January 2015

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2014

(GEORGIA)

Articles 2, 4, 5, 6, 26 and 29
of the Revised Charter

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.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Georgia, which ratified the Charter on 22 August 2005. The deadline for submitting the 7th report was 31 October 2013 and Georgia submitted it on 1 November 2013. On 22 May 2014, a request for additional information regarding Articles 2§2 and 26§2 was sent to the Government, which submitted its reply on 18 June 2014. Comments on the report of the Georgian Trade Union Confederation were registered on 18 November 2014.

The report concerns the following provisions of the thematic group "Labour rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- the right to information and consultation in collective redundancy procedures (Article 29).

Georgia has accepted all provisions from this group except Articles 2§3, 2§4, 2§6, 4§1, 4§5, 21, 22 et 28.

The reference period was from 1 January 2009 to 31 December 2012.

The conclusions on Georgia concern 15 situations and are as follows:

- 0 conclusions of conformity.
- 14 conclusions of non-conformity: Articles 2§1, 2§2, 2§5, 2§7, 4§3, 4§4, 5, 6§1, 6§2, 6§3, 6§4, 26§1, 26§2, 29.

In respect of one other situation related to Article 4§2, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Georgia under the Charter. The Committee requests the Government to remedy that situation by providing this information in the next report.

The upcoming report will deal with the following provisions of the thematic group "Children, families and migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),

- the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27),
- the right to housing (Article 31).

The deadline for submitting that report was 31 October 2014.

Conclusions and reports are available at www.coe.int/socialcharter.

Article 2 - Right to just conditions of work

Paragraph 1 - Reasonable working time

The Committee takes note of the information contained in the report submitted by Georgia. It also takes note of the information contained in the comments made by the Georgian Trade Union Confederation of 18 November 2014 and in the Government reply to these comments of 28 November 2014.

In its previous conclusion (Conclusions 2010) the Committee found that the situation in Georgia was not in conformity with the Charter, as the Labour Code permitted employers and workers to agree on working time without fixing a maximum limit on weekly working hours.The impugned provision was Article 14 of the Labour Code, which stipulated that "unless otherwise provided in the contract of employment, weekly working time shall not exceed 41 hours per week". The Committee considered in this respect that this provision contravened the right of workers to reasonable limits on daily and weekly working hours, including overtime, as the working time could simply be left to the discretion of the employer or the employee and was not subject to regulation.

The Committee observes that although it has not been explicitly mentioned in the report, the Labour Code provisions, including Article 14, were modified in 2013 (Organic Law of Georgia No 729 of 12 June 2013). Paragraph 1 of Article 14 now stipulates that the period during which an employee performs work shall not exceed 40 hours per week. In the companies having specific working conditions, where the operation/labour process requires more than 8 hours of uninterrupted work, the weekly working time shall not exceed 48 hours. The list of such specific working conditions is established by the Government. According to paragraph 2 of Article 14, the duration of the daily rest period shall not be less than 12 hours.

The Committee takes note of the report of the Georgian Trade Union Confederation (GTUC) regarding compliance of the Labour Code with the European Social Charter where the CTUC alleges that allowing 48 hours long working week in some professions, without any of it counting as overtime, represents discrimination. The Committee notes that the GTUC has appealed to the Georgian Constitutional Court to examine the constitutionality of this provision. It wishes to be kept informed.

The Committee thus understands that following the amendments to the Labour Code, the daily working hours may not exceed 12 hours and the weekly working hours may not exceed 48 hours.

The Committee further notes that according to paragraph 1^1 of Article 14, in those enterprises where the operation/labour process requires 24 hours of uninterrupted work, the parties may conclude a contract on shift work, provided that the 12 hours rest period between the shifts is maintained. In this connection, the Committee recalls that reasonable daily working hours are up to 16 hours a day and can only be exceeded in exceptional circumstances (such as natural disasters). The Committee asks for more details regarding the specific working conditions in which an employee may be expected to work 24-hour shifts.

According to the report, the Labour Code of Georgia permitted derogations from the legislation regarding working time, by allowing the employer and the employee to agree on the terms of contract, different from those stipulated by the law. The report states that this is no longer possible as a result of the amendments to the Labour Code.

The Committee observes that these amendments were introduced outside the reference period (2009-2012) and, therefore, cannot be taken into account in the assessment of the situation. However, given that with some of these amendments the situation which was previously found

not to be in conformity has changed, and also in the light of the questions for further clarification asked above, the Committee decides to reserve its position as regards the reasonable daily and weekly working time and the guarantees existing for workers in this respect.

In its previous conclusion, the Committee asked for information on the supervision of working time regulations by the Labour Inspection, including the number of breaches identified and penalties imposed. The Committee notes from the report that no statistics are available regarding the issue of working time. The Committee also notes from the information provided by the Georgian representative to the Governmental Committee (Report to the Committee of Ministers T-SG (2012)2, §27) that the Tripartite Social Partnership Commission has a mandate to monitor working time.

The Committee recalls that under Article 2§1 of the Charter an independent appropriate authority must supervise the observance of daily and weekly limits in order to ensure that the limits are respected in practice. The Committee notes that no such supervision takes place and therefore, it considers that the situation is not in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 2§1 of the Charter on the ground that there is no independent appropriate authority that supervises that daily and weekly working time limits are respected in practice.

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

The Committee takes note of the information contained in the report submitted by Georgia, as well as of the additional information provided in an addendum to the report.

The Committee previously noted that public holidays with pay are listed under Article 20 of the Labour Code and that the employee can request other days off instead of those specified by the law. It notes from the information provided in an addendum to the report that public holidays are included in the monthly remuneration. Work performed on public holidays is considered to be overtime work and is accordingly remunerated by an increased hourly salary, which amount is determined by the parties. According to Article 17§5, the parties can also agree to compensate such work by additional time off.

The Committee recalls that work performed on a public holiday entails a constraint on the part of the worker, who should be compensated. Considering the different approaches adopted in different countries in relation to the forms and levels of such compensation and the lack of convergence between states in this regard, the Committee considers that States enjoy a margin of appreciation on this issue, subject to the requirement that all employees are entitled to an adequate compensation when they work on a public holiday.

The Committee asked in its previous conclusion what rate of pay is applied for public holidays worked, whether the base salary is maintained in addition to the increased pay rate, and whether there is a compensatory day off in addition to any payment. It notes that the report does not reply to these questions, as it does not provide sufficient indications of the size of the compensation, in terms of salary and compensatory rest, granted in case of work performed on public holidays. It accordingly reiterates its questions and, in the meantime, it finds that it has not been established that work performed on a public holiday is adequately compensated.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 2§2 of the Charter, on the ground that it has not been established that work performed on a public holiday is adequately compensated.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

According to the Georgian Labour Code, any day of the week can be defined as weekly rest period by the employment contract between the employer and the employee. Public civil servants are entitled to weekly rest on Saturday and Sunday under the Law on Public Service. These days are also considered days off in educational institutions, both in private and public institutions.

