January 2017

European Social Charter

European Committee of Social Rights

Conclusions 2016

ARMENIA

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 Armenia, which ratified the Charter on 21 January 2004. The deadline for submitting the 10th report was 31 October 2015 and Armenia submitted it on 23 June 2016. The Committee received on 22 December 2015 observations from the International Organisation of Employers (IOE) expressing its perspective on the application of Article 24.

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).

Armenia has accepted all provisions from the above-mentioned group except Articles 9, 10§§1 to 5, 15§1 and Article 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 – weekly rest period (Article 2§5),
- the right to just conditions of work – information on the employment contract (Article 2§6),
- the right to organise (Article 5),
- the right to bargain collectively – conciliation and arbitration (Article 6§3),
- the right to bargain collectively – collective action (Article 6§4),
- the right of workers to take part in the determination and improvement of working conditions and working environment (Article 22),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),

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

– 7 conclusions of conformity: Articles 1§4, 2§5, 2§6, 6§3, 18§1, 18§3 and 18§4

– 10 conclusions of non-conformity: Articles 1§1, 1§2, 1§3, 5, 6§4, 15§2, 15§3, 20, 24 and 28

In respect of the other 2 situations related to Articles 18§2 and 22 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 Armenia 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 15

- Law on Employment, which came into force on 1 January 2014 and sets out measures to be taken to help persons with disabilities integrate into the labour market.

Article 20

- On 20 May 2013 the National Assembly of the Republic of Armenia adopted the “Law on ensuring equal rights and equal opportunities for women and men”, which prescribes guarantees for ensuring equal rights and equal opportunities for women and men in political, social, economic, cultural and other areas of public life.

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 to safe and healthy working conditions – safety and health regulations (Article 3§1),
- the right of children and young persons to protection – special protection against physical and moral dangers (Article 7§10),
- the right of employed women to protection of maternity – regulation of night work (Article 8§4),
- 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 – departure, journey and reception (Article 19§2),
- 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 – equality regarding taxes and contributions (Article 19§5),
- the right of migrant workers and their families to protection and assistance – equality regarding legal proceedings(Article 19§7),
- the right of migrant workers and their families to protection and assistance – guarantees concerning deportation(Article 19§8),
- 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 – iIllegality of dismissal on the ground of family responsibilities(Article 27§3)

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 Armenia.

Employment situation

According to the World Bank, the GDP growth rate in Armenia increased between 2011 and 2012 from 4.7% to 7.2% before decreasing again in 2013 to 3.5%. The GDP growth rate stabilised in 2014 at the level of 3.4%.

According to Eurostat, the overall employment rate remained practically stable during the reference period (53.3% (2011) – 53.7% (2014)).

The male employment rate decreased (2009; 69.3% – 2014; 63.1%) as well as the female employment rate (49.0% (2011) to 46.3% (2014).

According to the World Bank, the unemployment rate decreased (2011; 20.7% – 2014; 17.1%). The youth unemployment rate (% of active population aged 15-24) increased slightly from 13.7% in 2011 to 14.0% in 2014. The long-term unemployment rate (% of the total labour force) remained stable at 6.0% during the reference period.

The Committee notes that during the reference period the economic growth as well as the unemployment rate stabilised although the male and female employment rates decreased.

Employment policy

The Committee notes from the report, that the legislative framework of employment policies is guaranteed by a law revised in December 2013. This legislative framework is to be implemented by a number of policy measures, in particular the "2013 – 2018 Employment Strategy and the Report on Social Involvement of the Republic of Armenia" approved in November 2012 and "Concept paper of the Law of the Republic of Armenia" approved in April 2013.

These measures include specific employment programmes for vulnerable groups such as persons with disabilities. For example, salary compensation is provided for a person accompanying a disabled person. The Committee notes that none of these policy measures is accompanied by statistical data with respect to the number of beneficiaries.

The Committee notes that the report fails to provide the requested data on the overall activation rate as well as the information on the evaluation of the applied employment policies.

Conclusion

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

Article 1 - Right to work

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

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

1. Prohibition of discrimination in employment

The Committee had previously deferred its conclusion on the grounds that there was insufficient information provided (Conclusions 2008). In its previous conclusion (Conclusions 2012) the Committee wished to receive information on the following issues:

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

The Committee noted previously that under Article 14§1 of the Armenian Constitution, everyone is equal before the law. Discrimination on grounds of gender, race, skin colour, ethnic or social origin, genetic characteristics, language, religion, philosophy, political or other convictions, membership of a national minority, property status, disability, age or other factors of a personal or social nature is prohibited. Article 3§1.3 of the Labour Code provides for equality of parties to employment relationships irrespective of gender, race, nationality, language, origin, citizenship, social status, religion, marital and family status, age, philosophy and convictions, membership of a political party, trade union or public organisation and other factors unrelated to the employee's professional qualities (Conclusions 2008).

From the information provided in the report, which reiterates the above mentioned legal provisions, the Committee notes that the discrimination on grounds of sexual orientation is not prohibited in employment. It therefore concludes that the situation is not in conformity with Article 1§2 of the Charter on the ground that there is no protection against discrimination in employment on grounds of sexual orientation.

The Committee further notes that there is no clear and comprehensive definition and prohibition of direct and indirect discrimination covering all aspects of employment and occupation, including recruitment. The Committee recalls that legislation should prohibit both direct and indirect discrimination and discrimination should be prohibited in connection with recruitment or with employment conditions in general (remuneration, training, promotion, transfer and dismissal and other detrimental action) (Conclusions XVI-1 (2002), Austria). The Committee takes note of the information from the EU Progress Report that Armenia still does not have a comprehensive legal framework against discrimination and that the anti-discrimination strategy, which would help making legislative steps more consistent, remained a draft (European Commission, Country Progress Report 2014, SWD(2015) 63 final). The Committee concludes that the situation is not in conformity with the Charter on the grounds that the indirect discrimination is not defined and prohibited by the legislation and discrimination is not prohibited in connection with recruitment in employment.

With regard to the remedies available to victims of discrimination, the report indicates that in case an employment contract has been terminated by the employer due to discrimination, the employee can be re-instated and receive compensation for the period between the termination of the contract and the moment of re-employment. The report adds that in cases

when reinstatement is not possible, the employee shall be entitled to compensation in a maximum amount of 12 months' average wage. The Committee recalls that remedies available to victims of discrimination must be adequate, proportionate and dissuasive. Therefore, compensation for all acts of discrimination including discriminatory dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently dissuasive is proscribed (Conclusions 2012, Andorra). It concludes that the situation is not in conformity with the Charter on the ground that the upper limit on the amount of compensation that may be awarded in discrimination cases may preclude damages from making good the loss suffered and from being sufficiently dissuasive.

The Committee further asked information on the role of the Human Rights Defender in discrimination cases and the number of discrimination cases dealt with by the courts or Human Rights Defender (Conclusions 2012). The report indicates the Human Rights Defender is an independent official, who protects the human rights and freedoms in case of violation by the state and local self-government bodies and officials. The Human Rights Defender shall be entitled to interfere in the employment relations (including in cases of discrimination at work) only when violation of a right is the result of the action or inaction of a state body or an official. The report indicates that separate statistics on the number of cases of discrimination at the workplace are not conducted by the Office of the Human Rights Defender, but during the reference period 2011-2014 the Defender received 268 applications from the citizens regarding labour rights, including discrimination at work. The report does not provide data with regard to the number of cases of discrimination in employment dealt with by the courts. It only provides information on the number of cases dealing with employment relations in general during the reference period. The Committee notes from a Direct Request of ILO-CEACR that the Government stated that the Human Rights Defender did not receive any complaints of discrimination based on race, gender, religion, political opinion or national extraction in employment and that no cases of discrimination in employment were dealt with by the courts (Direct Request (CEACR) – adopted 2012, published 102nd ILC session (2013), Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The Committee asks that the next report indicate whether there are no complaints of discrimination in employment and information on any developments in this regard.

