January 2015

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2014

(ARMENIA)

Articles 2, 4, 5, 6, 22 and 28
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 Armenia, which ratified the Charter on 21 January 2004. The deadline for submitting the 8th report was 31 October 2013 and armenia submitted it on 23 December 2013.

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).

Armenia has accepted all provisions from this group except Article 2§7, 4§1, 21, 26§1, 26§2 and 29.

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

The conclusions on Armenia concern 17 situations and are as follows:

- 2 conclusions of conformity: Articles 2§2 and 2§3.
- 12 conclusions of non-conformity: Articles 2§1, 2§5, 2§6, 4§2, 4§4, 4§5, 5, 6§1, 6§3, 6§4, 22 and 28.

In respect of the other 3 situations related to Articles 2§4, 4§3 and 6§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 Armenia 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 Armenia.

In its previous conclusion (2010) the Committee observed that the Labour Code permits exceptions to the limits on the daily working time in case of special categories of employees (health care, child care institutions, specialised electricity and gas companies, specialised communications services and specialised services for the elimination of the effects of accidents, etc.), who may work up to 24 hours per day.

The Committee has previously recalled in this respect that daily working time should in no circumstances exceed 16 hours per day and found, therefore, that the situation was not in conformity with the Charter.

The Committee notes that during the reference period there have been substantive legislative developments. On 24 June 2010 the Law on the amendments to the Labour Code was adopted, introducing amendments and supplements to the latter with the aim of simplifying and clarifying the mechanisms of labour relations and bringing them into compliance with international treaties (the ILO conventions and the European Social Charter).

Following these amendments, Article 139(1) of the Labour Code now provides that the normal duration of the working time may not exceed 40 hours a week. Article 139 (2) provides that the maximum daily working time may not exceed 8 hours, while 139(3) provides that the working time, including overtime, upon the request of the employer, may not exceed 48 hours a week. The daily working time may not exceed 12 hours, including overtime.

The Committee further notes that Article 139(4) of the Labour Code, as amended, provides that the daily working time of specific categories of workers may amount to 24 hours a day, provided that the weekly working hours do not exceed 48 hours.

The Committee takes note of the Decision No 1223-N of the Government of 11 August 2005, which approves the list of occupations, containing 36 different professions, for whom 24-hours long working day is permitted.

The Committee considers that the situation which it has previously considered not to be in conformity with the Charter has not changed. The Committee recalls that the daily working time should in no circumstances (except for extraordinary situations) exceed 16 hours, even if, in compensation, it entails a limitation to the weekly working time. Therefore, the situation is not in conformity with the Charter.

In its previous conclusion (Conclusions 2010) the Committee asked what rules applied to on-call work. It notes from the report that Article 149 of the Labour Code regulates on-call working time. It provides that the employer may, for ensuring labour discipline or performance of urgent work, engage the worker in duty work (on-call work) in the premises of the employer or at home, after the end of the working day. The time of on-call spent at the work premises shall be equalised to the working time in its entirety, whereas the time of duty work at home shall be equalised to not less than half of the working time. The Committee understands that the time spent at home in readiness for work will count as half of the working time, where no effective work is undertaken, whereas it will count as full working time where effective work is undertaken. It asks if this understanding is correct.

The Committee takes note of the statistics regarding complaints received by the Labour Inspection and the amounts paid to employees as a result of administrative proceedings regarding compensation for overtime.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 2§1 of the Charter on the ground that the daily working time of some categories of workers can be extended to 24 hours.

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 Armenia.

The Committee notes from the report that Article 156(1) of the Labour Code, as amended on 24 June 2010, provides that non-working public holidays and commemoration days in Armenia are established by law. Accordingly, there are 16 paid non-working days (public holidays and days of remembrance). It previously noted (Conclusion 2007) that work on public holidays is exceptionally allowed in case "of work which cannot be interrupted on technical grounds needed for providing services to the population as well as work involving urgent repair loading and unloading".

Under Article 185 of the Labour Code, the work performed on rest days and non-working public holidays and commemoration days set by the law, shall be remunerated:

- when it is not established in the work schedule, at least double the amount of the hourly (daily) pay rate or task rate, or the employee shall be provided with another paid rest day within a month, or that day shall be added to the annual leave;
- when it is established in the work schedule, at least double the amount of hourly (daily) pay rate or task rate.

The remuneration of work performed on rest days, non-working public holidays and commemoration days shall be composed of the main salary and an additional remuneration equivalent thereto (supplement). Article 184 of the Labour Code provides for an additional supplement if the work is performed as overtime or at night.

The Committee furthermore notes from the report the information provided on the sanctions applicable in case of failure by the employer to pay the salary due for work performed on a public holiday, the adoption in 2011 of new rules concerning labour inspections and the statistical data concerning the inspections that were carried out.

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. In this respect, in light of the information available, the Committee considers that the situation in Armenia is in conformity with Article 2§2 of the Charter.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

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

The report indicates that the Labour Code, as amended in 2010, provides that the minimum duration of annual leave shall be 20 working days in case of a five-day working week, and 24 working days in case of a six-day working week. Collective agreements or contracts can provide for longer annual leave. Annual leave of 25-30 working days in case of a five-day working week, and 35-42 working days in case of a six-day working week is furthermore provided by law to certain categories of workers performing hard or dangerous occupations.