The Committee notes that the report does not reply to the question raised in its previous conclusion (Conclusions 2010), concerning the circumstances under which the postponement of the weekly rest period is provided. The Committee points out that to be in conformity with the Charter it must not be possible for the worker to renounce his/her weekly rest, not even in exchange for remuneration. The rest period can, however, 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. In the light of this, the Committee asks the next report to clarify under what conditions a worker can work on a day defined as a weekly rest day and whether, under what conditions, and how long the day off can be postponed. In particular, if the weekly day off is postponed, the Committee needs to know how many days in a row the worker might work before being entitled to a full day of rest.

In the meantime, in the absence of information on these issues, the Committee finds that it has not been established that the right to a weekly rest period is sufficiently guaranteed.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 2§5 of the Charter, on the ground that it has not been established that the right to a weekly rest period is sufficiently guaranteed.

Article 2 - Right to just conditions of work

Paragraph 7 - Night work

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

According to the report, under Article 18 of the Labour Code, night work is understood to be work performed between 22.00 and 6.00. The report further indicates that, under Article 54 of the Labour Code, the Georgian Ministry of Labor, Health and Social Affairs should elaborate and adopt a list of hard, hazardous and dangerous jobs and labor safety rules, including the rules relating to the periodic obligatory medical test of an employee, at the expense of the employer. This list was expected to be adopted within four months after the entry into force of the law in 2007, while the list of activities connected to the safety of the person's life and health was to be elaborated before November 2013 (after the reference period). The Committee asks the next report to clarify whether the rules referred to have been adopted and implemented, and what is their relevance to night work, as defined by Article 2§7 of the Charter.

The Committee recalls that Article 2§7 of the Charter guarantees compensatory measures for persons performing night work. Such measures must at least include the following:

- regular medical examinations, including a check-up prior to employment on night work;
- the provision of possibilities for transfer to daytime work;
- continuous consultation with workers' representatives on the introduction of night work, on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work.

The report does not reply to the Committee's questions on how often night workers are required to undergo medical examinations and whether regular examinations are carried out in practice. It therefore reiterates its questions. In the meantime, it finds that it has not been established that night workers are effectively subject to compulsory regular medical examinations.

As regards the two other points, the Committee had noted in its previous conclusion that it was possible for night workers to be transferred to day work and that there was a tripartite cooperation between the members of the Tripartite Social Partnership Committee on the use of night work and the conditions in which it is performed. It asks the next report to confirm this information, to clarify the legal basis of such provisions, and to clarify the conditions under which the transfer from night work to daytime work is possible. Pending receipt of this information, it reserves its position on these issues.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

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

In its previous conclusion (Conclusions 2010) the Committee found that the situation was not in conformity with the Charter, as the Labour Code permitted employers and workers to agree on overtime hours without limitations, and it did not guarantee the right to an increased remuneration for overtime work or time off in lieu.

The Committee notes that with the amendments to the Labour Code that were introduced in 2013 (Organic Law of Georgia No 729 of 12 June 2013), Article 17 of the Labour Code which regulates overtime work, has been substantially modified. The Committee notes, however, that these amendments were introduced outside the reference period.

As regards the first ground of non-conformity, the Committee notes that following the amendments, paragraph 3 of Article 17 defines overtime as working time in excess of 40 hours per week.

As regards the second ground of non-conformity concerning remuneration for overtime, according to paragraph 4 of Article 17 remuneration for an overtime working hour shall exceed remuneration for a usual working hour. The Committee asks whether time off, which can be taken in lieu of remuneration for overtime (paragraph 5 of Article 17), is of an increased duration. The Committee asks for some examples of the increased hourly rates at which overtime is paid.

The Committee considers that flexibility measures regarding working time are as such not in breach of the Charter. Under flexible working time arrangements, working hours are calculated on the basis of the average weekly hours worked over a period of several months. Within that period, weekly working hours may vary between specified maximum and minimum figures, without any of them counting as overtime and thus qualifying for a higher rate of pay. Arrangements of this kind do not, as such, constitute a violation of Article 4§2 (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§2), provided that the conditions laid down in Article 2§1 are respected, such as the following:

(i) maximum weekly (more than 60) and daily (up to 16) working hours are respected;

(ii) flexibility measures operate within a legal framework providing adequate guarantees, which clearly circumscribes the discretion left to employers and employees to vary, by means of collective agreement, working time.

(iii) flexible working time arrangements provide for a reasonable reference period for the calculation of average working time.

The Committee asks whether the law provides for flexible working time arrangements and if so, what are the rules that regulate them.

The Committee further recalls that the right of workers to an increased rate of remuneration for overtime work can have exceptions in certain specific cases, such as for senior officials as well as management executives of the private sector. The Committee reiterates its question as to whether there are any exceptions to the increased remuneration for overtime work and if so, what categories of workers are concerned.

The Committee notes that during the reference period there were no changes to the situation which it has previously considered not to be in conformity with the Charter. However, given the

amendments that were introduced in 2013 as well as further questions for clarification, the Committee reserves its position.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 3 - Non-discrimination between women and men with respect to remuneration

The Committee takes note of the information contained in the report submitted by Georgia. It also takes note of the information contained in the comments made by the Georgian Trade Union Confederation of 18 November 2014 and in the Government reply to these comments of 28 November 2014.

Legal basis of equal pay

In its conclusion on Article 20 (Conclusions 2012) the Committee noted that the provisions on gender equality in employment (the Labour Code) were supplemented by the adoption of the Gender Equality Act in 2010. The latter, *inter alia,* provides for equal treatment of men and women in the evaluation of work (Section 4, paragraph 2(i)), thereby strengthening the right of women and men to equal pay for work of equal value. However, the Committee notes that the Gender Equality Act does not contain an express guarantee of the right of men and women to equal pay for work of equal value.

The Committee recalls that Article 4§3 guarantees the right to equal pay without discrimination on the ground of gender. The principle of equal pay applies to the same work and also to different types of work of the same value.

The Committee takes note of the report of the Georgian Trade Union Confederation (GTUC) regarding compliance of the Labour Code with the European Social Charter that Article 2§3 of the Labour Code provides that discrimination is prohibited in labour relations, including on the ground of gender. However, according to the GTUC there is no explicit prohibition of unequal pay for the work of equal value.

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

Guarantees of enforcement and judicial safeguards

Domestic law must provide for appropriate and effective remedies in the event of alleged wage discrimination. Employees who claim that they have suffered discrimination must be able to take their case to the court (Statement of Interpretation on Article 4§3, Conclusions I). Anyone who suffers wage discrimination on the ground of gender must be entitled to adequate compensation, which is compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender. When the dismissal is the consequence of a worker’s reclamation about equal wages, the employee should be able to file a complaint for unfair dismissal.

The Committee asks whether any cases involving the right to equal pay for work of equal value have been brought before the courts.

