report indicates, however, that questions about household members who have disabilities and the nature of those disabilities were included in the 2014 national census. The Committee asks the next report to provide the relevant figures.

Georgia ratified the UN Convention on the Rights of Persons with Disabilities on 13 March 2014. At the end of 2014, a working group was set up in the Public Defender's Office to monitor the implementation of the Convention.

Anti-discrimination legislation and integrated approach

The Committee recalls that Article 15§3 requires the existence of non-discrimination legislation covering both the public and private sphere in fields such as housing, transport, communications and cultural and leisure activities and effective remedies for those who have been unlawfully treated (Conclusions 2007, Slovenia).

In its previous conclusion (Conclusions 2012), the Committee concluded that Georgia was not in conformity with the Revised Charter on the ground that it had not been established that persons with disabilities enjoyed effective protection against discrimination in the fields of housing, transport, communications and cultural and leisure activities.

The report refers to the Law on the Elimination of All Forms of Discrimination, which was enacted by the Georgian parliament on 2 May 2014 and entered into force on 7 May 2014. Its purpose is to eliminate discrimination on various grounds including health and disability (Article 1). The law prohibits all discrimination, both direct and indirect (Articles 2 §2 and 2 §3), and also introduces the notion of positive action in the context of promoting gender equality and in certain specific cases involving, *inter alia*, disability (Article 2 §7). Article 3 stipulates that the Law applies to public organisations and to natural and legal persons in all spheres. The Committee asks for information to be included in the next report on the implementation of this law and on the relevant case law on housing, transport, communications and cultural and leisure activities for persons with disabilities.

The elimination of discrimination is monitored by the Public Defender, who has the power to hear cases and oversee the implementation of mutual agreements which he or she has brokered between parties. If a dispute cannot be settled amicably, the victim can claim compensation for pecuniary and non-pecuniary damage through the courts (Article 10 §1).

On 30 April 2014, the Georgian parliament approved the 2014-2020 National Human Rights Strategy which proposes legislative and institutional changes, as well as changes in practice. Adopted on 6 June 2014, the accompanying 2014-2015 Action Plan includes provisions on the rights of people with disabilities (No. 20), aiming at ensuring access to public buildings and facilities and to transport (No. 20.3), promoting individual mobility (No. 20.4), developing the social security system (No. 20.10) and encouraging greater participation in cultural and sporting events (No. 20.12). This Action Plan was drawn up in co-operation with NGOs, the Public Defender's Office and government officials. The Committee wishes to know whether integrated programming is ensured among all authorities involved in the implementation of policy for persons with disabilities.

Consultation

In its previous conclusion (Conclusions 2012), the Committee requested clarification regarding claims by an NGO coalition that, in practice, the involvement of Disabled Persons' associations is not effective. In reply, the report states that people with disabilities and their representative organisations are involved in the process of developing policies, action plans and programmes which specifically concern them. As an example, the report mentions the various documents, which were developed by working groups that were open to all persons with disabilities and NGOs.

The report notes that the Government Council on disability issues which was set up in 2009 is continuing its work with a view to developing disability policies and co-ordinating their implementation (see Conclusions 2012).

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

In its previous conclusion (Conclusions 2012), the Committee requested more detailed information on the benefits and other forms of financial assistance available to persons with disabilities. The report responded by providing the following information:

- Under the Law on State Pensions of Georgia, people with disabilities who work do not lose their entitlement to the state pension, in contrast to other pensioners;
- Under the Law on Social Assistance, households which have a member with a disability have a greater chance of obtaining state-funded social assistance. The Committee wishes to receive further information about the types of social assistance that can be claimed by such families and the number of claimants.
- Financial incentives also apply to foster parents taking care of children with disabilities, with a view to promoting the deinstitutionalisation of state childcare services (see Conclusions 2012).
- The report indicates that since September 2011, pensions for people with disabilities have increased several times.
- In accordance with Article 82 (tax exemption) of the Tax Code of Georgia (amended on 30 July 2012), the annual tax-free allowance for people with disabilities increased from 3 000 GEL (approximately €1 324.24) to 6 000 GEL (approximately €2 648.48). The Committee asks the annual tax-free allowance for people without a disability.