Under Article 163 of the Labour Code, annual leave may be granted in parts upon the consent of the parties. In this case, one of the parts of the annual leave shall be at least 10 working days, in case of a five-day working week, and at least 12 working days in case of a six-day working week.

Although as a rule the annual leave should be granted during the reference year, Article 167(3) of the Labour Code, as amended, provides that the unused part of annual leave may be carried over to the next year. The Committee recalls that an employee must take at least two weeks uninterrupted annual holidays during the year the holidays were due and that annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement. In the light thereof, it asks the next report to clarify the circumstances under which annual leave can be postponed and in particular whether employees must use a certain part of the annual leave within the reference year or whether they can entirely postpone their leave to the following year.

The Committee previously noted (Conclusion 2007) that the postponement of annual leave was, *inter alia,* allowed in case of sickness or temporary incapacity of the employee. It asks the next report to confirm that this is still the case and to provide all relevant information in this respect.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Armenia is in conformity with Article 2§3 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

The Committee points out that the States Parties to the Charter are required to eliminate risks in inherently dangerous or unhealthy occupations and to apply compensatory measures to workers exposed to risks which cannot be or have not yet been eliminated or sufficiently reduced either in spite of the effective application of the preventive measures referred to above or because they have not yet been applied.

Elimination or reduction of risks

The Committee refers to its conclusion under Article 3§1 of the Charter (Conclusions 2013) for a description of dangerous activities and the preventive measures taken in their respect. It recalls that it concluded that the situation in Armenia was not in conformity with Article 3§1 of the Charter on the ground that it had not been established that there was an adequate occupational health and safety policy.

The report refers to the amendments introduced in the Labour Code in 2010, such as the introduction of compulsory medical examination, but does not contain evidence indicating that the situation assessed in 2013 in respect of Article 3§1 of the Charter has significantly improved. Accordingly, the Committee asks the next report to indicate the measures taken to eliminate or reduce risks associated with dangerous or unhealthy work and to provide, in particular, evidence of the effective implementation of the relevant measures, including as regards the labour inspectorate activities in this respect. In the meantime, it reserves its position on this issue.

Measures in response to residual risks

The Committee notes from the report that Article 183 of the Labour Code provides for the payment of a supplement to workers performing hard, harmful, especially hard and especially harmful works. The Committee points out that the aim of the compensation under Article 2§4 must be to offer those concerned sufficient and regular time to recover from the associated stress and fatigue, and thus to maintain their vigilance. Financial compensation can under no circumstances be considered an appropriate response under Article 2§4.

The Committee notes however from the information provided in respect of Article 2§3 that extended annual leave is also provided by law to certain categories of workers performing hard or dangerous occupations, as listed in the Decision of the Government No. 1698-N of 1 December 2010. It recalls that, although States have a certain discretion to determine the activities and risks concerned, the Committee monitors their decisions and that the law must at least consider sectors and occupations that are manifestly dangerous or unhealthy, such as mining, quarrying, steel making and shipbuilding and occupations exposing employees to ionising radiation, extreme temperatures and noise. It asks the next report to provide details on the activities and risks covered by the abovementioned list and eligible to measures such as extended annual leave or, if applicable, reduced working time. In the meantime, it reserves its position on this issue.

Conclusion

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

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 Armenia.

Pursuant to the Labour Code, as amended in 2010, the common weekly rest day is Sunday or, in case of a five-day working week, Saturday and Sunday (Article 155). When work on the weekly rest day is necessary in order to serve the needs of the population (organisations specialising in urban transportation, energy supply, gas supply and heating, theatre, museum, public food, etc.), the employer shall define another rest day. In case the activity cannot be interrupted due to technical conditions of the production or the need for uninterrupted and continuous provision of services to the population, or because of the application of an uninterrupted work regime, the rest days are granted on the other days of the week in a sequence prescribed by the working schedule for each group of employees, to be elaborated and adopted in conformity with Article 142 of the Labour Code. The uninterrupted weekly rest should not be less than 35 hours.

The Committee previously considered that it was not established that the right to weekly rest period was guaranteed. In particular, the Committee asked for confirmation that weekly rest periods may not be replaced by financial compensation, that employees may not forfeit their rest, and that, in case of postponement of the weekly rest period for justified reasons, no worker may be made to work more than twelve days in succession before being granted a two-day rest period. The Committee notes that the report does not provide any information in this respect. It accordingly reiterates its questions and, in the meantime, maintains its finding of non-conformity in this respect.

Conclusion

The Committee concludes that the situation in Armenia 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 may not be forfeited or replaced by financial compensation and that adequate safeguards exist to ensure that workers may not work for more than twelve consecutive days without a rest period.

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

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

Article 14 of the Labour Code, as amended in 2010, defines that the employment relations between employee and employer shall arise by the written employment contract concluded in the manner defined by labour legislation or, with the consent of the parties, by an individual legal act on employment. The provisions of the Labour Code on the regulation of contractual relations shall also apply to the regulation of labour relations arising by an individual legal act on employment.