Methods of comparison and other measures

According to the report, the "Action Plan on Gender Equality" (NAP) for 2011-2013 was elaborated in cooperation with the Gender Advisory Council and approved by the Parliament on 5 May 2011. The objective of the "Action Plan on Gender Equality" is, among others, the

integration of the gender equality principle in economic and employment policies. The Committee wishes to be informed about the implementation of the Action Plan specifically in relation to equal pay rights.

The Committee notes from the report that the average nominal monthly salary in all activities in the first quarter of 2012 for men was GEL 829 and GEL 488 for women. The Committee asks what are the possible causes of the pay gap. It also asks the next report to provide information on the pay gap for work of equal value.

The Committee refers to the Statement of Interpretation on Article 20 (2012) and asks whether it is possible to make pay comparisons across companies in equal pay litigation cases.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 4§3 of the Charter on the ground that there is no explicit statutory guarantee of equal pay for work of equal value.

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

The Committee takes note of the information contained in the report submitted by Georgia. It also takes note of the information contained in the comments made by the Georgian Trade Union Confederation of 18 November 2014 and in the Government reply to these comments of 28 November 2014.

It previously concluded (Conclusions 2010) that the situation was not in conformity with Article 4§4 of the Charter, on the grounds that the Labour Code did not specify any period of notice for termination of employment, and the period of notice that applied during the probationary period was not reasonable. It asked for confirmation that, in the civil service, both the notice period and the severance pay for termination of employment were applied to all tenured staff, including those on probationary periods or part-time contracts. It also asked for information on the following matters: the grounds for dismissal in the civil service, including disciplinary offences and immediate dismissal; the right of employees to absent themselves during notice periods to look for other employment; information ascertaining that the only exception to the period of notice set by the law was immediate dismissal for serious offences.

In reply, the report states that section 38, paragraph 1 of the Code provides for a three days' notice and severance pay equal to two months' wages when a dismissal is made on one of the following grounds: economic, technological or organisational circumstances; incompatibility of qualifications or work experience with the post or the work; long-term incapacity for work for health reasons. The Civil Service Act of 31 October 1997 (No. 45), as amended by Law No. 2509 of 28 December 2009, provides for a month's notice and severance pay equal to two months' wages.

The Committee takes note of the statements by the representative of the Government to the Governmental Committee (Report concerning Conclusions 2010, §166), according to which employees are not obliged to work during the period corresponding to the severance payment, thus enabling them to seek other employment; the Code does not make any exception to the general rules applicable to notice in the event of dismissal for serious offences; and the rules in the Civil Service Act apply to all tenured civil servants.

The Committee notes that the provisions of the Code to which the report refers are the result of amendments made by Law No. 729 of 12 June 2013. The Code of 2006 was repealed and replaced by the Labour Code of 2010. Article 38, paragraphs 3 and 4 of the Code in force during the reference period provided that, in the event of contract termination, severance pay equal to one month's wages would be paid, except where one of the parties had breached the contract. The other causes of termination of employment provided for by Article 37 of the Code in force during the reference period gave entitlement neither to a notice period nor to severance pay.

In the civil service, the severance pay provided for by section 109, paragraph 1 of the Civil Service Act is equal to two months' wages only if the agency in which the employee works is wound up or its staff numbers are reduced. In the event of termination of employment for health reasons or long-term incapacity, the severance pay provided for in section 109, paragraph 2 of the Civil Service Act is equal to one month's wages only.

The Committee points out that in accepting Article 4§4 of the Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being determined mainly in accordance with the length of service. While it is accepted that the period

of notice may be replaced by severance pay, such pay should be at least equivalent to the wages that would have been paid during the corresponding period of notice. Furthermore, the right to reasonable notice applies to all categories of employees (Conclusions XIII-4 (1996), Belgium), including during probationary periods (General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §§26 and 28) and regardless of the ground for termination of their employment (Conclusions XIV-2 (1998), Spain).

The Committee notes that the amendments to the Code with regard to the rules on notice, which the Parliament adopted on 12 June 2013, were not in force during the reference period. It considers that, in the private sector, the amount of severance pay provided for in the event of contract termination by Article 38, paragraph 3 of the Code, which was in force during the reference period, is not reasonable for employees with more than three years of service. Furthermore, the lack of any notice and/or severance pay during probationary periods or in the event of termination of employment owing to a breach of the employment contract, to the death of the employer or to the winding up of the company (Article 37(c), (h) and (i) and Article 38, paragraph 4 of the Code) is not in conformity with Article 4§4 of the Charter. In the civil service, the amount of severance pay provided for by section 109, paragraph 1 of the Civil Service Act in the event that an agency is wound up or its staff numbers are reduced, is not reasonable when the civil servant worked more than five years of service.

The Committee asks for information in the next report on the notice periods and/or amount of severance pay applicable to the other grounds for termination of employment provided for by sections 93 to 107 of the Civil Service Act. It also asks for information on the applicability of the relevant provisions to the support staff and independent service providers covered by sections 7 and 8 of the Civil Service Act.

The Committee requests that all information be up-to-date of the amendments to the Code adopted on 12 June 2013.

Conclusion

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

- the severance pay provided for during the reference period in the event of contract termination is not reasonable beyond three years of service;
- no provision is made during the reference period for notice during probationary periods or in the event of termination of employment owing to a breach of the employment contract, the death of the employer or the winding up of the company;
- the severance pay applicable in the civil service when an agency has been wound up or its staff has been cut is not reasonable beyond five years of service.

Article 5 - Right to organise

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

Forming trade unions and employers' organisations

In its last conclusion (Conclusions, 2010), the Committee noted that, pursuant to Section 2§9 of the Trade Union Act, trade unions cannot be formed with a membership of less than 100 persons. The Committee recalled that requirements as to minimum numbers of members comply with Article 5 only if the number is reasonable and presents no obstacle to the founding of organisations (cf. Conclusions XIII-5 (1997), Portugal). It concluded that the requirement foreseen by the Trade Union Act is not reasonable and contrary to the Charter.

The Committee notes that in a recent Observation concerning Georgia, the ILO Committee on the Application of Conventions and Recommendations (ILO-CEACR) asked for information on the measures taken or envisaged by the Government to amend Section 2§9 of the Trade Union Act, as to lower the minimum trade union membership requirement (cf. Observation – adopted 2011, published 101st ILC session (2012), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Georgia (ratification: 1999)).

The report merely confirms that according to the above-mentioned Section, trade unions cannot be formed with an initiative of less than 100 persons. The Committee notes the information provided by the representative of Georgia in the Governmental Committee of the European Social Charter, who stated that "according to Article 6 of the Constitution (…), once ratified, international instruments are an integral part of national legislation and prevail over national legislation. Accordingly, the Revised Social Charter prevails over the Trade Unions Act". The same representative pointed out that "according to the Civil Code, trade unions are 'non-commercial units' for which there are no limitations on membership for registration purpose". He concluded by underlining that "whilst the Trade Unions Act might not be in line with international standards regarding trade union membership requirements, in practice no trade unions have been refused to register on grounds of this membership requirement by the National Public Registry Agency (authority competent for the registration of commercial and non-commercial entities)" – see Report of the Governmental Committee concerning Conclusions XIX-3 (2010).