The report does not provide any information on the applicable rules regarding the burden of proof in disputes concerning allegations of discrimination. The Committee recalls that domestic law should provide for a shift in the burden of proof in favour of the plaintiff in discrimination cases (Conclusions 2002, France). It concludes therefore that the situation is not in conformity with the Charter on the ground that it has not been established that the legislation provides a shift in the burden of proof in discrimination cases.

With regard to the access of foreigners to civil service posts, the report indicates that according to Section 11 of the Law of the Republic of Armenia "On civil service", the citizens of the Republic of Armenia meeting the requirements submitted in accordance with the job description for the given positions of the civil service, fluent in Armenian and having attained the age of 18 shall be eligible for a position of the civil service, irrespective of nationality, race, gender, faith, political or other views, social origin, property or other status**.**

The Committee recalls that States Parties may make foreign nationals' access to employment on their territory subject to possession of a work permit but they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G of the Charter. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority (Conclusions 2012, Albania). The Committee asks whether all posts in the civil service are reserved to Armenian citizens.

Otherwise, it asks which are the categories of jobs/positions in the civil service which are banned to foreign nationals. Meanwhile, the Committee reserves its position on this point.

The Committee previously requested information on any measures taken to eliminate discrimination in employment (Conclusions 2012). No information is provided in the report. The Committee reiterates its question on the manner in which the authorities ensure the implementation of the anti-discrimination legislation in employment. It further asks the next report to provide information on any concrete positive measures/actions taken or envisaged to promote equality in employment and to combat all forms of discrimination in employment.

2. Prohibition of forced labour

The Committee previously held that the situation in Armenia was not in conformity with Article 1§2 on the ground that it had not been established that the exceptions to the prohibition of forced labour were in conformity with the Charter (Conclusions 2012).

The Committee takes note from the report of the provisions relating to the implementation of the restrictions to the right to work authorised by Article 3§2 of the Labour Law. In particular, Article 75 of the Labour Law, under which it is forbidden to call a strike in public sectors which are important for the economy, public security, national defence and urgent medical aid services. Claims made by employees of such organisations and services must be discussed at national level through bodies for social partnership, with the participation of the relevant trade union organisation and the employer. Strikes are also prohibited in natural disaster areas as well as regions where martial law or a state of emergency has been declared. Article 106 of the Labour Law governs temporary changes in conditions of employment in emergency situations (transfer and suspension) and guarantees the right to demand compensation for any loss suffered. Some of the responsibilities in the event of violations of labour legislation are established in Article 41 of the Code of administrative offences. The administrative penalty may be followed by a fine of fifty times the minimum wage, which employers have to pay if they continue to violate the workers' rights. Article 132 of the Criminal Code prohibits trafficking in human beings, sexual exploitation, slavery and forced labour.

In the light of this information, the Committee considers that the situation is in conformity with the Charter from this point of view.

Work of prisoners

The Committee notes from the report that where working time, rest periods, pay, safety and health are concerned, prison work is governed by the Labour Law. Work relations are governed by general legislation, except in cases provided for in the Prison Code. Prisoners may do all sorts of work for the prison administration or for external employers approved by the prison administration, except those forbidden by law. In closed or semi-closed prisons, prisoners work in special work cells or in their own cell. In semi-open and open prisons sectors of industrial and agricultural activities can be organised. Only people who have permission to leave the prison without convoy or escort may be involved in work outside the prison boundaries and the number of hours to be spent outside the prison must be stipulated in the work contract. Prisoners may take part in unpaid maintenance work, provided it is with their consent, not during rest periods, and for no more than two hours a day.

The Committee refers to its Statement of Interpretation of Article 1§2 on prison work (Conclusions 2012) and asks that the next report contain updated information on the social protection of prisoners working during their detention (employment injury, unemployment, health care and old age pensions).

Domestic work

According to the report domestic work is governed by the Labour Law, Article 3§1 of which prohibits forced labour and violence against employees.

In its previous conclusion, the Committee referred to its Statement of Interpretation of Article 1§2 on the existence of forced labour in the domestic environment and in family enterprises. As the current report does not provide any information on the legislation adopted to combat this type of forced labour and the measures taken to apply it, the Committee reiterates its request that the next report include relevant information on this point. In particular it asks whether the homes of private individuals who employ domestic workers can be inspected and whether foreign domestic workers are entitled to change employers in the event of abuse or if they lose their right to a residence permit if they leave their employer.

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

The Committee previously concluded that the situation in Armenia, where military service lasts 24 months, was not in conformity with Article 1§2 of the Charter on the ground that the duration of the alternative civil service – 42 months – amounted to an excessive restriction on the right to earn one's living in an occupation freely entered upon. It notes from the report that the law on alternative service was amended in 2013 and that the duration of alternative military service is now 30 months and that of alternative civil service 36 months. The Committee considers that the length of the alternative civil service in comparison with the duration of alternative military service remains too long and concludes that the situation is still not in conformity with the Charter on this point.

With regard to the minimum period of service in the armed forces, the Committee pointed out in its previous conclusion that any minimum period of service in the armed forces must be of a reasonable duration and in cases of longer minimum periods due to education or training that an individual has benefited from the length must be proportionate to the duration of the education and training. Likewise any fees/costs to be repaid on early termination of service must be proportionate (Conclusions 2012). The Committee asks that the next report provide updated information on the minimum periods of service in the armed forces and on the impact of studies or training courses followed by soldiers on the duration of their service in the armed forces and on the possible financial repercussions of early termination of service.

Requirement to accept the offer of a job or training

According to the report, a State Programme for Employment for 2014, approved in September 2013, is designed to improve the labour market by bringing it into line with international standards. According to the legislation in force, unemployed persons are entitled to assistance in finding work and they are obliged to accept a second offer of employment presented by an employment agency. Anyone who rejects a second job offer loses their unemployed status and the right to state support. Job-seekers who have professional qualifications and to whom a suitable offer has not been made six months after they contact an employment agency, may find themselves obliged to change or improve their qualifications. In such cases, proposed work which corresponds to the newly acquired qualifications is considered to be suitable. Paid work proposed by an employment agency for a maximum of six months, which does not require any specific qualifications, is considered suitable for unqualified job-seekers and those who have not worked in their area of qualification for the five previous years.

The Committee takes note of this information. Referring to its Statement of Interpretation on Article 1§2 in the general introduction to Conclusions 2012 it asks that the next report include relevant information on the remedies that may be used to challenge the decision to suspend or withdraw assistance from the State in case of unemployment.