Under Article 84 of the Labour Code, as amended, the written employment contract shall include, *inter alia*: information on the identity of the parties; the place of work; the date of commencement of the contract or employment relationship; the title or functions of the employee; the remuneration (salary and supplements) and the length of validity of the contract (where applicable); and the duration of the probationary period agreed by the parties. Upon agreement of the parties, the individual legal act on employment and the written employment contract may also contain other terms.

The Committee recalls that, under Article 2§6, the written information provided to workers when starting employment must include at least:

- the identities of the parties;
- the place of work;
- the date of commencement of the contract or employment relationship;
- 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.

The Committee previously asked (Conclusion 2010) for confirmation that the employment contract or another written document provided to the worker contains information on: the length of paid leave; the notice to be given in the event of termination of the contract or the employment relationship; the employee's standard daily or weekly working hours; and references to any collective agreements governing the employee's conditions of work. In the absence of this information in the report, the Committee reiterates the question and, in the meantime, finds that it has not been established that the right to information on the employment contract is guaranteed. The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Armenia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 2§6 of the Charter on the ground that it has not been established that the right to information on the employment contract is guaranteed.

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 Armenia.

In its previous conclusion (Conclusions 2010) the Committee found that the situation was not in conformity with the Charter on two grounds: the labour Code did not contain adequate legal guarantees ensuring workers increased remuneration for overtime and it had not been established that overtime compensation in the form of time off was longer than the additional hours worked.

As regards the first ground of non-conformity, the Committee previously noted that section 184 of the Labour Code gave the parties freedom in determining the overtime remuneration rate, provided it was not less than the hourly rate of the employee.

The Committee now notes from the report that Law HO-117-N of 24 June 2010 on Amendments to the Labour Code adopted in 7 August 2010, amended Article 184 of the Code. It provides that in addition to the hourly rate, a supplement of no less than 50% of the hourly rate shall be paid for every hour of overtime work.

The Committee notes from the information provided by the Armenian representative to the Governmental Committee (Report concerning Conclusions 2010, §121) that following these amendments, the provision which allowed the parties to determine the overtime remuneration rate upon their agreement was removed.

The Committee observes that the clause contained in Article 184 of the Labour Code (2004), before amendments, which provided that the remuneration for every hour of overtime work, agreed between the parties, could not be less than the hourly wage of the employee, has been deleted. Therefore, the situation is now in conformity with the Charter on this point.

As regards the second ground of non-conformity, according to Article 185 the employee may be provided with a paid time off to be taken in compensation for overtime or to be added to the annual leave. The rest time provided in place of overtime work must correspond to the duration of the overtime worked. The Committee considers that the situation which it has previously found not to be in conformity with the Charter on this ground has not changed. Therefore, it reiterates its previous finding of non-conformity.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 4§2 of the Charter on the ground that the legislation does not guarantee an increased time off in lieu of remuneration for overtime.

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 Armenia.

Legal basis of equal pay

The Committee refers to its conclusion on Article 20 (Conclusions 2012) in which it noted that according to the report, Article 178 of the Labour Code provided 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, the Confederation of Labour Unions and the Association of employers requires all parties to ensure gender equality in all aspects of employment, including remuneration.

Guarantees of enforcement and judicial safeguards

The Committee refers to its conclusion under Article 20, in which it found that persons who believe that they have been discriminated on grounds of gender 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.

As regards remedies, an individual who has been discriminated against may, *inter alia*, seek restitution, reinstatement (in case of dismissal), or compensation for damage. Compensation is available for economic loss.

The Committee recalls that under Article 4§3 of the Charter 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 court. Domestic law should provide for a shift of the burden of proof in favour of the plaintiff in discrimination cases.

Anyone who suffers wage discrimination on grounds 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 (Conclusions XIII-5 (1997), Statement of Interpretation on Article 20).

The Committee further recalls that 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. In this case, the employer must reintegrate him in the same or a similar post. If reinstatement is not possible, the employer has to pay compensation, which must be sufficient to compensate the worker and to deter the employer. Courts have the competence to fix the amount of this compensation, not the legislator (Conclusions XIX-3, Germany).

The Committee requests that the next report provide detailed information regarding the guarantees of enforcement of the equal pay principle, burden of proof, and sanctions as well as domestic case law on equal pay litigations.

Methods of comparison and other measures

Under Article 20 of the Charter, equal treatment between women and men includes the issue of equal pay for work of equal value. Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful this comparison can only be made across companies/undertakings. Therefore, the Committee requires that it be possible to make pay comparisons across companies. It notes

that at the very least, legislation should require pay comparisons across companies in one or more of the following situations:

- cases in which statutory rules apply to the working and pay conditions in more than one company;
- cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;
- cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding [company] or conglomerate.

The Committee holds that this interpretation applies, *mutatis mutandis* to Article 4§3.

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

The Committee takes note of the statistics regarding the pay gap between women and men. It notes that women earned, overall in all occupations, around 64.1% of the men's wage in 2010.

The Committee recalls that under Article 4§3, States must promote positive measures to narrow the pay gap, including:

– measures to improve the quality and coverage of wage statistics;

– steps to ensure that more attention is paid to equal pay for women and men in national action plans for employment.

The Committee asks what measures are taken to narrow the gap.