Measures to overcome obstacles

Technical aids

In its previous conclusion (Conclusions 2012), the Committee asked that the next report clarify whether technical aids are provided to people with disabilities free of charge or whether they must contribute themselves to the cost. It also asked whether support services, such as personal assistance or home help, were provided free of charge. It appears from the report that Georgia is encouraging the development and provision of various types of social services for people with disabilities (see the report for further details).

The report mentions the programme which involves providing technical aids (wheelchairs; orthopaedic devices and prostheses; hearing aids; cochlear implantation and rehabilitation). The Committee asks that the next report provide further details of this programme, in particular whether there is a quota for the provision of technical aids and how many people have received them.

As regards communication support, the report describes a programme for persons with hearing impairments to help them become socially integrated. It includes sign language interpretation in public institutions, and the provision of information for deaf people about

public services. The Committee asks that the next report provide details of this programme, in particular whether there is a quota for the provision of sign language interpretation and how many people have benefitted from these services.

According to the report, all the services mentioned are free for children while adults with disabilities living in households which are above the poverty line must make a minimum co-payment towards the cost of certain services. The Programme's Monitoring Division set up in 2014 within the Ministry of Labour, Health and Social Affairs, monitors social services to ensure that they comply with the relevant standards.

The report further points out that social services for people with disabilities are funded through vouchers granted by the decision of the Social Service Agency, which recipients can use to pay to whichever service provider they wish.

The Committee observes that the report only partly answers its earlier questions (Conclusions 2012 and 2008) concerning technical aids. It therefore reiterates its question as to whether support services such as personal assistance or home help are provided free of charge, and whether mechanisms are in place to assess the barriers to communication and mobility faced by individual persons with disabilities and to identify the technical aids and support measures that may be required to assist them in overcoming these barriers.

Communication

The report describes a communication support programme to ensure that people with hearing impairments are socially integrated, as mentioned above.

According to the report, the Central Electoral Commission has made a number of commercials for hearing-impaired voters. During the presidential election campaign (2013), two televised debates were broadcast in sign language.

In the absence of a reply to the question raised in its previous conclusion (Conclusions 2012), the Committee again asks what measures have been taken to ensure access to communication adapted to different forms of disability, in particular as regards new information and communication technologies.

Mobility and transport

In its previous conclusions (Conclusions 2012 and 2008), the Committee asked how access to public transport (by road, rail, air and sea) was guaranteed for people with disabilities. As regards air transport, the report states that the Civil Aviation Agency has introduced rules which plans to provide assistance and protect the rights of people with disabilities. In addition, the report points out that during the process of rebuilding the airport, LLC "United Airports of Georgia" considered accessibility issues for people with disabilities.

The Committee also notes that, in those same conclusions, it made a number of specific requests to enable it to determine whether the accessibility of public transport services to people with disabilities is ensured both in law and in practice. Since the report only partly answers its queries, the Committee reiterates all the specific questions concerning transport (Conclusions 2012 and 2008).

Housing

On the subject of housing, the 2014-2015 action plan provides, as has already been stated, that people with disabilities must be able to access public buildings. The Committee observes that the action plan does not contain any specific provisions on adapted housing, including social housing, public or private, or on the adaptation of existing housing.

In addition, the report refers to Ordinance No. 41 of 6 January 2014 on technical conditions for adaptation space for people with disabilities, according to which all buildings, both public and private, must be designed and built in keeping with the principle of universal design.

In its previous conclusions (Conclusions 2012 and 2008), the Committee asked whether grants were available to people with disabilities for housing rehabilitation, lift construction and removal of obstacles to mobility, how many people had received such grants and what progress had been made in promoting accessible housing. Having received no reply on this points, the Committee reiterates its question. The Committee requests the next report to provide clear information in this respect and notes that in the absence of these information it will not be able to establish that there is effective access to housing.

Culture and leisure

The report states that in 2012 the Ministry of Culture and Monument Protection implemented a special programme to help people with disabilities take part in cultural, creative and entertainment events. In addition, the Ministry of Sport and Youth Affairs ensures the preparation and participation of Georgian athletes in international and national paralympic competitions, and provides scholarships in order to improve the living and material conditions of athletes and coaches.