Privacy at work

The Committee notes from the report that, pursuant to Article 149 of the Labour Law of the Republic of Armenia, to ensure discipline in the workplace or the performance of urgent work in specific cases, employers may require employees to be on duty in the workplace or at home at the end of the working day or on days of rest or public holidays, not more than once a month without the employees' consent and not more than once a week with their consent. Where the duty is performed in the workplace after the end of the working day, the total working time may not exceed the maximum duration of a working day fixed by Article 139 of the Labour Law. The duration of the duty in the workplace or at home on days of rest or public holidays may not exceed eight hours a day. The duration of work carried out in the workplace must be equal to the normal working time, whereas the duration of work done at home must be not less than half of the normal working time. Where the duration of the duty in the workplace or at home exceeds the working time prescribed by the relevant legislation, the employee must, during the following month, be given a rest period of the same duration, or such time may be added to the annual leave or be paid as overtime work. Employees under the age of eighteen are not allowed to be engaged in duty work under these conditions, whereas pregnant women and women with children under the age of three may only be engaged with their free consent.

The Committee refers to its Statement of Interpretation on Article 1§2 on this matter (Conclusions 2012) and asks that the next report provide information on how an employer's responsibility for the violation of workers' right to privacy is implemented.

Conclusion

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

- indirect discrimination is not defined and prohibited by the legislation;
- discrimination is not prohibited in connection with recruitment in employment;
- there is no protection against discrimination in employment on grounds of sexual orientation;
- the upper limit on the amount of compensation that may be awarded in discrimination cases may preclude damages from making good the loss suffered and from being sufficiently dissuasive;
- it has not been established that legislation provides for a shift in the burden of proof in discrimination cases;
- the duration of alternative civil service amounts to an excessive restriction of the right to earn one's living in an occupation freely entered upon.

Article 1 - Right to work

Paragraph 3 - Free placement services

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

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 Armenia under the Charter and that the Government consequently has an obligation to provide the requested information in the next report on this provision.

The report does not contain any information on the number of persons placed via the public employment service during the reference period. In this respect, from another source, the Committee notes the following data: 2011: 10,786 persons; 2012 – 11,538 persons; 2013: 12,650 persons; 2014: 2,406 persons (source: website of the State Employment Agency of the Republic of Armenia – *employment main indices*: http://employment.am/en/39/free.html). Should these data be confirmed, the Committee asks that the next report comments on the decrease in the number of placements in 2014.

The report does not provide any information on quantitative indicators to assess the effectiveness of employment service. In addition to the number of persons placed via the public employment service, the Committee asks that the next report contain information on the following indicators: a) total number of registered job seekers and unemployed persons b) number of vacancies notified to the State Employment Agency (SEA); c) number of persons placed via SEA; d) placement rate (i.e. percentage of placements compared to the number of notified vacancies); e) placements by SEA as a percentage of total employment in the labour market. It also asks 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, including possible comparisons and comments.

In reply to the Committee's request, the report indicates that statistics on average time taken to fill a vacancy are not available. The Committee could not find in the report the requested information on the number of persons working in SEA and the number of counsellors involved in placement services. It asks that this information is provided in the next report. As regards the ratio of placement staff to registered job seekers, the report specifies that one employee serves 769 persons on average.

In reply to a Committee's request on the adoption of a legal basis for the operation of private employment agencies, the report states that "the activities of non-state job placement organisations have been regulated within the scope of the reforms in the field of employment and within the framework of implementation of state employment programmes reserved to the State Employment Service". The Committee asks that the next report provide details on the relevant legal basis; where applicable, information on the abovementioned programme and reform should be also included in the next report. The Committee takes note of the information concerning the programme "Provision of support for making use of the services provided by non-state job placement organisations*"*. It asks that the next report provide updated information on the implementation of this programme.

Given the lack of information on quantitative indicators to assess the effectiveness of free employment service and other aspects, including the organisation and functioning of SEA, it has not been established that the employment services operate in an efficient manner in Armenia.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 1§3 of the Charter on the ground that it has not been established that free placement services 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 Armenia.

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 Armenia 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 requested updated information as regards equal treatment of nationals of other States Parties and the specific legal basis for it. The report refers to Article 3 of the Law “On employment”, as the legal basis regulating the employment rights of foreign and stateless residents. The Committee asks the next report to clarify whether all persons, including nationals of other States Parties, are guaranteed equal access to vocational guidance and continuing vocational training, without any length of residence requirement.

Vocational guidance

Professional orientation and career services for out-of-school youth, job seekers and unemployed persons are provided by the State Employment Agency, under the competence of the Ministry of Labour and Social Affairs. According to the report, the number of people who were provided with vocational guidance was 26 431 in 2011, 23 521 in 2012, 21 986 in 2013 and 25 248 in 2014.

In addition, as from 2007, a “Youth Professional Orientation Centre” (see Conclusions 2008), provides guidance to young persons entering the labour market for the first time. In 2008-2012 the Centre addressed about 1 500-3 000 beneficiaries per year through individual, group and self-service services for professional orientation of youth. The Committee takes note of the increase in the number and quality of the services provided and of the activities carried out by the Centre during the reference period, including the organisation of public events and the development of tools and material.

In 2012, according to the report, some important initiatives have been taken to make professional orientation available from general education and through all stages of employment and professional career. The introduction of such a vocational guidance system is one of the objectives of the Employment Strategy of the Republic of Armenia for 2013-2018 and its Implementation Action Plan, adopted by the Government in November 2012, as well as of the "Concept Paper of development of professional orientation and its Implementation Action Plan for 2012-2015", adopted in October 2012. Pursuant to the Concept Paper, a system of professional orientation shall be introduced, with the main objective of creating opportunities for free and conscious choice of a professional activity complying with the interests, needs and characteristics of a person, as well as with demand for staff qualified and competitive in the labour market. The vocational guidance system will involve both general education and vocational education institutions, as well as regional centres of integrated social services, the relevant trade specialists of which will provide professional orientation services adapted to the participants (pupils, students, job seekers, unemployed persons and others). Based on statistical data of 2013-2014, the introduction of this system should provide regular professional orientation to about 360 000 pupils in general education and about 110 000 students of professional and higher education institutions, while out-of-school persons may continue to apply to the State Employment Agency and/or its local agencies for complex social services.

The report furthermore indicates that methodological support, staff training, enhancement of qualification and provision of information for the entities of the professional orientation system are to be provided by the Methodological Centre for Professional Orientation, which is the legal successor of the abovementioned “Youth Professional Orientation Centre” (in accordance with a Government’s decision of 13 December 2012). The Centre shall implement the programmes of methodological support for the entities of the system free of charge, within the framework of the state programme. During the reference period, the Centre ensured the training of about 800 specialists.

The Committee asks the next report to provide updated information on the implementation of the Concept Paper, in particular as regards the human and financial resources allocated to vocational guidance and the number of beneficiaries, whether in the education system or in the labour market.

Continuing vocational training

The report indicates that, pursuant to Article 21 of the Law “On employment”, professional (vocational) training is provided to persons who are unemployed or facing the risk of dismissal. They can get initial training for a period of up to 6 months, or training aimed at re-specialisation and enhancement of their qualification for a period of up to 3 months. Vocational training aims at supporting participants in acquiring competences which will improve their chances to find a job corresponding to the labour market’s demands, to reduce the risk of dismissal and to engage in entrepreneurial activity. The ultimate purpose of the programme is to ensure stable employment of unemployed persons and job seekers facing the risk of dismissal through enhancement of their competitiveness in the labour market. Vocational training can also be provided by other bodies, in conformity with the Law "On Procurement". Long-term unemployed persons have a priority right to attend such trainings.

According to the report, the number of unemployed people who were given vocational training was 1804 in 2011, 1477 in 2012, 1500 in 2013 and 1591 in 2014.