The Committee asks that the next report provides examples on trade unions formed with an initiative or membership of less of 100 persons. Moreover, bearing in mind the information provided within the Governmental Committee, it asks whether the Government envisages amending section 2§9 of the Trade Union Act so as to lower the minimum trade union membership requirement.

In this context, the Committee reiterates its request for information on initial formalities, such as declarations, registration and fees. It recalls that if fees are charged for the registration or establishment of an organisation, they must be reasonable and designed only to cover strictly necessary administrative costs (cf. Conclusions XV-1 (2001) XVI-1 (2003), United Kingdom). The Committee also reiterates its question as to whether different statutes and rules apply to employers' associations. Finally, the Committee repeats its questions as to whether domestic law provides for a right to appeal to courts to ensure that the right to organise is upheld.

The Committee considers that the information provided in the report is not sufficient to establish that the requirement regarding minimum numbers of members presents no obstacle to the founding of organisations.

Freedom to join or not to join a trade union

In its previous conclusion, the Committee noted that according to Section 46§§1 and 2 of the Labour Code, an employee's right – including the right to organise – may be restricted by the employer in the employment contract. In this respect, the Committee considered that as candidates may be forced to accept restrictions on their right to establish, to join or not to join a trade union in order to obtain employment, the above-mentioned section unduly restricts the enjoyment of trade union rights. It recalled that trade union members must be protected from any detrimental consequences that their trade union membership or activities may have on their employment, including recruitment. The Committee therefore concluded that the situation was not in conformity with Article 5 on this point.

The Committee notes that in a recent Observation with respect to the Right to Organise and Collective Bargaining Convention 1949 (No. 98), ILO-CEACR recalled that workers may face many practical difficulties in proving the real nature of denial of employment, especially when seen in the context of blacklisting of trade union members, which is a practice of which its strength lies in its secrecy. Since it may often be difficult, if not impossible, for a worker to prove that he/she has been the victim of an act of anti-union discrimination, legislation could provide ways to remedy these difficulties, for instance by stipulating that grounds for the decision of non-recruitment should be made available upon request (Observation adopted 2012, published 102nd ILC session (2013) – Georgia (ratification: 1993)).

As the report does not refer to this particular ground of non-conformity, the Committee notes that the representative of Georgia in the Governmental Committee (Report of the Governmental Committee concerning Conclusions XIX-3 (2010)) declared that the rights which can be limited in the employment contract refer to the "interests and powers" of both parties (the employer and the employee) and not to fundamental rights, such as the right to organise. He also held that "Article 2§6 of the Labour Code stipulates that the parties must respect fundamental human rights and freedoms as guaranteed by Georgian legislation". He concluded that "even if the employee agrees to a limitation of his or her fundamental rights and freedoms in the labour agreement, such agreement will be considered void".

Based on these statements, the Committee asks to be informed on the specific provision in domestic law establishing that the rights that can be limited by an agreement between employer and employee cannot refer to the right to organise. In the absence of such a provision and bearing in mind Article 2§6 of the Labour Code (see above), it asks confirmation that the right to organise is specifically recognised as a fundamental human right or freedom by a statutory act. Moreover, as employers are not required to substantiate their decision for not recruiting a candidate (cf. Labour Code, Section 5§8), the Committee asks to be informed on any judicial or administrative decision(s) declaring a limitation of the right to organise agreed by an employer and an employee in the framework of an employment contract void.

The Committee considers that the information provided in the report is not sufficient to establish that the legal framework allowing restrictions on the right to organise that may be included in employment contracts is in conformity with Article 5 of the Charter.

In this same context, whilst taking account of the general prohibition of discrimination based on trade union membership, in its last conclusion, the Committee also found that as employers are not required to substantiate their decision for not recruiting a candidate (section 5§8 of the Labour Code), a candidate might be excluded by an employer as a consequence of his/her membership of a trade union. As regards dismissals, the Committee found that employers can terminate a contract without giving a reason, provided that the employee receives a severance pay equivalent to one month's salary (cf. Section 37(d) and 38§3 of the Labour Code). The

Committee considered that it would be impossible for the candidate / employee concerned to prove that he/she has not been recruited / has been dismissed because of their trade union membership. The situation regarding protection against discrimination on grounds related to trade union membership in the framework of recruitment and dismissal was therefore not in conformity with Article 5.

The report does not refer to this aspect. The Committee notes the following observations presented by the Government, with respect to anti-union discrimination, within the Governmental Committee in 2011:

- A general prohibition of anti-union discrimination is enshrined in the Constitution (Articles 14 and 26), the Trade Union Act (Section 11), the Labour Code (Section 2(3) and (6)), and the Criminal Code (Section 142)**.**
- As regards the protection against discrimination on grounds related to trade union membership in the framework of recruitment, in practice candidates become members of trade unions only after recruitment and there are no reported cases in which a person was not recruited based on his/her trade union membership.
- As regards the protection against discrimination on grounds of trade union membership in the framework of dismissal, a contract can be terminated at the initiative of both the employer and the employee. In case of dismissal, the employer is obliged to pay at least one month's salary to the employee, unless a higher payment is laid down in the employment contract. The employee is not obliged to work during this period. A dismissed worker is entitled to take proceedings before a court and in this framework, the employer is obliged to provide the reason of dismissal (see the written information presented by the representative of Georgia – Report of the Governmental Committee concerning Conclusions XIX-3 (2010)).

The Committee notes that serious allegations of dismissals of representatives from unions or threats on union members were recently noted by ILO-CEACR with respect to the implementation of ILO Convention No. 98 by Georgia. These allegations are based on the information provided by a number of national and international trade unions. On this basis and in light of the absence of explicit provisions banning dismissals by reason of union membership or participation in union activities, ILO-CEACR concluded that the Labour Code does not offer sufficient protection against anti-union dismissals. It therefore requested the Government to take the necessary measures to revise sections 5§8, 37(1)(d) and 38(3) of the Labour Code in consultation with the social partners, so as to ensure that it provides for adequate protection against anti-union discrimination.

The Committee notes from another source (ITUC, Survey of violation of trade unions rights) that:

- Owners of privatised hospitals and polyclinics have refused to negotiate with unions and actively intimidate any staff cooperating with trade unions. Many medical workers have withdrawn from trade unions because of fear for dismissal. 116 trade union organisations (45 per cent) have ceased to exist and membership has fallen by 7,968 (41 per cent).
- In Khasuri, an employer advised trade union members not to attend the Railway Workers Trade Union Congress and threatened them with dismissal. In this context, other members were dismissed without prior notice.
- As a result of interferences by central and local governments, 14 city and district level organisations of the Public Servants Trade Union ceased to exist – amounting to a loss of 2,350 members.