Conclusion

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

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 Georgia.

It refers to its previous conclusions (Conclusions 2008 and 2012), where it noted that no working permit was required for aliens wishing to engage in gainful occupation in the territory of Georgia. Furthermore, according to the report, Georgian legislation guarantees protection from any kind of discrimination in labour relations both for the nationals and the foreigners residing in the country.

Work permits

The report recalls that the Law on the Legal Status of Aliens and Stateless Persons provides the legal basis and mechanism for entry, stay, transit and departure of aliens. In particular, it provides that aliens may carry out investment and business activity in conformity with Georgian legislation, and that they shall have the same rights and obligations as nationals, unless otherwise provided by the legislation. Aliens' labour activities shall be governed by Georgian legislation.

As regards the legislation in force since 2006, the Committee refers to its previous conclusions (Conclusions 2012), where it considered the situation to be in conformity with Article 18§1 of the Charter. It notes however that, as of 1 September 2014, new legislation entered into force, which provides for the following types of residence permits: work residence permit, study residence permit, residence permit for the purpose of family reunification, residence permit of a former citizen of Georgia, residence permit of a stateless person, special residence permit, investment residence permit, and permanent residence permit. Decisions refusing a residence permit can be appealed.

The Committee notes that further amendments to the Law on Legal Status of Aliens, a new Law on Labour Migration, a Resolution (No. 417) on "employment by a local employer of a labour immigrant (alien not holding a Georgian permanent residence permit) and performance of paid labour activities by such immigrant", as well as other implementing legislation in the field of immigration entered into force in 2015, out of the reference period. It accordingly asks the next report to provide comprehensive and updated information on the legal framework concerning the issuing of visas to aliens wishing to engage in a gainful occupation in Georgia, either as employed or self-employed persons.

Relevant statistics

The report does not provide the information requested (Conclusions 2012) on the number and rate of refusals of temporary and permanent residence permits. The Committee notes however from the 2015 Report of the State Commission on Migration Issues that the number of temporary and permanent residence visa permits issued rose from 7395 in 2011 to 10 125 in 2014. The number of work-based residence permits remained on the other hand stable (4539 permits in 2011 against 4666 in 2014). Immigrants were mostly coming from neighbouring countries (Russian Federation, Turkey, Armenia, Azerbaijan and Ukraine). In particular, 22% of work residence permits were issued to Turkish nationals in the period 2010-2014.

In 2010-2014, 8,189 refusals to grant residence permit (approximately 17% in comparison to the total number of applications) were issued by relevant authorities. The rate of refusals however more than doubled in 2014 (2335 refusals, out of 12 460 applications, namely a refusal rate of almost 19%) compared to 2011 (748 refusals, out of 8143 applications, namely a refusal rate of 9%).

In 2010-2014, overall 26 706 foreigners started either entrepreneurial or non-entrepreneurial activities. The overwhelming majority of registrations, though, were comprised of Limited Liability Companies (LTD) and individual entrepreneurs. The highest numbers of LTDs were registered in 2012 and 2013, followed by an almost 50% decline in 2014, which brought the number of registrations (4 506) almost to the level of 2011 (4 050).

On average, 4 200 work residence permits per year were issued in 2010-2014; 76% of which (16 084) concerned first time applications and 24% (5 036) renewal of permits.

The Committee notes that the development of a Unified Migration Analytical System – a centralised database which will combine major migration-related data in synchronised manner is under way. It asks the next report to provide updated information on applications for the granting and renewal of residence permits for reasons of work made by nationals of States Parties to the Charter and numbers of rejections and approvals.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Georgia 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 Georgia.

Administrative formalities and time frames for obtaining the documents needed for engaging in a professional occupation

The Committee refers to its assessment under Article 18§1 and to its previous conclusions (Conclusions 2008 and 2012), where it noted that Georgia did not have a work permit system, but that a residence permit was nevertheless required after a certain period of stay (360 days under the Legal Status of Aliens Act 2006, 90 days after the 2014 amendments Act – see below).