The Committee asks whether employees – apart from those considered to be at risk of dismissal – are entitled to vocational training and, if so, it reiterates its request for information on the number of employees attending continuing vocational training.

In its previous conclusions (Conclusions 2007, 2008 and 2012), the Committee had asked whether training costs were covered by companies or the employees themselves. It notes in this respect that the report refers to an amendment to Article 201 of the Labour Code which was introduced in 2015, out of the reference period, obliging employers to organise vocational training at their expense for students and employees recruited for up to six months. It also notes that the Labour Code provides for special educational leave (Articles 171 and 174). Under Article 200 of the Labour Code, employees must continue to be paid their average daily wage when they attend training at their employer’s request; where employees follow a training course on their own initiative, payment conditions are governed by a collective agreement or a one-off agreement between the two parties.

Guidance and vocational training for persons with disabilities

The report confirms that persons with disabilities are entitled, free of charge, to vocational guidance and training. The Committee asks the next report to provide further details, including statistical data, concerning guidance targeted at persons with disabilities.

As regards vocational training, the report indicates that it is implemented taking into account the Individual rehabilitation programme drawn up by the local agencies of the Medical Social Expert Examination Agency. The Committee previously noted (Conclusions 2012) that a programme on "Vocational training and development of working skills of disabled persons" has been in place since 1995. The aim is to assist participants in finding a suitable job through the acquisition of new abilities or the carrying out of entrepreneurial activities. The

beneficiaries of the programme are provided with a monthly scholarship in the amount of 50 percent of the minimum salary.

According to the report, the number of persons with disabilities involved in the programme was: 118 in 2011, 84 in 2012, 116 in 2013 and 121 in 2014.

The Committee asks the next report to provide updated information on the measures taken to ensure equal access of persons with disabilities to vocational guidance and training, the types of training available to such persons and the number of participants.

Conclusion

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

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 Armenia in response to the conclusion that it had not been established that the right to a weekly rest period could not be forfeited or replaced by financial compensation and that adequate safeguards existed to ensure that workers do not work for more than twelve consecutive days without a rest period (Conclusions 2014, Armenia).

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 weekly rest is regulated by Article 155 of the Labour Code which expressly provides that for employees working six days a week, the common rest day shall be Sunday, and in case of a five-day working week, the rest days shall be Saturday and Sunday. In sectors and industries where where work may be required during the common rest days the rest shall be granted on other days of the week.

Employees shall in any event be entitled to a weekly uninterrupted rest period of not less than 35 hours.

Finally, the report explains that the Labour Code does not include any provisions providing that employees may substitute weekly uninterrupted rest period for financial compensation or otherwise waive their right to a weekly rest period. Moreover, there is no provision for postponing or transferring the weekly rest days.

The Committee understands that waiving or postponing the weekly rest period is not provided for by the legislation and as such it considers the situation to be in conformity with the Charter. However, it asks that the next report state whether waiving or postponing the weekly rest period is legally possible by individual or collective agreement, and if not, what is the situation in practice (for example on the basis of labour inspection data).

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Armenia is in conformity with Article 2§5 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

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 Armenia in response to the conclusion that it had not been established that the right to information on the employment contract was guaranteed (Conclusions 2014, Armenia).

Article 2§6 guarantees the right of workers to written information when starting employment. This information can be included in the employment contract or another document (Conclusions 2014, Republic of Moldova). This information must at least cover essential aspects of the employment relationship or contract, i.e. the following:

- the identities of the parties and the place of work;
- the date of commencement of the contract or employment relationship and, in the case of a temporary contract or employment relationship, the expected duration thereof;
- the amount of paid leave;
- the length of the periods of notice in case of termination of the contract or the employment relationship;
- the remuneration;
- the length of the employee's normal working day or week;
- where appropriate, a reference to the collective agreements governing the employee's conditions of work (Conclusions 2003, Bulgaria).

The report states that Article 14 of the Labour Code was amended by the Law HO-96-N of 22 June 2015 and henceforth provides that employment relations between the employee and the employer shall be deemed to arise on the basis of an employment contract concluded in writing as prescribed by the labour legislation or an individual legal act on accepting employment. Moreover, Article 84 of the Labour Code, also as amended by the aforementioned 2015 law and now provides that the employment contract and the individual legal act on accepting employment shall include the following items:

- (1) the year, month, date and place of adoption of the individual legal act and conclusion of the employment contract;
- (2) the first name, last name (also patronymic name, upon his or her request) of the employee;
- (3) the name of the organisation or the name of the employer who is a natural person;
- (4) the structural subdivision (in case of availability thereof);
- (5) the year, month and date of the commencement of work;
- (6) the name of the position and/or official functions;
- (7) the amount of the base salary and/or the method of determining it;
- (8) the additional payments, increments, supplementary payments and etc. paid to employees in the prescribed manner;
- (9) the validity period of the individual legal act or the employment contract (where necessary);
- (10) the duration and conditions of the probation period where a probation period is prescribed;
- (11) the regime of working time — normal duration of working time or incomplete working time or shorter working time or a summary calculation of working time;
- (12) the type and duration of annual leave (minimum, additional, extended);
- (13) the position, first name and the last name of the person signing the legal act.

According to the report it follows from Article 85 of the Labour Code that, before commencing the work, the employer or the employer's authorised person shall be obliged to properly introduce the employee to the conditions of employment, the collective agreement (where available), the internal disciplinary rules and other legal acts of the employer regulating the employee's work at the workplace.

On the basis of this information the Committee considers that the situation is compatible with the Charter. It nevertheless requests confirmation that the written contract shall indicate the length of the periods of notice in case of termination of the contract or the employment relationship.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Armenia is in conformity with Article 2§6 of the Charter.

Article 5 - Right to organise

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

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 Armenia in response to the conclusion that it had not been established that there is adequate protection against discrimination for employees who are trade union members or participate in trade union activities; that trade union representatives have access to workplaces to carry out their responsibilities (Conclusions 2014, Armenia).

Under Article 5 trade union officials must have access to the workplace and union members must be able to hold meetings at work in so far as employers' interests and company requirements permit (Conclusions XVI-1 (2000), France). In addition trade union members must be protected from any harmful consequence that their trade union membership or activities may have on their employment, particularly any form of reprisal or discrimination in the areas of recruitment, dismissal or promotion because they belong to a trade union or engage in trade union activities (Conclusions 2010, Moldova) Where such discrimination occurs, domestic law must make provision for compensation that is adequate and proportionate to the harm suffered by the victim (Conclusions 2004 Bulgaria).

In a previous conclusion (Conclusions 2010, Armenia) the Committee asked whether trade union representatives have access to workplaces to carry out their union responsibilities and whether union members are entitled to hold meetings in the workplace. Previous reports did not provide answers in this respect. The Committee therefore concluded that the situation is not in conformity with the Charter on the ground that it has not been established that trade union representatives have access to worplaces to carry out their responsibilities, the current report fails to provide any information on this issue therefore the Committee reiterates its previous conclusion.

The Committee noted previously that Article 3 of the Labour Code provides for the equality of parties in employment relations irrespective of their trade union affiliation. Moreover, Article 114 (4)(1) of the Labour Code provides that trade union membership or participation in trade union activities during non-working hours, and upon consent of the employer during working hours, shall not be deemed a lawful reason for the termination of an employment contract. The Committee noted, however, that the report did not indicate whether there is any protection against harmful consequences of discrimination for employees who are trade union members or engage in trade union activities, nor whether compensation is provided for that is adequate and proportionate to the harm suffered by the victim. The Committee therefore concluded that the situation is not in conformity with the Charter on the ground that it has not been established that there is adequate protection against discrimination for employees who are trade union members or engage in trade union activities (Conclusions 2014).