Conclusion

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

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 Armenia.

It previously concluded (Conclusions 2010) that the situation in Armenia was not in conformity with Article 4§4 of the Charter on the grounds that notice periods and severance pay were not calculated according to the length of service; one month was not a reasonable period of notice for workers with more than one year of service; and failure to fulfil obligations, loss of the employer's confidence and being called up for military service were no acceptable grounds for dismissal without notice. It asked for information on the notice period or severance pay applied in cases of long-term incapacity for work and the cases provided for in Article 113, paragraphs 1, No. 10 of the Labour Code. It also asked for examples of notice periods arising from collective agreements and/or individual employment contracts.

The report does not provide this information. The Government representative informed the Governmental Committee (Report on Conclusions 2010, §§ 138-140) of the changes to the Code in force since 1 July 2010.

Reasonable period of notice

The Committee notes that Article 113, paragraph 1, of the Code now contains 11 grounds for dismissal. Under Article 113, paragraph 2 of the Code, combined with Article 115, paragraph 1 of the Code, a two-month notice period applies to dismissal following the liquidation of the company or a change in circumstances (grounds provided for by Article 113, paragraph 1, Nos. 1 and 2 of the Code). Notice periods for dismissal on the grounds of unsuitability of the employee, long-term incapacity for work or the employee reaching retirement age (grounds given in Article 113, paragraph 1, Nos. 3, 7 and 11 of the Code) are as follows:

1. 14 days for employees with up to one year of service;
2. 35 days for one to five years of service;
3. 42 days for five to ten years of service;
4. 49 days for ten to 15 years of service;
5. 60 days for more than 15 years of service.

In cases of termination of employment following the liquidation of a company, a change in its circumstances or the reinstatement of the employee in previous employment (grounds provided for by Article 113, paragraph 1, Nos. 1, 2 and 4 of the Code), Article 129, paragraph 1, of the Code also provides for a payment equivalent to the wage payable during the notice period. The amount of severance pay awarded for dismissal on the grounds of unsuitability of the employee, long-term incapacity for work or the employee reaching retirement age (provided for in Article 113, paragraph 1, Nos. 3, 7 and 11 of the Code) is equivalent to the wage payable for:

1. ten days for up to one year of service;
2. 25 days for one to five years of service;
3. 30 days for five to ten years of service;
4. 35 days for ten to 15 years of service;
5. 44 days for more than 15 years of service.

The Committee points out that by 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 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. The Committee notes in the present case that, since 1st July 2010, the calculation of notice periods and severance pay has been based on length of service. It considers, however, that the two-month notice period and the amount of severance pay awarded in the event of the liquidation of the company or a change in its circumstances (grounds provided for in Article 113, paragraph 1, Nos. 1 and 2 of the Code) are only reasonable within the meaning of Article 4§4 of the Charter for employees with fewer than two years of service. The notice period and severance pay for dismissal on the grounds of unsuitability of the employee, long-term incapacity for work or the employee reaching retirement age (provided for in Article 113, paragraph 1, Nos. 3, 7 and 11 of the Code) are insufficient with regard to Article 4§4 of the Charter.

The Committee also notes that Article 129, paragraph 2 of the Code allows for longer notice periods to be established and repeats its request for examples of collective agreements containing more favourable clauses for employees. It also asks for the next report to state whether the application of the same grounds of dismissal to the early termination of fixed-term contracts also relates to notice periods or severance pay in lieu thereof.

Application to all workers

The Committee notes the 13 grounds for terminating employment contracts listed in Article 109, paragraph 1 of the Code. Under Article 129, paragraph 1 of the Code, severance pay is only awarded when contracts are terminated following a substantial change in working conditions (ground provided for in Article 109, paragraph 1, No. 9 of the Code) or when the employee is called up for military service (ground provided for in Article 124 of the Code). The amount paid is the equivalent of the wage payable for:

1. ten days up to one year of service;
2. 25 days for one to five years of service;
3. 30 days for five to ten years of service;
4. 35 days for ten to 15 years of service;
5. 44 days for more than 15 years of service.

The Committee also notes that notice or severance pay in lieu thereof are excluded in the event employers of domestic workers die and have no descendent (ground provided for by Article 128 of the Code). The same applies in the event of dismissal on grounds of unsuitability (provided for in Article 120, paragraph 1 of the Code); repeated failure to perform duties or disciplinary offences; loss of the employer's confidence; abuse of alcohol, narcotics or other psychotropic substances; failure to report for one day or more with no good reason; or refusal to undergo the mandatory medical examination (Article 123, paragraph 1 combined with Article 113, paragraph 1, Nos. 5, 6 and 8 to 10 of the Code).

The Committee points out that protection by means of notice periods and/or compensation in lieu thereof must cover all workers regardless of whether they have a fixed-term or a permanent contract (Conclusions XIII-4 (1996), Belgium) and regardless of the reason for the termination of their employment (Conclusions XIV-2 (1998), Spain). It notes in the present case that, since 1 July 2010, the calculation of severance pay has been based on the length of service. It considers, however, that the severance pay for termination of employment following a substantial change in working conditions (ground provided for in Article 109, paragraph 1, No. 9 of the Code) or when the employee is called up for military service (ground provided for in Article 124 of the Code) does not satisfy the requirements of Article 4§4 of the Charter. The same applies to the three-day notice period for seasonal work (Article 100, paragraph 1 of the Code) and temporary work (Article 101, paragraph 1 of the Code).