- Union members who had recently organised unions at municipal level were forced to sign forms resigning from the union, under threat of dismissal, resulting in the loss of hundreds of members.
- Although anti-union discrimination is prohibited in Georgian legislation, courts do not apply this legislation. Article 23 of the Trade Union Act, which states that employers can dismiss employees elected as chairpersons of trade union organisations only with the consent of the union, is ignored in practice.

In this framework, the Committee notes that the Georgian Trade Unions Confederation (GTUC) estimates that union membership decreased by more than 100 000 people since the adoption of the Labour Code, because of the lack of protection against anti-union discrimination.

The Committee asks for further information on the cases mentioned by ITUC, as well as on all cases in which trade union members appealed to courts for anti-union discrimination. Where possible, the Committee asks for information on any final judgment of the court(s) concerned, and, in this framework, more particularly, on the facts provided by the employer to justify that the dismissal of a worker was not based on grounds related to trade union membership, as well as on the possible courts' assessments concerning the above-mentioned facts. The Committee also asks to be informed whether, according to the law, trade unions representatives can be dismissed during their term of office or during a specified period following its expiry.

The Committee recalls that "the Charter is a living instrument, whose purpose is to protect rights not merely theoretically but also in fact" (International Commission of Jurists v. Portugal, Complaint No. 1/1998 / Decision on the merits of 9 September 1999, §32) and that "the implementation of the Charter requires the States Parties to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter" (Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53).

The situation remained unchanged during the reference period**.** The Committee therefore considers that that the protection against discrimination based on trade union membership in the context of recruitment and dismissal is insufficient.

Trade union activities

In its previous conclusion, the Committee recalled that the independence of trade unions takes various forms: (a) trade unions are entitled to choose their own members and representatives; (b) excessive limits on the reasons for which a trade union may take disciplinary action against a member constitute an unwarranted interference in the autonomy of trade unions inherent in Article 5 (Conclusions XVII, United Kingdom); (c) 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 XV-1, France). The Committee asked that the next report provide detailed information on these issues. The report provides information on the general legal framework on the independence of trade unions and their autonomy with respect to the management of their resources and financial means. However, no information is provided on the above-mentioned specific issues. The Committee reiterates its request in this regard.

In its previous conclusion, the Committee also asked for information on the autonomy of the newly created trade union in the education sector (i.e. Professional Education Syndicate, PES) from the authorities. The report does not contain the requested information. The Committee reiterates its request in this respect.

The Committee notes that in its Observation of 2012 regarding implementation of ILO Convention No. 98 by Georgia, ILO-CEACR refers to numerous allegations of employers' interference in trade union internal affairs, in the private and public sectors, including the prohibition of collection of trade union dues, harassment and pressure exercised on trade union members to leave their respective unions. The Committee asks to be informed on these allegations.

Bearing in mind the allegations referred to in the above-mentioned Observation, the Committee considers that the information provided in the report is not sufficient to establish that trade unions are entitled to perform and indeed perform their activities without interference from authorities and/or employers.

Representativeness

In its previous conclusion, the Committee underlined that while domestic law may restrict participation in various consultation and collective bargaining procedures to representative trade unions alone, the following conditions must be met for the situation to comply with Article 5: (a) decisions on representativeness must not present a direct or indirect obstacle to the founding of trade unions; (b) areas of activity restricted to representative unions should not include key trade union prerogatives (Conclusions XV-1, Belgium); (c) criteria used to determine representativeness must be reasonable, clear, predetermined, objective, prescribed by law and open to judicial review (Conclusions XV-1, France).

The Committee asked whether any form of representativeness exists in Georgia and, if so, requests that the next report provide information on this point. No information was found in the report with respect to the issue of representativeness. The Committee reiterates its request in this regard.

The Committee considers that the information provided in the report is not sufficient to establish that the conditions possibly established with respect to representativeness of trade unions are not detrimental to the right to organise.

Personal scope

In its previous conclusion, the Committee noted that in accordance with the Public Service Act, civil servants enjoy the right to join trade unions. It asked whether they have the right to establish trade unions as well. The report does not provides the requested information. From another source it notes that civil servants have the right to form and join trade unions, but restrictions to this right were established for certain categories of workers employed in law enforcement agencies and prosecutors' offices (ITUC, Survey on Georgia, 2009).

The Committee asks that the next report provide comments on this information and reiterates its request in this respect. The Committee considers that the information provided in the report is not sufficient to establish the extent to which the right to organise applies to staff of law enforcement bodies and the prosecutor's offices.

In its previous conclusion, the Committee also asked that the next report indicate whether: a) members of the armed forces enjoy the right to organise and whether restrictions apply to them; b) in accordance with Article 19§4b of the Charter, Georgian authorities secure for nationals of other parties a treatment that is not less favourable than that of their own nationals in respect of membership of trade unions and enjoyment of the benefits of collective bargaining.

The report does not provide the requested information. The Committee reiterates its requests on the above-mentioned points.

Conclusion

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

- it has not been established that the requirement as to minimum number of members presents no obstacle to the founding of organisations;
- it has not been established that the legal framework allowing restrictions on the right to organise that may be included in employment contracts is not detrimental to the right to organise;
- the protection against discrimination based on trade union membership in the context of recruitment and dismissal is insufficient;
- it has not been established that trade unions are entitled to perform and indeed perform their activities without interferences from authorities and/or employers*;*
- it has not been established that the conditions possibly established with respect to representativeness of trade unions are not detrimental to the right to organise;
- it has not been established to which extent the right to organise applies to staff of law enforcement bodies and the prosecutor's offices.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

In reply to a question raised by the Committee in its previous conclusion (Conclusions 2010), the report indicates that in March 2010 the Prime Minister issued Order No. 57 on "The Tripartite Social Partnership Commission's regulations and its composition" to ensure good communication and create a platform for exchanging views on labour relations issues. In the document presented by the representative of Georgia in the Governmental Committee of the European Social Charter, it is pointed out that "The Tripartite Social Partnership Commission [TSPC] is held on average once in a quarter. The last meeting of the [TSPC] was held in February 2012" (Report of the Governmental Committee concerning Conclusions XIX-3 (2010)).

The Committee notes that in a recent Observation with respect to the Right to Organise and Collective Bargaining Convention, 1949 No. 98, the ILO Committee on the Application of Conventions and Recommendations (ILO-CEACR) noted with concern the allegation by the Georgian Trade Unions Confederation (GTUC) that "the TSPC remains to be very ineffective and that over two and a half years of its existence, this body has not solved one single issue and not one of its decisions and recommendations has been acted upon" (cf. Observation of ILO-CEACR adopted 2012, published 102nd ILC session (2013)).