The report provides information on remedies for those who have been unlawfully dismissed, reintegration and compensation, but does not directly address the questions previously put by the Committee, therefore the Committee reiterates its previous conclusion.

Conclusion

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

- it has not been established whether there is adequate protection against discrimination for employees who are trade union members or participate in trade union activities;
- it has not been established that trade union representatives have access to workplaces to carry out their responsibilities.

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

TIn 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 Armenia in response to the conclusion that it had not been established that mediation/conciliation procedures exist in the public sector (Conclusions 2014, Armenia).

Article 6§3 applies also to the public sector(Conclusions III, (1973), Denmark, Germany, Norway, Sweden).

According to the report the mediation/conciliation services for the public sector are the same as those in place for the private sector. The Committee recalls that it has previously found the situation with regard to the private sector to be in conformity with the Charter. The Committee asks the next report to provide information on the relevant legislation.

Conclusion

Pending receipt of the information requestd the Committee concludes that the situation in Armenia is in conformity with Article 6§3 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

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 Armenia in response to the conclusion that it had not been established that the restrictions on the right to strike in the energy supply services comply with the conditions established by Article G and it had not been established that striking workers are protected from dismissal after a strike (Conclusions 2014, Armenia).

Under Article 6§4 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) 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).

According to the report Article 75 of the Labour Code prohibits, inter alia, strikes in the energy supply services (electricity, gas etc). However no further details are provided, while strikes in other essential services are permitted subject to the provision of a minimum services, no such provision appears to be made in respect of energy supply services. Therefore the Committee finds that the situation is still not in conformity with the Charter on this point.

As regard the dismissal of striking workers, while the report does not directly address the issue, the Committee notes that an employer is not permitted to subject employees to disciplinary measures for participating in a strike and may not hire new employees to replace striking workers. The Committee infers from this that it is not permitted to dismiss striking workers, either during or after a strike. However it asks the next report to provide confirmation of this. Meanwhile, it reserves its position.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 6§4 of the Charter on the grounds that it has not been established that the restrictions on the right to strike in the energy supply services comply with the conditions laid down by Article G of the Charter.

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

Paragraph 2 - Employment of persons with disabilities

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

Armenia ratified the UN Convention on the Rights of Persons with Disabilities on 22 September 2010. The first report on the implementation of the Convention was published in 2013.

Employment of persons with disabilities

The report does not provide any figures. The Committee notes from Armenia's first report to the UN Committee on the Rights of Persons with Disabilities (2013) that in 2012, there were 182 379 persons with disabilities in the country, 11 057 of whom had a first-degree disability, 86 402 a second-degree one, 76 767 a third-degree one, and 8 156 of whom were children.

The Committee requests up-to-date figures on the total number of persons with disabilities, the number of people with disabilities of working age, the number in employment (in the open market or in sheltered employment), the number benefiting from employment promotion measures, the number seeking employment and the number who are unemployed. In the absence of these figures, it cannot be established that the situation is in conformity with Article 15§2.

Anti-discrimination legislation

In its previous conclusion (Conclusions 2012), the Committee found that the situation was not in conformity with Article 15§2 of the Charter on the ground that it had not been established that persons with disabilities were guaranteed effective protection against discrimination in employment. Consequently, it asked for information on the judicial and non-judicial remedies provided for in the event of discrimination on the ground of disability and on relevant case law. In reply, the report describes a draft Law on the protection of the rights of persons with disabilities and their social inclusion, which should prohibit discrimination on the ground of disability. According to the information provided by the representative of Armenia for the report of the Governmental Committee, the draft law has already been submitted to parliament for adoption.

In its previous conclusion (Conclusions 2012), the Committee also asked for information on compliance with the requirement for reasonable accommodation and whether it has prompted any increase in employment of persons with disabilities on the open labour market. In reply, the report presents the Law on Employment, which came into force on 1 January 2014 and sets out measures to be taken to help persons with disabilities integrate into the labour market. Persons with disabilities without work are regarded as unemployed and have the same rights as all other unemployed persons, along with certain specific rights, namely the right to job placement under the system of compulsory job quotas and, in the event of placement, the right to support for workplace adjustment.

The information provided does not answer the questions asked in its conclusions 2012, the Committee repeats the questions and concludes in the meantime that it has not been established that effective protection against discrimination in employment is guaranteed for persons with disabilities.

Measures to encourage the employment of persons with disabilities

In its previous conclusion (Conclusions 2012), the Committee requested updated information on any actual increase in the level of employment of persons with disabilities as a result of the various programmes and measures implemented. In the absence of a reply, the Committee reiterates its request.

The report states that, under the Law on Employment, the presence of a disability is one of the criteria for a person to be identified as being non-competitive in the labour market. The Committee takes note of the mechanism to determine whether unemployed persons are considered non-competitive in the labour market described in detail in the report. The Committee asks for information in the next report on the impact of this law on the employment of persons with disabilities.

In addition to the measures to encourage the employment of persons with disabilities referred to in the previous conclusion (Conclusions 2012), the report describes new national employment programmes funded by the state budget, which are intended to promote employment, particularly for persons with disabilities. They include a lump-sum payment in the event of job placements to acquire necessary work skills and capabilities, a financial support programme for unemployed persons with disabilities wishing to engage in self-employed activities, a programme for persons with disabilities to be placed with employers and the promotion of seasonal employment.

The report also states that vocational training is provided for persons with disabilities as well as programmes to refresh their working skills. In 2011, 118 persons took part in these programmes and 38 were placed in a job. In 2014, 121 took part and 49 were placed in a job.

The report also describes a number of changes that were made under the annual employment programme relating to the wages of persons with disabilities on placements:

- partial wage compensation amounting to 50% of the monthly minimum wage;
- reduction in the compensation period from 1 to 2 years to 6 months;
- in addition to wage compensation, employers receive a lump sum of AMD 200 000 (about €327) for each person with a disability placed with them to acquire the working skills and capabilities and compensation for the costs of adjusting their workplace to a rate approved by the authorised body;
- financial support for persons who need a person to accompany them in an amount equal to 50% of the minimum monthly wage for a period of six months.

The report states that it is planned to apply a quota system to the public sector in 2016 and to the private sector in 2017, outside the reference period. Employers who do not comply with the quota will be required to pay a fine for each unfilled post amounting to 300 times the minimum wage, which will be paid into an extra-budgetary account. The Committee asks for detailed information in the next report on the implementation of these rules, the level of compliance with the quota and the measures taken to ensure compliance.

The report also states that one of the main aims of the National Employment Strategy concerning persons with disabilities is an annual increase in the number of persons with disabilities taking part in national employment programmes of at least 50% compared to the previous period. The Committee asks for information in the next report on the result of this strategy.

The Committee notes that according to Armenia's initial report to the Committee on the Rights of Persons with Disabilities (2013), in 2012, 1 259 persons with disabilities were registered with the local offices of the State Employment Agency.