With regard to serious offences, which are the only grounds on which dismissal without notice or compensation is authorised (Conclusions 2010, Armenia), the Committee considers that the only ground for immediate dismissal which is in conformity with Article 4§4 is that of repeated failure to perform duties or disciplinary offences (provided for in Article 113, paragraph 1 No. 5 of the Code). For most grounds of dismissal or termination of employment contracts, however, the ruling out of notice periods and/or compensation in lieu thereof is not in conformity with Article 4§4 of the Charter.

The Committee asks for information in the next report on the notice periods that apply in the public sector, particularly for civil servants covered by the Civil Service Act of 26 May 2011 (No. 172), as amended by Law No. 122-N of 19 March 2012.

Conclusion

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

- in most cases, no notice period and/or severance pay in lieu thereof is applicable to dismissal or termination of an employment contract;
- with regard to the particular situations in which provision has been made for notice and/or severance pay in lieu thereof, the period and/or amount is not reasonable as regards:
    - dismissal following the liquidation of the company or the change in circumstances, beyond five years of service;
    - dismissal on the ground of the employee's unsuitability for the job, long-term incapacity for work or having reached retirement age;
    - termination of employment contracts following a substantial change in working conditions or when the employee is called up for military service;
    - termination of seasonal or temporary work contracts.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to wage deductions

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

It previously concluded (Conclusions 2007 and 2010) that the situation in Armenia was not in conformity with Article 4§5 on the ground that it had not been established that deductions from wages would not deprive workers and their dependants of their means of subsistence. It repeated its request for information on: the way in which the extent and origin of damage caused to employers by their employees was established; the rules that applied to the deduction of trade union dues, fines and maintenance payments; the application of the 50% limit on deductions; and how means of subsistence were provided for workers with the lowest incomes and their dependents.

In reply, the report confirms that the general limits to deductions from wages to 50% of the monthly wage, under Article 214 of the Labour Code, applies to employees receiving the minimum wage.

The Committee notes that, on the whole, Law No. 117-N of 24 June 2010 amending the Code has made no change in the situation since the previous reference periods. It notes, however, that Article 190, paragraph 3 of the Code now authorises the withdrawal of wages altogether when the production of defective goods is attributable to the employee's fault. Article 191, paragraphs 1 and 2 of the Code also authorises proportional deductions when production quotas are not reached, with the maintenance of two-third of the wage when the failure to achieve production quotas cannot be attributed to the employee, and unlimited deductions when the shortfall can be attributed to the employee.

The Committee points out that the goal of Article 4§5 of the Charter is to guarantee that workers protected by this provision are not deprived of their means of subsistence (Conclusions XVIII-2 (2007), Poland). It notes that, in the present case, the complete withdrawal of wages in the circumstances provided for by Articles 190 and 191 of the Code deprives workers and their dependants of any means of subsistence. The limitation provided for by Article 214 of the Code allows situations to persist in which workers receive only 50% of the minimum wage, an amount which does not enable them to provide for themselves and their dependants.

The Committee also points out that under Article 4§5 of the Charter, the circumstances (tax claims, social contributions, civil claims, maintenance claims, criminal or disciplinary fines, trade union dues, etc.) and/or the operations (attachment) liable to result in deductions from wages must be clearly and precisely defined. Hence, it asks for information in the next report on the deductions authorised by the law under Article 213, paragraph 1 of the Code. It also repeats its request concerning the way in which the extent and the origin of damage caused to employers by the actions of their employees is established under Article 213, paragraph 2, No. 4 of the Code. Furthermore, it asks for information on measures to prevent workers from waiving their right to limited deductions from wages.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 4§5 of the Charter on the grounds that:

- withdrawing wages entirely for reasons connected with the quality and quantity of production deprives workers and their dependants of any means of subsistence;
- after all authorised deductions, the wages of workers with the lowest pay do not allow them to provide for themselves and their dependants.

Article 5 - Right to organise

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

Forming trade unions and employers' organisations

The Committee refers to its previous conclusion (Conclusions 2010) for a detailed description of the formation of trade unions and employers' organisations.

In its previous conclusion, the Committee asked for the amount of the registration fee to be paid by trade unions as well as employers' organisations. The report does not provide an answer in this respect. Therefore, the Committee reiterates its question. In the meantime, the Committee reserves its position on this point.

Freedom to join or not to join a trade union

In its previous conclusion (Conclusions 2010) the Committee asked whether protection was provided to employees against harmful consequences for their employment due to their trade union membership or activities, particularly against any form of reprisal or discrimination in the areas of recruitment, dismissal or promotion. In case such discrimination occured, the Committee asked whether domestic law makes provision for compensation that is adequate and proportionate to the harm suffered by the victim.

The Committee notes 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 notes, however, that the report does 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 is provided for compensation that is adequate and proportionate to the harm suffered by the victim. The Committee therefore concludes that the situation is not in conformity with the Charter on the ground that it has not been established whether there is adequate protection against discrimination for employees who are trade union members or engage in trade union activities.