The report states that in November 2012, the Government adopted a decree establishing "[t]he labour relations and social dialogue commission". This commission deals, *inter alia* ,with reconciliation aspects and it is entitled to put forward proposals and recommendations with respect to labour issues. The Committee asks the next report to clarify the specific roles of, and the possible interaction between, the TSPC and the "labour relations and social dialogue commission" with respect to consultation between workers and employers.

The report contains references to the provisions on the TSPC that were introduced in the Labour Code in June 2013. As these provisions were adopted outside the reference period, the Committee will not take them into consideration in this conclusion. However, it asks that the next report provide detailed information, including examples, on their implementation. More generally, the Committee asks that the next report contains concrete examples on the activities carried out by any commission or body aimed at promoting joint consultation between workers and employers.

As requested in the previous conclusion, the Committee asks that the next report contains: a) information on the levels covered by joint consultation; b) confirmation that all the matters of mutual interest of the parties are covered by joint consultation; and c) information on the existence, structure and functioning of consultative bodies in the public sector. The Committee considers that the situation in Georgia is not in conformity with Article 6§1 on these points.

Moreover, the Committee reiterates its question on whether employers' and employees' organisations have the opportunity for joint consultation on a bi-partite basis. In this respect, it recalls that if adequate consultation exists, there is no need for the State to intervene. If no adequate joint consultation is in place, the State must take positive steps to encourage it (*Centrale générale des services publics* (CGSP) v. Belgium, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41). It also reiterates its question on whether issues of interpretation of collective agreements are dealt with within the framework of joint consultation or within other specific mechanisms.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 6§1 of the Charter on the grounds that:

- joint consultation does not take place on several levels;
- joint consultation does not cover all matters of mutual interest of workers and employers;
- joint consultation does not take place in the public sector, including the civil service.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

In its last conclusion (Conclusions 2010), the Committee noted that according to the Labour Code, employers are authorised to specify internal labour regulations with respect to a number of working conditions. It also noted that according to the Government, when these conditions are regulated by a collective agreement, this prevails over the above-mentioned regulations. However, the Committee observed that this guarantee is neither enshrined in the Labour Code, nor in any other legislative provision. It therefore concluded that it was not established that an employer may not unilaterally disregard a collective agreement.

The Committee notes that in a recent Observation with respect to the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the ILO Committee on the Application of Conventions and Recommendations (ILO-CEACR) "notes with concern numerous allegations of violations of collective bargaining rights in the country" including the fact that "employers in the public and private sectors refuse to bargain collectively or to respect those agreements that have been concluded" (Observation of ILO-CEACR adopted 2012, published 102nd ILC session (2013)).

The report confirms the information provided in the previous report. It also pointed out that the employer is authorised to introduce internal labour regulations, only when working conditions are not regulated by an individual or collective agreement. The Committee cannot identify the legal provision(s) establishing that when working conditions are regulated by a collective agreement, this prevails over the internal regulations established by the employer. In the light of the above, the Committee reiterates its conclusion that it has not been established that an employer may not unilaterally disregard a collective agreement.

The Committee notes that in the above-mentioned Observation, the ILO-CEACR also recalls that “Articles 41-43 of the the Labour Code seem to put in the same position collective agreements concluded with trade union organizations and agreements between an employer and non-unionized workers, including as few as two workers” and that it finds it difficult “to reconcile the equal status given in the law to these two types of agreement with ILO principles on collective bargaining, according to which the full development and utilization of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations should be encouraged and promoted, with a view to the regulation of terms and conditions of employment by means of collective agreements. If, in the course of collective bargaining with the trade union, the enterprise offers better working conditions to non-unionised workers under individual agreements, there is a serious risk that this might undermine the negotiating capacity of the trade union" (Observation of ILO-CEACR adopted 2012, published 102nd ILC session (2013)).

In addition, the Committee notes that in the same Observation, ILO-CEACR reports the following statistics provided by the Georgian Trade Unions Confederation: during 2011, 41 collective agreements were terminated and 32 agreements expired and were not renewed; no agreements were signed in the second half of 2011; and between June 2011 and June 2012, only five new collective agreements have been concluded. The Committee asks that the next report provide more information on these data and the possible measures taken to reverse the negative trend concerning the conclusion of collective agreements.

In its last conclusion (ibid.) the Committee asked the Government to provide detailed information on the collective agreements concluded in the private and public sector at

enterprise, sectoral and national level and on the number of employers and employees covered by these agreements. The report does not contain the requested information. It is simply pointed out that “the Government does not have statistics related to this issue”. The Committee notes that in the above-mentioned Observation, ILO-CEACR notes the Government’s indication that it does not have official statistics regarding the number of collective agreements. However, in the same Observation, it is also indicated that "(...) the Government points out that according to the 2010 ILO/DIALOGUE study, the collective bargaining coverage rate in the country is 25.9 per cent" (cf. Observation of ILO-CEACR adopted 2012, published 102nd ILC session (2013)). The Committee asks the Government to provide comments on the above-mentioned rate, as well as information on the steps taken to promote machinery for voluntary negotiations between employers or employers’ organisations and workers’ organisations.

In its previous conclusion, the Committee also asked the Government to provide information on the measures taken or planned to facilitate and encourage the conclusion of collective agreements, and whether the rules on collective bargaining procedures also apply to the public sector, or what other regulations allow for the participation of employees in the public sector in the determination of their working conditions. The report does not contain the requested information. The Committee considers that there is nothing to establish that the situation is in conformity to the Charter on this point.

Conclusion

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

- voluntary negotiations between employers or employers’ organisations and workers’ organisations are not promoted in practice;
- it has not been established that an employer may not unilaterally disregard a collective agreement;
- it has not been established that the legal framework allows for the participation of employees in the public sector in the determination of their working conditions.

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

In its last conclusion (Conclusions 2010), the Committee considered that there was no effective conciliation, mediation or arbitration service and therefore concluded that the situation was not in conformity with the Charter. The Committee notes that there have been no changes in this regard during the reference period (2009-2012).

The Committee notes that the provisions of the Labour Code relating to labour disputes were amended in 2013. The report provides information on some of these provisions. The report describes that the Labour Code, as amended, refers to the Social Partnership Tripartite Commission (TSPC), which also deals with the resolution of labour disputes. The Committee takes note of the amended legal framework . However, as it was adopted outside the reference period, the Committee will not take it into consideration in this conclusion. The Committee asks that the next report provide detailed information, including examples, on its implementation. In particular, it asks to be informed on the activities carried out by the TSPC with respect to labour disputes.

The report indicates that in November 2012, the Government adopted a decree establishing "[t]he labour relations and social dialogue commission" and this commission deals*, inter alia* ,with labour disputes and promotes reconciliation between employers and employees. In this context, a list of 11 cases that have been discussed by the above-mentioned commission is provided. The Committee asks that the next report provide concrete examples on the role played by the above-mentioned commission with regard to labour disputes. It also asks the report to clarify the specific roles of, and the possible interaction between, the TSPC and "the labour relations and social dialogue commission" with respect to conciliation, mediation or arbitration.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 6§3 of the Charter on the ground that there is no effective conciliation, mediation or arbitration service.