Conclusion

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

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

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

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

Anti-discrimination legislation and integrated approach

In its previous conclusion (Conclusions 2012), the Committee found that the situation in Armenia was not in conformity with Article 15§3 of the Charter on the ground that it had not been established that there was legislation ensuring that people with disabilities had effective protection against discrimination in the fields of housing, transport, telecommunications, culture and leisure activities. Consequently, the Committee requests information on whether there is anti-discrimination legislation in conformity with the requirements of Article 15§3 and how it is implemented, including as regards the remedies available. In reply, the report describes a draft Law on the protection of the rights of persons with disabilities and their social inclusion, which should prohibit discrimination on the ground of disability. According to the information provided by the representative of Armenia for the report of the Governmental Committee, the draft law has already been submitted to parliament for adoption. The report also refers to Article 48 of the Armenian Constitution, which states that "the main tasks of the state in the economic, social and cultural fields shall be [*inter alia*] … to implement programmes for the prevention and treatment of disability [and] promote the participation of persons with disabilities in the life of the community". However, the legislative provisions, if adopted, will apply outside the reference period.

In view of the situation, the Committee asks the next report to inform it about the adoption of the law, the date of its entry into force and its implementation, including as regards the remedies available. In the meantime, the Committee concludes that, during the reference period, there was no anti-discrimination legislation to protect persons with disabilities and explicitly covering the fields of housing, transport, communications and cultural and leisure activities.

Consultation

The Committee refers to its previous conclusion (Conclusions 2012), in which it stated that a National Commission on Issues relating to Persons with Disabilities, chaired by the Minister of Labour and Social Affairs, was set up in 2008 and co-ordinates work in this field.

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

The Committee found previously that the situation was in conformity with the Charter and no change is mentioned in the report.

Measures to overcome obstacles

Technical aids

The Committee found previously that the situation was in conformity with the Charter and no change is mentioned in the report.

Communication

In its previous conclusion (Conclusions 2012), the Committee asked for information on measures taken to improve access for persons with disabilities to communication and media services and on the legal status of sign language. In reply the report states that under the Law on Television and Radio, programmes must be interpreted into sign language or subtitled in Armenian. Public television and radio companies and private television

companies which broadcast children's programmes and news programmes are required to guarantee access to the deaf by broadcasting at least one children's programme and at least one news programme every day with sign language interpretation or with Armenian subtitles.

The Committee asks again what the legal status of sign language is.

Mobility and transport

In its previous conclusion (Conclusions 2012), the Committee asked for updated information on the progress made in making transport, including rail transport, accessible to persons with disabilities. In reply, the report states that in 2014, the buses in Yerevan city centre were converted to make them accessible to persons with disabilities (through ramps or special lifting facilities). The Committee asks again whether persons with reduced mobility are entitled to special fares or required to bear the extra costs of any special facilities. It also wishes to know what measures have been taken to improve access to public transport (air, road and sea). In the absence of reply on these points, the Committee considers that it is not established that effective accessibility for people with disabilities to different means of transport is provided.

Housing

In its previous conclusion (Conclusions 2012), the Committee asked for information on how the rules on the accessibility of buildings for persons with reduced mobility are applied in practice and what remedies are available. It also asked whether financial assistance was provided to convert existing housing and for clarification on the accessibility of polling stations. In the absence of any reply, the Committee reiterates its questions and it considers that it has not been established that there is an effective access to housing.

Culture and leisure

The report refers to Article 40 of the Constitution, which states that "everyone shall have the right to freedom of literary, artistic, scientific and technical creation and the right to benefit from scientific achievements and to take part in the cultural life of the community".

The report also states that the participation of persons with disabilities in cultural life is carried out with the active contribution of NGOs and the financial support of the state and donor organisations. The Ministry of Culture assists NGOs for persons with disabilities by providing appropriate rooms and venues.

The Committee takes note of the various events held during 2014 to promote access for persons with disabilities to cultural life and sport.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 15§3 of the Charter on the following grounds:

- during the reference period, there was no anti-discrimination legislation to protect persons with disabilities and explicitly covering the fields of housing, transport, communications and cultural and leisure activities and
- it has not been established that persons with disabilities have effective access to housing and transport.

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

Paragraph 1 - Applying existing regulations in a spirit of liberality

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

Work permits

The report states that the body authorised to issue work permits had not yet been accredited by the Government during the reference period. Foreign nationals therefore could work in Armenia without a work permit. The report does not answer the question put by the Committee in its previous conclusion (Conclusions 2012), namely whether temporary and permanent residence permits automatically conferred the right to engage in a gainful occupation.

The report states that in June 2015, amendments to the Law on Foreigners were adopted to set up a procedure to issue work permits. Under these amendments, employers are required to ask the authorities for permission to take on a third-party national. The Committee asks for information in the next report on the various types of work permit issued to nationals of States Parties to the Charter.

Relevant statistics

The Committee points out that in order to assess the degree of liberalism in applying existing regulations, it requires figures showing the refusal rates for work permits for both first-time and renewal applications. A high percentage of successful applications by nationals of States Parties to the Charter for work permits and for renewal of work permits and a low percentage of refusals is a clear sign that existing regulations are being applied in a spirit of liberality.

In its previous conclusion (Conclusions 2012), the Committee asked if any applications for residence permit had been rejected and, if so, for what reasons. The report fails to answer this question or provide any statistics. The Committee notes that legislative changes were made in 2015, outside the reference period, and requests that the next report indicates its impact through requested relevant statistics. The Committee asks in particular that the next report provides data on the number of work permits (first permits and renewals) granted or denied, based on the number of applications, specifically concerning nationals of States Parties to the Charter, and the grounds for refusing such requests.

Conclusion

The Committee concludes that the situation in Armenia is in conformity with Article 18§1 of the Charter.

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

Paragraph 2 - Simplifying existing formalities and reducing dues and taxes

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

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

In its previous conclusion (Conclusions 2012), the Committee noted that the decision concerning the granting of temporary or permanent residence status was adopted by the Passport and Visa Department of the Government within 30 days following receipt of the necessary documents. The Committee further noted that there was no system of work permits in Armenia, something that continued to be the case during the reference period. It was not until June 2015, outside the reference period, that amendments to the Law on Foreigners were adopted, introducing a procedure for issuing work permits. According to these amendments, the employer must seek permission from the authorities in order to employ a third-country national.

The Committee asks that the next report provide information about the formalities for granting residence and work permits to nationals of States Parties to the Charter. In this connection, the Committee notes that conformity with Article 18§2 presupposes the possibility of completing formalities related to the employment of foreign workers in the country of destination as well as in the country of origin and obtaining the residence and work permits at the same time and through a single application. Article 18§2 also implies that waiting times for requisite permits (residence and work) must be reasonable.

Chancery dues and other charges

In its previous conclusion, the Committee held that the fees charged for obtaining temporary and permanent residence permits, as well as for their renewal, were high. It noted that the fees stood at €281 for a temporary permit and €321 for a permanent permit. Even though outside the reference period, the Committee notes in the report that under the amendment made to the Law on State Duty in 2015, employers will in future be charged the sum of AMD 25 000 (Armenian dram), the equivalent of €48, for obtaining a work permit for a foreign worker in the Republic of Armenia. However, the report contains no information about the fees charged for obtaining or renewing temporary or permanent residence permits during the reference period. The Committee, therefore requests that mention be made of this in the next report and points out that chancery dues and other charges for permits must not be excessive and in any event, must not exceed the administrative cost incurred in issuing them.