The Committee recalls that workers must be free to join or not to join a trade union (Conclusions I (1969) Statement of Interpretation on Article 5). The Committee asks the next report to provide information on the freedom to not to join a trade union. In the same vein, the Committee asked in its previous conclusion (Conclusions 2010) whether in practice there are examples of closed shops or other union security clauses. Since the report is silent on these issues, the Committee reiterates its questions.

Trade union activities

According to section 13 of the Trade Unions Act, trade unions are independent from state bodies, local self-government bodies, employers, other organisations and political parties. They should not be accountable to them nor be subject to their control, except for cases provided for by law. Moreover, public administration bodies, local self-government bodies, other organisations, and natural persons cannot interfere with the exercise of trade unions' rights, except in cases provided for by law. In its previous conclusion (Conclusions 2010) the Committee asked for more information on circumstances provided by law where interference in unions' affairs by the authorities is permitted. In view of the absence of an answer, the

Committee reiterates its question. In the meantime, the Committee reserves its position on this point.

In its previous conclusion (Conclusions 2010) 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. The report does not provide answers in this respect. The Committee therefore concludes 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.

Representativeness

The Committee recalls that domestic law may restrict participation in various consultation and collective bargaining procedures to representative trade unions alone. For the situation to comply with Article 5, the following conditions must be met: 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 (2000), Belgium); c) criteria used to determine representativeness must be reasonable, clear, predetermined, objective, prescribed by law and open to judicial review (Conclusions XV-1 (2000), France).

The Committee notes that pursuant to Section 4(1) and (2) of the Law on Employers' Organisations, the number of employers required to form employers' organisations is as follows:

- at the national level: over half of the employers' organisations operating at the sectoral and territorial levels;
- at sectoral level: over half of the employers' organisations operating at the territorial levels;
- at territorial level: the majority of employers in a particular administrative territory or employers' organisations from different sectors in a particular administrative territory.

The Committee notes that in 2011 the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO-CEACR) considered that the minimum membership requirements, as set out in section 4 of the Law, are too high given that there is only one national level organisation, one organisation per sector and one territorial level employers' organisation per territory or a particular sector in the territory. The ILO Committee notes the Government's indication that the issue of amending the Law on Employers' Organisations will be discussed with the relevant social partners.

The Committee also notes that section 2 of the Law on Trade Unions sets out similar prerequisites for federations of trade unions at the territorial, sectoral and national levels for the purpose of representing workers' labour, professional, social and economic rights and interests, and protection in labour relations with employers' organisations and state bodies, by requiring the participation of more than half of the trade unions which include the majority of workers at the respective level.

The Committee notes that in 2011 the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO-CEACR) expressed the hope that the Government will take the necessary measures in order to amend the Law on Employers' Organisations and the Law on Trade Unions in consultation with the social partners, so as to lower the minimum membership requirements set for establishing organisations at the national, sectoral and territorial levels and to ensure that more than one organisation can be established at each level. It requested the Government to provide in its next report information on the measures taken or

envisaged in this respect (Direct Request (CEACR) – adopted 2011, published 101st ILC session (2012), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Armenia (Ratification: 2006)). In the meantime, the Committee concludes that the situation is not in conformity with the Charter, on the ground that the minimum membership requirements set for forming trade unions and employers' organisations are too high.

Personal scope

Pursuant to Article 28 of the Constitution, freedom of association, including the right to form and join trade unions, may be restricted in a manner prescribed by law for employees of the Prosecutor's Office, as well as for judges and members of the Constitutional Court. The Government indicates that such employees do not enjoy the right to form trade unions. According to section 6 of the Law on Trade Unions (as amended in 2006) public servants employed in the Prosecutor's Office, police, national security service, as well as judges and members of the Constitutional Court cannot be members of trade union organisations. The Committee notes that in 2011 the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO-CEACR) requested the Government to take the necessary measures to amend its legislation so as to ensure that employees of the Prosecutor's Office, judges and members of the Constitutional Court, as well as civilians employed by the police and security service can establish and join organisations of their own choosing. It requested the Government to indicate all measures taken or envisaged in this respect (Direct Request (CEACR) – adopted 2011, published 101st ILC session (2012), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Armenia (Ratification: 2006)).

Moreover, pursuant to section 6 of the Law on Trade Unions, a signed employment contract with a given employer is a requisite for trade union membership. The ILO Committee considers that the criterion for determining the persons who should enjoy this right should not be based on the existence of an employment relationship, which is often non-existent, for example in the case of self-employed workers or those who practice liberal professions, or in the informal sector. The Committee notes that in 2011 the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO-CEACR) requested the Government to indicate in its next report any measures taken or envisaged to ensure the rights afforded by the Convention to the abovementioned categories of workers, namely workers who for various reasons may not have a formal contract of employment (Direct Request (CEACR) – adopted 2011, published 101st ILC session (2012), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Armenia (Ratification: 2006)).

The Committee concludes that the situation is not in conformity with the Charter, on the ground that the following categories of workers cannot form or join trade unions of their own choosing: employees of the Prosecutor's Office, civilians employed by the police and security service, self-employed workers, those working in liberal professions and the informal sector workers.