In particular, it notes that, as of 1 September 2014, new legislation entered into force, which provides for different types of residence permits, including a work residence permit, and that further amendments to the relevant legislation have been adopted or were under consideration out of the reference period. It accordingly asks the next report to provide comprehensive and updated information on the formalities needed, under the new legal framework, for nationals of other states party to the Charter wishing to engage in a gainful occupation in Georgia, either as employed or self-employed persons.

In this connection, the Committee recalls that under Article 18§2 States undertake to simplify the formalities needed for an alien to engage in a professional occupation, including the possibility of completing such formalities in the country of destination as well as in the country of origin. It asks the next report to clarify what are the documents and procedural steps required to obtain the relevant permits, what is the authority responsible for delivering them, whether applications can be filed in Georgia as well as in the alien's country and whether they can also be filed online. It also asks the next report to provide detailed information on the conditions and procedure applicable in case of renewal of the permit.

The Committee previously noted (Conclusions 2008) that the law provided that temporary residence permits should be issued or renewed within thirty days from the date of the formal application and within three months as regards permanent residence permits. It asks the next report to indicate the time frames for issuing and renewing the relevant permits under the new legal framework.

Chancery dues and other charges

The Committee recalls that States Parties are under an obligation to reduce or abolish chancery dues and other charges paid either by foreign workers or by their employers. 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. In addition, States have to make concrete efforts to progressively reduce the level of fees and other charges payable by foreign workers or their employers. States are required to demonstrate that they have taken measures towards achieving such a reduction. Otherwise, they will have failed to demonstrate that they serve the goal of facilitating the effective exercise of the right of foreign workers to engage in a gainful occupation in their territory.

As the report does not contain any information concerning the fees charged for obtaining or renewing temporary or permanent residence permits, the Committee asks that this information be provided in the next report.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Georgia is in conformity with Article 18§2 of the Charter.

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 Georgia.

Access to the national labour market

The Committee refers to its assessment under Article 18§1 and to its previous conclusions (Conclusions 2008 and 2012), where it noted that Georgia did not have a work permit system, but that a residence permit was nevertheless required after a certain period of stay (360 days under the Legal Status of Aliens Act 2006, 90 days after the 2014 amendments Act – see below). It also noted that no general restrictions apply to the employment of foreigners in ordinary types of jobs (Conclusions 2012 on Article 18§1).

No information is provided in the report in response to the Committee's question (Conclusions 2012) on the reglementation and qualifying conditions (e.g. amount of investment, job creation) concerning the exercice, by a foreigner, of self-employed activities. The Committee notes however that the relevant legal framework has in the meantime been amended.

In fact, as of 1 September 2014, new legislation entered into force, which provides for different types of residence permits, including a work residence permit, and further amendments to the relevant legislation have been adopted or were under consideration out of the reference period. The Committee accordingly asks the next report to provide comprehensive and updated information on the conditions laid down for access by foreign workers to the national labour market, under the new legal framework, either as employed or self-employed persons.

The Committee also asks for information in the next report about the measures adopted, if any, (either unilaterally, or by way of reciprocity with other States Parties to the Charter) to liberalise regulations governing the recognition of foreign certificates, professional qualifications and diplomas, with a view to facilitating the access to national labour market. Such information shall concern the category of dependent employees, as well as the category of self-employed workers, including workers wishing to establish companies, agencies or branches in order to engage in a gainful occupation.

The Committee recalls that a person who has been legally resident for a given length of time on the territory of another Party should be able to enjoy the same rights as nationals of that country. The restrictions initially imposed with regard to access to employment (which can be accepted only if they are not excessive) must therefore be gradually lifted. It asks in this connection what conditions apply to the renewal of permits, for employed and self-employed nationals of states party to the Social Charter.