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 3 - Liberalising regulations

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

Access to the national labour market

The Committee recalls that, under Article 18§3, States Parties are required to liberalise periodically the regulations governing the employment of foreign workers in respect of access to the national labour market and that the conditions laid down for access by foreign workers to the national labour market must not be excessively restrictive.

The Committee notes that foreign nationals could be employed without a work permit in Armenia during the reference period. The report states that, in June 2015, the law on foreigners was amended to introduce a procedure for the issuance of work permits. The Committee asks that the next report stipulate the various kinds of work permits issued and the conditions laid down for access by foreign workers to the national labour market.

The Committee also requests information on the measures taken to liberalise regulations governing the recognition of foreign certificates, professional qualifications and diplomas, necessary to engage in a gainful occupation as an employee or a self-employed worker. In this connection, it wishes to know the number of cases of recognition of foreign certificates, professional qualifications or diplomas issued to nationals of States Parties to the Charter.

Exercise of the right of employment / Consequences of job loss

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 its previous conclusion (Conclusions 2012), the Committee noted that when a foreign worker loses his/her job, the residence permit is not automatically revoked, and therefore the worker is not obliged to leave the country. The report states that there have been no new developments since the Committee's last examination of the situation.

Conclusion

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

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

Paragraph 4 - Right of nationals to leave the country

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

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

Conclusion

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

Article 20 - Right to equal opportunities and equal treatment in 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 Armenia.

Equal rights

The Committee noted previously that the Constitution, *inter alia*, prohibits discrimination on grounds of gender and the Labour Code further provides that gender discrimination in employment is prohibited (Conclusions 2012).

The report indicates that on 20 May 2013 the National Assembly of the Republic of Armenia adopted the "Law on ensuring equal rights and equal opportunities for women and men", which prescribes guarantees for ensuring equal rights and equal opportunities for women and men in political, social, economic, cultural and other areas of public life and regulates the relations arising therefrom. The Committee asks for information on the amendments brought by this new law in respect to gender equality and how it is implemented into practice. It also asks whether the new legislation provides for a shift in the burden of proof in gender discrimination cases.

The Committee previously asked whether there are occupations reserved for one sex, i.e. exceptions to the principle of equality due to genuine occupational requirements (Conclusions 2012). The report indicates that according to the legislation of Armenia, there are no jobs reserved only for one particular gender.

The Committee noted previously that persons who believe that they have been discriminated on grounds of sex in employment may take the matter before the courts. Furthermore, trade unions may act on behalf of individuals who believe that they have been discriminated against (Conclusions 2012). With regard to remedies, the Committee previously asked whether there are upper limits to the amount of compensation that may be awarded (Conclusions 2012). The report indicates that in case an employment contract has been terminated by the employer due to discrimination, the employee can be reinstated and receive compensation for the period between the termination of the contract and the moment of re-employment. The report adds that in cases when reinstatement is not possible, the employee shall be entitled to compensation in a maximum amount of 12 months' average wage.

The Committee recalls that remedies available to victims of discrimination must be adequate, proportionate and dissuasive. Therefore, compensation for all acts of discrimination including discriminatory dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently dissuasive is proscribed (Conclusions 2012, Andorra). Noting that legislation provides an upper limit to the amount of compensation, the Committee concludes that the situation is not in conformity with Article 20 of the Charter on the ground that the upper limit on the amount of compensation that may be awarded in gender discrimination cases may preclude damages from making good the loss suffered and from being sufficiently dissuasive.

The Committee noted previously that Article 178 of the Labour Code provides that equal remunerations shall be paid to men or women for the same or equal (amount of) work. The collective agreement signed in 2009 between the Government, Confederation of Labour Unions and the Association of employers requires all parties to ensure gender equality in all issues of employment, including remuneration (Conclusions 2012)

The Committee asked whether there were appropriate methods of pay comparison enabling employees to compare the respective values of different jobs, and whether pay comparisons beyond a single employer were possible (Conclusions 2012). The report indicates that there are not such methods of pay comparisons in Armenia.

The Committee recalls 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"). 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).

Considering the above mentioned, the Committee asks whether it is possible in equal pay litigation cases to make comparisons of pay between several companies which are covered by the same collective works agreement. 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) 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).

Equal opportunities

The Committee takes note from the report of the statistics provided by the National Statistics Service of Armenia on the average monthly wage by economic sector, according to which in all economic sectors, the average monthly wages of women are lower than those of men. The Committee notes that in 2014 women's average monthly wages represented 90% of men's in agriculture, forestry and fishing; 80% in education; 62.4% in health care and social services; 65.5% in manufacturing; and 59.6% in financial and insurance activities. It further notes that women earned, overall in all occupations, around 63.7% of the men's wage in 2012 and 65.9% in 2014.

The Committee also notes that according to the results of a study of the United Nations Population Fund (UNFPA), in Armenia women earn 35.9% less than what men are paid ("Diagnostic Study on Discrimination Against Women in Armenia 2015-2016", UNFPA).

The Committee takes note of the measures implemented to promote gender equality described in the report. It notes the adoption of the Gender Policy Strategic Action Plan for 2011 – 2015 which includes measures to eliminate discrimination based on gender in the socio-economic field and achieve equality in employment, measures to expand women's economic opportunities and improve their working conditions and income in rural areas, measures to enhance women's and men's competitiveness on the labour market and lower the level of women's unemployment, measures to promote the entrepreneurial activities and economic initiatives of women, and measures to create favourable conditions for reconciling work with family responsibilities, including through the involvement of men in childcare. The report indicates that training sessions on gender issues are being organized for civil servants.

The Committee notes that women continue to face higher unemployment rates than men and remain concentrated in lower paying sectors and lower positions. The Committee takes note that despite the efforts and measures taken by the authorities to ensure gender equality

in employment, the pay gap remains manifestly high around 35%, and therefore, the situation is not in conformity with the Charter.

The Committee asks the next report to provide information on the situation of women in employment (by comparison with men overall and in different occupations/sectors of economy) and the wage gap between the sexes.

The Committee asks the next report to provide comprehensive information on all measures taken to eliminate *de facto* inequalities between men and women, including positive actions/ measures taken. It asks in particular information on their implementation and impact on combating occupational sex segregation in employment, increase women's participation in a wider range of jobs and occupations, including decision-making positions, and to reduce the gender pay gap.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 20 of the Charter on the following grounds:

- the limits imposed on compensatory awards in gender discrimination cases may prevent such violations from being adequately remedied and effectively prevented;
- the unadjusted pay gap is manifestly too high.

Article 22 - Right of workers to take part in the determination and improvement of working conditions and working environment

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 Armenia in response to the conclusion that it had not been established that the right of workers to take part in the determination and improvement of working conditions and the working environment is effective; workers' representatives have legal remedies when their right to take part in the determination and improvement of working conditions and the working environment is not respected and sanctions exist for employers who fail to fulfill their obligations under this Article (Conclusions 2014, Armenia).

Article 22 applies to all undertakings, whether private or public. States Parties may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice (Conclusions 2005, Estonia).