In respect of the police, the Committee considered in its previous conclusion (Conclusions 2010) that the situation of police officers in Armenia was not in conformity with Article 5, on the ground that they were prohibited from joining trade unions. Given that the situation has not changed in this respect, the Committee reiterates its conclusion of non-conformity.

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 worplaces to carry out their responsibilities;
- the minimum membership requirements set for forming trade unions and employers' organisations are too high;
- the following categories of workers cannot form or join trade unions of their own choosing: employees of the Prosecutor's Office, civilians employed by the police and security service, self-employed workers, those working in liberal professions and the informal sector workers;
- police officers are prohibited from joining trade unions.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

With regard to the enterprise level, the Committee notes that Article 41 (4) of the Labour Code provides that joint consultation is consultation between employers and workers' representatives. It also notes that consultation particularly covers: employers' current and future activities, information on possible changes in employment, measures to be implemented in case of possible reduction in the number of employees and other information on employment relations, unless such information is deemed to be a state, official or commercial secret.

At the national level, the Committee refers to the Republican Collective Agreement concluded between the Government, the Confederation of Trade Unions and the Republican Employers' Association on 27 April 2009, which regulates social and labour relations and joint consultations of the mentioned parties. Section 5 of this Collective Agreement provides for a Tripartite Republican Commission. The latter has been established on 9 July 2009 and is composed of 5 representatives from each party. The purpose of the Tripartite Republican Commission is to promote the establishment and development of social partnership and ensure the implementation of the Republican Collective Agreement. The sittings of the Commission are convened on an ad hoc basis at least once every three months by the chairperson. The parties shall consult on the following issues: occupational safety and health; jobs; salary and living standard of the population; labour market and employment; and social security and social protection.

The Committee recalls that it is open to States Parties to require trade unions to meet representativeness criteria subject to certain general conditions. With respect to Article 6§1, such a requirement must not excessively limit the possibility of trade unions to participate effectively in consultation. In order to be in conformity with Article 6§1, representativity criteria should be prescribed by law, should be objective and reasonable, and subject to judicial review, which offers appropriate protection against arbitrary refusals (Conclusions 2006, Albania). The Committee refers to its conclusion under Article 5 where it finds that the situation is not in conformity with the Charter, on the ground that minimum membership requirements set for forming trade unions and employers' organisations are too high. Consequently, the Committee concludes that the situation is not in conformity with the Charter, on the ground that minimum membership requirements excessively limit the possibility of trade unions to participate effectively in consultations. The Committee also wishes the next report to indicate whether non-representative organisations have the right to participate in collective bargaining.

In its previous conclusion (Conclusions 2010), the Committee asked whether there exist specific consultative bodies in the public sector and if so what their structure is and how they operate. In view of the lack of information in this respect, the Committee reiterates its question. 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 6§1 of the Charter on the ground that minimum membership requirements excessively limit the possibility of trade unions to participate effectively in consultations.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

The Committee notes that, according to the Labour Code, as amended: (i) in case of absence of trade unions in the company or if the existing trade union does not include more than half of the company's workers, the staff meeting (conference) elects representatives (or a representative body) (section 23(2)); (ii) the existence of representatives (or a representative body) elected by the staff meeting (conference) must not prevent the implementation of trade unions' functions (section 23(3)); and (iii) the "workers' representatives", a term that includes both trade union delegates and elected representatives, enjoy the right to negotiate collectively and to sign collective agreements (section 25(1)(iv)) and are designated as the parties to the collective agreement (sections 45(1), 55(1) and 56). Furthermore, the Committee notes that, according to section 16(2) of the Trade Union Act, as amended, if the trade union does not represent more than half of the workers who have signed an employment contract with the employer, it can represent and defend only the interests of those employees who are members of the union.

The Committee notes that in 2012 the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO-CEACR) recalled that direct negotiations between the undertaking and its employees, bypassing representative organisations where these exist, is detrimental to the principle that negotiation between employers and organisations of workers should be encouraged and promoted. Consequently, the ILO Committee requested the Government to clarify whether, under the legislation in force, in cases where there is no trade union representing 50 per cent of the company's workers, the existing minority unions are entitled to bargain collectively on behalf of their own members (Direct Request (CEACR) – adopted 2012, published 102nd ILC session (2013), Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – Armenia (Ratification: 2003)). The Committee requests the next report to provide information in this respect. In the meantime, it reserves its position on this point.

The Committee notes that, as a result of the adoption of the Act to amend and supplement the Labour Code of 24 June 2010, Section 44 of the Labour Code now provides that its Part 2 (Collective Labour Relations) applies to the state and local autonomous bodies as well as to the workers of the Central Bank of Armenia, and does not apply to the labour relations involving the workers of special services and persons holding political, discretionary and civil posts.The Committee notes that in 2012 the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO-CEACR) requested the Government to provide information on the meaning of the terms "special services" and "civil posts", and on the categories of workers covered by those terms (Direct Request (CEACR) – adopted 2012, published 102nd ILC session (2013), Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – Armenia (Ratification: 2003)). The Committee also requests the next report to provide information on the meaning of the terms "special services" and "civil posts", and on the categories of workers covered by those terms. In the meantime, it reserves its position on this point.