Consequences of the loss of employment

The Committee recalls that, under Article 18§3 of the Charter, loss of employment must not lead to the cancellation of the residence permit, thereby obliging the worker to leave the country as soon as possible. In case a work permit is revoked before the date of expiry, either because the employment contract is prematurely terminated, or because the worker no longer meets the conditions under which the work permit was granted, it would be contrary to the Charter to automatically deprive such worker of the possibility to continue to reside in the State concerned and to seek another job and a new work permit, unless there are exceptional circumstances which would authorise expulsion of the foreign worker concerned, in the meaning of Article 19§8. In these circumstances, Article 18§3 of the Revised Charter requires the validity of the residence permit to be extended to provide sufficient time for a job to be found. In light thereof, the Committee asks the next report to

clarify whether, under the new legal framework, there are circumstances under which the loss of employment might entail the automatic revocation of a foreign national's residence title.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Georgia 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 Georgia.

It previously noted (Conclusions 2008) that under Article 22 of the Constitution, any person legally present in Georgia is free to leave the country and all citizens are free to return. Restrictions can be made to this right in so far as they are prescribed by the law and are necessary in a democratic society in the interest of national security or public safety, for the protection of public health, for the prevention of crime or for the administration of justice. The Committee had furthermore noted that, under section 10 of the Act on the right of Georgian nationals to temporary exit from and entry into the country, restrictions to the right to leave the country were possible if the persons concerned were required to be present by the judicial authorities (for a hearing or pending enforcement of a sentence); if they had used false documents to support their application; or in other situations prescribed by the law.

The Committee repeatedly requested clarifications on the rules and regulations concerning the exit and entry of Georgian nationals (Conclusions 2008 and 2012). The report refers to the adoption and entry into force of a new Law on Labour Migration in 2015, out of the reference period, but does not provide the information requested. The Committee notes from the Guidebook on Legal Emigration 2015, issued by the Secretariat of the State Commission on migration issues, that Georgian citizens have the right to leave Georgia for a foreign country for a temporary or permanent residence. In the latter case, an emigration permit is needed. A male person between 18 and 27 years old, will also need to certify that military recruitment has been postponed, or that he has been exempted from military service.

The Committee recalls that under Article 18§4, States undertake not to restrict the right of their nationals to leave the country to engage in gainful employment in other Parties to the Charter. The only permitted restrictions are those which are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals. The Committee asks the next report to clarify in which concrete situations other than those related to the presentation of false documents or related to criminal proceedings can a national be prevented from leaving the country. It holds that if such information is not 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 requested information, the Committee concludes that the situation in Georgia is in conformity with Article 18§4 of the Charter.

Article 20 - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

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

Equal rights

The Committee recalls that it examined aspects relating to maternity protection and family responsibilities under Article 8 and 27 of the Charter (Conclusions 2015).

The Committee points out that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter, and does so therefore every two years (under thematic group 1 "Employment, training and equal opportunities", and thematic group 3 "Labour rights").

In its previous conclusion on Article 20 (Conclusions 2012) the Committee noted that the provisions on gender equality in employment (the Labour Code) were supplemented by the adoption of the Gender Equality Act in 2010. The latter, *inter alia,* provides for equal treatment of men and women in the evaluation of the quality of work of men and women (Section 4, paragraph 2(i)).

The Committee notes that the Gender Equality Act 2010 promotes equality between men and women in a range of areas namely: employment; general, vocational and higher education; health care; social protection; family relations; access to information; and in the political sphere. Section 6 expressly prohibits discrimination in employment, with a specific prohibition of sexual harassment.

However, the Committee noted that the Gender Equality Act does not contain an express guarantee of the right of men and women to equal pay for work of equal value (Conclusions 2014 on Article 4§3).

The Committee recalls that the right of men and women to "equal pay for work of equal value" must be expressly provided for in legislation (Conclusions XV-2 (2001), Slovak Republic). The Committee observes that in the legislation there is no express statutory guarantee of the right of men and women to equal pay for work of equal value. Therefore, it considers that the situation is not in conformity with the Charter on this point.

The Committee noted that legislation provides that women who believed they have been subject to gender discrimination may take their case to court. However it requested previously information on the burden of proof (whether legislation provided for a shift in the burden of proof) and on remedies, in particular, on any limits to compensation that may be awarded to victims of discrimination (Conclusions 2008, Conclusions 2012). The report does not provide a response to these questions. The Committee reiterates its questions.