Workers and/or their representatives (trade unions, worker's delegates, health and safety representatives, works councils) must be granted an effective right to participate in the decision-making process and the supervision of the observance of regulations in all matters referred to in this provision, such as:

- the determination and improvement of the working conditions, work organisation and working environment;

- the protection of health and safety within the undertaking. The right of workers' representatives to consultation at the enterprise level in matters of health and safety at the workplace is equally dealt with by Article 3 (right to safe and healthy working conditions, see supra). For the States Parties who have accepted Articles 3 and 22, this issue is examined only under Article 22;

- the organisation of social and socio-cultural services within the undertaking. The right to take part in the organisation of social and socio-cultural services and facilities only applies in undertakings where such services and facilities are planned or have already been established. Article 22 of the Charter does not require that employers offer social and socio-cultural services and facilities to their employees but requires that workers may participate in their organisation, where such services and facilities have been established (Conclusions 2007, Armenia, Italy).

Workers must have legal remedies when these rights are not respected. There must also be sanctions for employers which fail to fulfil their obligations under this Article (Conclusions 2003 Bulgaria).

According to the report where there is (are) no trade union(s) in the organisation or none of the existing trade unions unites more than half of the number of employees of the organisation, representatives (a body) can be elected by the staff meeting (conference).

The Committee asks whether undertakings employing less than a certain number of workers, are excluded from the scope of this provision.

Article 26 of the Labour Code provides that an employer shall be obliged to, inter alia, consult with the representatives of employees while making decisions that may affect the legal status of the employees and, in cases provided for by the Code, receive their consent; consider the proposals of the representatives of employees and provide answers in writing within the time limits prescribed by the Code and, where no such time limits are prescribed, not later than within one month and provide necessary information on issues concerning work to the representatives of employees.

The Committee asks where a collective agreement does not cover issues relating to working conditions, work organisation and working environment; is there an obligation on employers to consult employee representatives (or where no representatives employees directly) on related issues. Pending receipt of the information requested the Committee reserves its position on this point.

Pursuant to Article 253 of the Labour Code, the employer shall be obliged to inform and consult employees on health and safety issues.

An employer may set up a Commission for safety assurance and health of employees within the organisation, the rules of procedure have been approved by the Decision of the Government of the Republic of Armenia No. 1007-N of 29 June 2006. The Commission shall receive information from the employer about health and safety risks, provide information to employees, make proposals to the employer, provide training on health and safety, and assist in any investigation into occupational accidents.

The Commission shall meet not less than every three months.

The Committee asks when if at all, it is obligatory to establish a safety and health commission.

The Committee concludes that the situation is now in conformity with the Charter on this issue.

As regards remedies and sanctions the report states that rights protected under the Labour Code are enforceable through the courts, by employees and employee representatives. The Committee asks whether there are sanctions that may be imposed on employers who do not respect the rules relating to consultation on working conditions, working environment and work organization.

Conclusion

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

Article 24 - Right to protection in case of dismissal

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

Scope

The Committee notes that there have been no changes to the situation which it has previously (Conclusions 2008) considered to be in conformity with the Charter. It asks for the next report to provide a full and up-to-date description of the situation.

Obligation to provide valid reasons for termination of employment

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

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

The Committee observed in its 2012 conclusions that pursuant to Article 113 of the Labour Code the employers have the right to terminate employment prior to the expiry of employment contract when the employee reaches retirement age.

The Committee notes that there is no information that the situation during the reference period has changed, therefore considers that it is not in conformity with the Charter as the termination of employment prior to the expiry of employment contract at the initiative of the employer on the sole ground that employee reach the pensionable age, which is permitted by law, is not justified.

Prohibited dismissals

The Committee notes that points 3 and 7 of part 1 of Article 113 of the Labour Code of the Republic of Armenia respectively prescribe that the employer shall have the right to rescind the employment contract concluded for an indefinite time limit, as well as the employment contract concluded for a fixed time limit before the end of the validity period where by reason of insufficiency of the professional knowledge or his/her health state the employee cannot perform his or her employment duties. The Committee notes the time limit for a long-term incapacity for work (in case the employee has failed to come to work, due to temporary incapacity for work, for more than 120 consecutive days or for more than 140 days during the last twelve months unless it is prescribed by law and other regulatory legal acts that the workplace and the position are preserved for a longer period in case of certain diseases).

The Committee notes that deterioration of the health state of the employee may serve as a ground for termination of the employment contract, where it is of sustainable nature and hinders the process of work or excludes the possibility to continue it and that compatibility of the employee's professional abilities with the assumed position or work is assessed by the employer, whereas medical and social expert assess the employee's state of health.

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

Remedies and sanctions

The Committee notes that the report states that according to the Law HO-5-N of 12 March 2014, part 2 of Article 265 has been amended and states that for economic, technological and organisational reasons, or in case of impossibility of reinstatement of future employment relations between the employer and the employee, the court does not need to reinstate the employee to his/her former position, making the employer obliged to pay compensation for the entire period of forced idleness in the amount of the average salary, prior to the entry into force of the court judgement, and pay compensation in exchange for non-reinstatement of the employee to position in the amount not less than the average monthly salary, but not more than twelve times the average monthly salary. The employment contract shall be deemed rescinded starting from the day of entry into legal force of the court judgement. The Committee asks what is meant by 'impossibility of reinstatment'.

The Committee recalls that Article 24 of the Revised Charter requires that courts or other competent bodies are able to order adequate compensation, reinstatement or other appropriate relief. Compensation in case of unlawful dismissal is considered appropriate if it includes reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body. The Committee further recalls that (Statement of interpretation on Article 8§2 and 27§3, Conclusions 2011) compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues, and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time. The Committee asks whether the legislation complies with this approach and in the meantime it reserves its position on this point.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 24 of the Charter on the ground that the termination of employment at the initiative of the employer on the sole ground that the person has reached the pensionable age, which is permitted by law, is not justified.

Article 28 - Right of workers' representatives to protection in the undertaking and facilities to be accorded to them

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 Armenia in response to the conclusion that it had not been established that workers' representatives are granted adequate protection against prejudicial/detrimental acts other than dismissal; and that facilities granted to workers' representatives were adequate (Conclusions 2014, Armenia).

Under Article 28 protection should cover the prohibition of dismissal on the ground of being a workers' representative and the protection against detriment in employment other than dismissal (Conclusions 2003, France).

The facilities to be provided may include for example those mentioned in the R143 Recommendation concerning protection and facilities to be afforded to workers representatives within the undertaking adopted by the ILO General Conference of 23 June 1971 (support in terms of benefits and other welfare benefits because of the time off to perform their functions, access for workers representatives or other elected representatives to all premises, where necessary, the access without any delay to the undertaking's management board if necessary, the authorisation to regularly collect subscriptions in the undertaking, the authorization to post bills or notices in one or several places to be determined with the management board, the authorization to distribute information sheets, factsheets and other documents on general trade unions' activities), as well as other facilities such as financial contribution to the workers' council and the use of premises and materials for the operation of the workers' council (Conclusions 2010, Statement of interpretation on Article 28).

The report recalls that representatives are protected against dismissal and that Article 3 of the Labour Code, prohibits, inter alia, discrimination on ground of trade union membership. However, the Committee needs more concrete information on the protection of worker representatives against detriment in employment other than dismissal.

Pursuant to part 3 of Article 175 of the Labour Code, employee representatives shall be exempt from employment duties for up to six working days per year, to attend various events organised by the employees' representative bodies or to improve their qualifications as members of the representative bodies of employees.

The Committee takes note of this information, but in order to assess the situation still needs further information on other facilities to be afforded to worker representatives (see above).

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 28 of the Charter on the grounds that:

- it has not been established that workers' representatives are granted adequate protection against prejudicial acts other than dismissal;
- it has not been established that facilities granted to workers' representatives are adequate.