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

It notes that the information provided with respect to the implementation of Article 6§4 mainly refer to provisions of the Labour Code amended in June 2013. While taking note of the revised legal framework, as the latter was adopted outside the reference period, the Committee will not take it into consideration in this conclusion. It asks that the next report provide detailed information, including examples, on the implementation of the above-mentioned framework.

In its previous conclusion (Conclusions 2010) the Committee requested information on:

- who has the right to call a strike and whether this right is reserved to trade unions;
- which are the categories of workers that are denied the right to strike, in order to assess that the restrictions are in accordance with Article G of the Charter;
- what sectors the relevant legislation is intended to cover when banning the right to strike of employees whose work is related to human life and health or which, due to its technological mode, cannot be suspended;
- whether strikes of the above-mentioned workers are totally banned or whether provision is made for a minimum service;
- the practical circumstances in which courts actually postpone or suspend a strike;
- the meaning of the provision providing that the maximum duration of a strike can be 90 days;
- what happens in the event a strike has not been resolved within the above-mentioned 90 days period;
- further procedural requirements, for example on those subjecting the exercise of the right to strike to prior approval by a certain percentage of workers.

The report does not contain the requested information.

The Committee considers that this information is essential to assess the conformity of the situation with regard to Article 6§4 of the Charter. It therefore asks that the next report provides the above-mentioned information with respect to the relevant legislation.

Conclusion

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

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

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

Prevention

Article 26§1 requires States Parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat sexual harassment. In particular, in consultation with social partners, they should inform workers about the nature of the behaviour in question and the available remedies.

In its previous conclusion, the Committee had requested information on measures taken in this respect. In particular, it had asked information on any preventive measures to raise awareness about the problem of sexual harassment in the workplace. As the report does not reply to this question, the Committee reiterates it and refers to its finding of non-conformity below, as regards the lack of preventive measures against sexual harassment.

Liability of employers and remedies

The report refers to Articles 137, 138 and 139 of the Criminal Code, which provide for criminal sanctions in case of rape, sexual abuse under violence and coercion into sexual intercourse or other types of sexual coercion. In particular, the fact of using one's position or authority is an aggravating circumstance in case of rape. The fact of using one's material, official or other type of dependency in order to threat a person and force him/her to a sexual act is also a criminal offence. Victims of such offences can submit a claim to the City courts, in accordance with criminal law. The report states that the Georgian legislation does not include any other provision related to sexual harassment in the workplace.

The Committee notes however from the United Nations Development Programme and the Office of the High Commissioner of Human Rights that a Law on Gender Equality was adopted in March 2010, which provides, *inter alia*, that "Labour relations shall not allow for (...) any adverse verbal, non-verbal or physical behaviour of sexual nature aimed at or resulting in personal offence or creating intimidating, hostile or humiliating environment (Article 6.b).

The Committee recalls that, under Article 26§1 of the Charter, sexual harassment qualifies as a breach of equal treatment characterised by the adoption, towards one or more persons, of preferential or retaliatory conduct, or other forms of insistent behaviour, which may undermine their dignity or harm their career. Irrespective of admitted or perceived grounds, harassment creating a hostile working environment shall be prohibited and repressed in the same way as acts of discrimination, independently from the fact that not all harassment behaviours are acts of discrimination, except when this is presumed by law. The Appendix to Article 26§1 specifies that states have no obligation to enact laws relating specifically to harassment where workers are afforded effective protection against harassment by existing norms, irrespective of whether such norms are general anti-discrimination acts or specific laws against harassment.

The Committee considers in the light of the above elements, that sexual harassment in the workplace covers a much broader range of discriminatory behaviour and practices than those covered by the Criminal Code alone. The Gender Equality Law could be relevant in this respect, but there is no indication that it provides for the necessary preventive and reparatory means to effectively protect employees against sexual harassment, nor that it is interpreted and applied by employers, public authorities and courts in such a way as to ensure such concrete and effective protection. Accordingly, the Committee considers that the situation is not in conformity

with Article 26§1 on the ground that there are no preventive and reparatory means to effectively protect employees against sexual harassment.

Burden of proof

The Committee recalls that, in order to allow for the effective protection of victims, civil law procedures require a shift in the burden of proof, making it possible for courts to rule in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges.

As regards the provisions of the Criminal Code in respect of sexual violence, coercion, or rape, the burden of proof rests with the plaintiff: (s)he must prove whether or not (s)he was a victim of sexual offences. The Committee asks the next report to indicate whether a person who considers to be a victim of the types of behaviour referred to in Article 6.b of the Gender Equality Law can turn to a civil or administrative court or another authority (such as the Ombudsman), and what rules would then apply in terms of burden of proof.

Redress

The Committee recalls that victims of sexual harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer. In addition, the right to reinstatement should be guaranteed to employees who have been unfairly dismissed or pressured to resign for reasons related to sexual harassment.

In response to the Committee's question, the report states that, if the defendant is found guilty of a sexual offence covered by the Criminal Code (rape, sexual abuse under violence, coercion into sexual intercourse, or other types of sexual coercion), no compensation is provided for under the Criminal Code. However, the plaintiff is entitled to submit a new claim for reparation of damages under the Civil Code (Articles 18 and 413). According to the report, there is no example of award of moral damages in this type of cases, as no claim was submitted. The report does not provide a reply to the Committee's question concerning the right to reinstatement of employees who were unfairly dismissed or pushed to resign for reasons related to sexual harassment. The Committee reiterates its question, as well as its request for updated information on relevant examples of compensation cases in relation to sexual harassment. In the meantime, the Committee refers to its above finding of non conformity on the grounds that the existing framework does not provide sufficient and effective measures to protect employees against sexual harassment.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 26§1 of the Charter, on the ground that there are no preventive and reparatory means to effectively protect employees against sexual harassment.

Article 26 - Right to dignity in the workplace

Paragraph 2 - Moral harassment

The Committee takes note of the information contained in the report submitted by Georgia, as well as of the additional information provided in an addendum to the report.

Prevention

Article 26§2 requires States Parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat moral harassment. In particular, in consultation with social partners, they should inform workers about the nature of the behaviour in question and the available remedies.

As the report and its addendum do not provide an answer to the Committee's request for information on preventive measures that were adopted in this respect, the Committee reiterates its question and, in the meantime, it finds that it has not been established that appropriate preventive measures apply in Georgia to protect workers against moral harassment in the workplace.