In its previous conclusion, the Committee asked whether in equal pay litigation cases, it was possible to make comparison of pay and jobs across enterprises (Conclusions 2012).

The Committee recalls that under Article 20, equal treatment between women and men includes the issue of equal pay for work of equal value. Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful, this comparison can only be made across companies/undertakings. Therefore, the Committee requires that it be possible to make pay comparisons across companies. It notes that at the very least, legislation should require pay comparisons across companies in one or more of the following situations:

- cases in which statutory rules apply to the working and pay conditions in more than one company;
- cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;

- cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding (company) or conglomerate (Conclusions 2012, Statement of Interpretation on Article 20).

The Committee recalls that in equal pay litigation cases the legislation should allow pay comparisons across companies only where the differences in pay can be attributed to a single source. For example, the Committee has considered that the situation complied with this principle when in equal pay cases comparison can be made with a typical worker (someone in a comparable job) in another company, provided the differences in pay can be attributed to a single source (Conclusions 2012, Netherlands, Article 20) or when pay comparison is possible for employees working in a unit composed of persons who are in legally different situations if the remuneration is fixed by a collective agreement applicable to all entities of the unit (Conclusions 2014, France, Article 4§3).

The Committee asks whether in Georgia in equal pay litigation cases it is possible to make comparisons of pay outside the company directly concerned.

The Committee noted previously that that through the Gender Equality Act of 26 March 2010 (Section 12), the Council for Gender Equality was established (Conclusions 2012). The competence of the Council for Gender Equality includes developing and monitoring the implementation of an action plan on gender equality, proposing legislative amendments, and conducting studies on gender equality. The Committee asks that the next report provide information on any studies or awareness raising activities conducted by the Council for Gender Equality.

The Committee previously noted that the Council for Gender Equality brings together nongovernmental and governmental representatives to discuss and issue recommendations on gender issues (Conclusions 2012). It asked whether the Council is an independent body and how its members are selected. Since the report does not address this matter, the Committee reiterates its question.

Equal opportunities

The Committee notes that the Action Plan on Gender Equality for 2011–13 on 5 May 2011 was approved, which aims to, inter alia, integrate the gender equality principle in economic and employment policies, increase public awareness on gender equality issues and eliminate stereotypical views of men and women's role in society. (Direct Request (CEACR) – adopted 2011, published 101st ILC session (2012), Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – Georgia).

The Committee asks the next report to provide information on the specific measures taken under the Action Plan on Gender Equality for 2011–13, and the impact they have had, including with regard to women's access to employment. It also wishes to receive up-to-date statistical data on men and women's distribution in the labour market as well as the gender pay gap, and information on all positive actions/measures taken or envisaged to promote gender equality, including equal pay for work of equal value.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 20 of the Charter on the ground that there is no explicit statutory guarantee of equal pay for work of equal value.

Article 26 - Right to dignity in the workplace

Paragraph 2 - Moral harassment

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on conclusions of non-conformity for repeated lack of information in Conclusions 2014.

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that employees were given appropriate and effective protection against moral (psychological) harassment in the workplace or in relation to work (Conclusions 2014, Georgia).

Under Article 26 para 2 workers must be afforded effective protection against harassment. This protection must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be retaliated against for upholding these rights (Conclusions 2007, Statement of Interpretation on Article 26)

Further victims of harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer.

In addition, the persons concerned must have a right to be reinstated in their post when they have been unfairly dismissed or pressured to resign for reasons linked to harassment (Conclusions 2003, Bulgaria, Conclusions 2005, Republic of Moldova).

The Committee previously found the report failed to provide the necessary information on several issue which led it to conclude that the situation was not in conformity with the Charter, namely the liability of employers and the means of redress in case of moral harassment, the burden of proof, and the right of persons to effective reparation for pecuniary and non pecuniary damage, including examples of relevant case-law (Conclusions 2014, Georgia).

The report fails to provide information on the above-mentioned issues. Therefore the Committee is obliged to reiterate its previous conclusion.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 26§2 of the Charter on the ground that it has not been established that employees, during the reference period, were given appropriate and effective protection against moral (psychological) harassment in the workplace or in relation to work.