Liability of employers and remedies

The Committee recalls that Article 26§2 of the Charter establishes a right to protection of human dignity against harassment that creates a hostile working environment related to a specific characteristic of a person. States Parties are required to take all necessary preventive and compensatory measures to protect individual workers against recurrent reprehensible or distinctly negative and offensive actions directed against them, at the workplace or in relation to their work, since these acts constitute humiliating behaviour. Irrespective of admitted or perceived grounds, harassment creating a hostile working environment characterized by the adoption towards one or more persons of persistent behaviours which may undermine their dignity or harm their career, shall be prohibited and repressed in the same way as acts of discrimination. This shall be so, independent of the fact that not all harassment behaviours are acts of discrimination, except where this is presumed by law.

The report states that moral harassment is covered by the Criminal Code in Articles 144 (torture), 150 (coercion) and 151 (intimidation). In the case of torture, the report points out that the fact that the perpetrator be an officer or a person using his official position is considered an aggravating factor. The Committee asks the next report to provide examples of case law showing that the provisions referred to have been used in the context of moral harassment in the workplace.

In its previous conclusion, the Committee noted that the Labour Code prohibits discrimination and provides that in the framework of employment relations, the parties should respect the basic human rights and freedoms as defined by the legislation. In particular, Article 2§4 of the Labour Code sets out: "Direct or indirect oppression of a person aimed at or causing the creation of harassing, hostile, humiliating, dignity harming or insulting environment is considered to be discrimination. Creation of conditions that directly or indirectly impair a person's condition in comparison to other persons in the same conditions is also considered to be discrimination." In this connection, the Committee had requested information on the liability of employers and the means of redress in case of moral harassment. It notes that the addendum to the report refers to the introduction in the Labour Code of provisions establishing internal procedures in case of individual labour disputes and financial liability for damages. However, these legislative changes occurred in 2013, out of the reference period; the Committee accordingly shall examine them

during its next assessment of the compliance of the situation with Article 26§2 of the Charter. In the meantime, it reiterates the questions raised and finds that it has not been established that, during the reference period, workers were effectively protected against moral harassment.

Burden of proof

The report contains no information in reply to the Committee's question on the issue of the burden of proof in moral harassment cases during the reference period. It recalls that effective protection of employees under civil law requires a shift in the burden of proof. In particular, courts should be able to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges. The Committee reiterates its question and, in the meantime, refers to the finding of non-conformity above.

Redress

Under Article 26§2, victims of harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer.

The report does not provide a reply to the Committee's question on how the right of persons to effective reparation for pecuniary and non pecuniary damage is guaranteed. It reiterates its request and asks in particular for examples of relevant case-law awarding damages in cases of moral harassment in relation with the workplace. In the meantime, it finds that it has not been established that the existing framework provides, in law and in practice, sufficient and effective measures to protect employees against harassment.

Conclusion

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

Article 29 - Right to information and consultation in procedures of collective redundancy

The Committee takes note of the information contained in the report submitted by Georgia. It also takes note of the information contained in the comments made by the Georgian Trade Union Confederation of 18 November 2014 and in the Government reply to these comments of 28 November 2014.

Definition and scope

The Committee notes that according to Section 11 of the Trade Union Act (1997) concerning the right to promote employment, the employers or associations of employers (unions, federations) shall inform the trade unions concerned, with at least a two months' notice, about the liquidation, reorganisation or temporary suspension of the operation of the enterprise, institutions and organisations, that would result in reducing the number of jobs or deteriorating the working conditions, in order to ensure the protection of the rights and interests of the workers.

The Committee further notes that Article 38^1 of the Labour Code as amended on massive layoffs (Organic Law of Georgia No 729 of 12 June 2013) (outside the reference period) gives a more precise definition of collective redundancy as the termination of a labour agreement within 15 calendar days for at least 100 employees, on the grounds stipulated in Article 37 (1) (a), such as economic circumstances, or technological or organisational changes, that make it necessary to reduce the workforce.

Prior information and consultation

According to Section 11 of the Trade Union Act, a trade union shall be entitled to submit to the bodies of the state authority concerned, the proposals on the postponement or suspension of the arrangements related to collective redundancy of workers. Furthermore, Article 38^1 of the Labour Code provides that the employer is obliged to send a written notification about the redundancies to the Ministry of Labour, Health and Social Affairs as well as to the workers concerned.

The Committee also takes note of Article 42 of the Labour Code which defines workers' representatives. It notes, however, that the obligation of the employer to inform the workers about collective redundancies concerns informing the workers and not their representatives (Article 38^1 of the Labour Code). The Committee asks if the legislation also guarantees the right of workers' representatives to be informed.

The Committee refers to its Statement of Interpretation of Article 29 (Conclusions 2014 and 2003) and recalls that this provision of the Charter provides the employer's duty to consult (and not only to inform) with workers' representatives as well as the purpose of such consultation. The Committee has held that the obligation to inform and consult is not just an obligation to inform unilaterally, but it implies that a process (of consultation) is set in motion, which is that there is sufficient dialogue between the employer and the worker's representatives on ways of avoiding redundancies or limiting their number and mitigating their effects. The consultation procedure must cover the following:

- the redundancies themselves, including the ways and means of avoiding them or limiting their occurrence; and
- support measures, such as social measures to facilitate the redeployment or retraining of the workers concerned and the redundancy package.

Moreover, with a view to fostering dialogue, all relevant documents must be supplied before consultation starts, including the reasons for the redundancies, the planned social measures, the criteria for being made redundant and information on the order of the redundancies.

Even though the Charter does not require that the agreement be reached following such consultations, the Committee considers that the failure of the employer to carry out his/her information and consultation obligations amounts to the violation of Article 29.

The Committee notes from the report the Georgian Trade Union Confederation (GTUC) regarding compliance of the Labour Code with the European Social Charter that Article 38^1 does not provide a solid legal framework for social dialogue and trade unions involvement in collective redundancy procedures or an obligation of employers to provide support measures to mitigate the social consequences of redundancies.

The Committee considers that even though Section 11 of the Trade Union Act stipulates the obligation of the employer to notify about collective redundancies, it does not guarantee the right of workers and their representatives to be consulted in good time before the redundancies take place. Therefore, the situation is not in conformity with Article 29.

Preventive measures and sanctions

The Committee recalls that consultation rights must be accompanied by guarantees that they can be exercised in practice. Where employers fail to fulfil their obligations, there must at least be the possibility of recourse to administrative or judicial proceedings before the redundancies are made, to ensure that they are not put into effect before the consultation requirement is met. Provision must be made for sanctions after the event, and these must be effective, which is sufficiently deterrent for employers (Statement of Interpretation on Article 29, Conclusions 2003).

The Committee asks what sanctions exist if the employer fails to notify the workers' representatives about the planned redundancies. It also asks what preventive measures exist to ensure that redundancies do not take effect before the obligation of the employer to inform and consult the workers' representatives has been fulfilled.

The Committee asks what sanctions exist if the employer fails to notify about the planned redundancies in the meaning of Article $38^1$of the Labour Code.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 29 of the Charter, on the ground that the legislation does not effectively guarantee the right of workers to be consulted in collective redundancy procedures.