The report indicates that in 2012, 873 collective agreements have been concluded. The collective agreements applies to 175 252 employees of enterprises, out of which 173 004 are members of a trade union. The Committee wishes the next report to indicate the coverage of the workforce by collective bargaining.

In view of the lack of information, the Committee asks the next report to provide information on the procedures governing the possible extension of collective agreements.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

The Committee notes that under the Labour Code all collective labour disputes must be brought before a conciliation commission. Pursuant to Article 68 of the Labour Code the Conciliation Commissions are set up with an equal number of representatives of each party to the dispute. The total number of members of the Conciliation Commission shall be determined upon agreement of the parties. The Conciliation Commission shall be set up within seven days from the written refusal to meet the claims by the entity having received the claim. If the parties fail to determine the total number of members of the Conciliation Commission, they shall at their discretion delegate their representatives to the Commission. Each party may not have more than five representatives.

In its previous conclusion (Conclusions 2010) the Committee asked whether there are any circumstances in which recourse to arbitration is compulsory. The report does not provide an answer in this respect. Therefore, the Committee reiterates its question. In the meantime, its reserves its position on this issue.

In its previous conclusion the Committee also asked to be informed on mediation/conciliation procedures in the public sector. In view of the lack of information on this issue, the Committee concludes that the situation is not in conformity with the Charter, on the ground that it has not been established that mediation/conciliation procedures exist in the public sector.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 6§3 of the Charter on the ground that it has not been established that mediation/conciliation procedures exist in the public sector.

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

Collective action: definition and permitted objectives

The Committee notes that according to Article 73 of the Labour Code a strike is defined as a "temporary cessation of work, completely or partly, of the employees or a group of employees of one or several organisations, for the purpose of settling a collective labour dispute".

Entitlement to call a collective action

The Committee notes that pursuant to Article 74(1) of the Labour Code in order to declare a strike, a vote by two-thirds of an organisation's (enterprise's) employees is required by secret ballot. If a strike is declared by a subdivision of an organisation, a vote by two-thirds of the employees of that subdivision is required. However, if such a strike hampers the activities of other subdivisions, the strike should be approved by two-thirds of the employees of the subdivision, which may not be less than half of the total number of employees of the organisation. Further to the amendment of this Article on 24 June 2010, "in case of absence of a trade union in the organization, the responsibility for declaring a strike by the decision of the staff meeting (conference) is transferred to the relevant branch or regional trade union".

The Committee notes that in 2011 the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO-CEACR) considered that the requirement of a decision by more than half of all the workers involved in order to declare a strike is excessive. It recalled in this respect, that if a member State deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level. The ILO Committee therefore requested the Government to take the necessary measures in order to amend section 74 of the Labour Code, so as to lower the required majority and to ensure that account is taken only of the votes cast (Direct Request (CEACR) – adopted 2011, published 101st ILC session (2012), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Armenia (Ratification: 2006)). The Committee considers that the situation is not in conformity with the Charter, on the ground that the required majority to call a strike is too high.

Specific restrictions to the right to strike and procedural requirements

In its previous conclusion (Conclusions 2010) the Committee asked whether strikes are entirely prohibited in the energy supply services or whether there is a minimum service requirement. The report does not provide an answer in this respect. Therefore, the Committee concludes that the situation is not in conformity with the Charter, on the ground that it has not been established that in the energy supply services the restrictions on the right to strike falls within the scope of application of Article G. The Committee asks whether there are other sectors where the right to strike is restricted.

Consequences of a strike

According to Article 80 of the Labour Code after the decision to declare a strike has been made and during the strike, the employer shall have no right to:

- impede all or individual employees to attend their workplaces;

- refuse to provide work to employees;
- subject employees to disciplinary liability for participating in a strike.

In its previous conclusion (Conclusions 2010) the Committee asked whether striking workers could be dismissed after the strike. In view of the absence of an answer, the Committee concludes that the situation is not in conformity with the Charter, on the ground that it has not been established that striking workers are protected from dismissal after the strike.

Given the absence of information, the Committee asks for the second time confirmation that any deduction from strikers' wages corresponds exactly to the duration of the strike and that workers participating in a strike, who are not members of the trade union having called the strike, are entitled to the same protection as trade union members. 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 6§4 of the Charter on the grounds that:

- the required majority of workers to call a strike is too high;
- it has not been established that the restrictions on the right to strike in the energy supply services comply with the conditions established by Article G;
- it has not been established that striking workers are protected from dismissal after the strike.

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

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

Working conditions, work organisation and working environment

Pursuant to Article 22 of the Labour Code, in the event workers are represented by trade unions or elected representatives, such representation also covers non-unionised workers. The Committee recalls that States may exclude from the scope of Article 22 of the Charter those undertakings employing less than a certain number of workers, to be determined by national legislation or practice. The Committee wishes the next report to indicate the number of employees needed for an undertaking to have employees represented by trade unions or elected representatives.

The Committee notes from its previous conclusion (Conclusions 2010) that Article 25 of the Labour Code provides that employees' representatives have the right to submit proposals to the employer on the organisation of work. Pursuant to Article 26 of the Labour Code, an employer is under the obligation to consult with employees' representatives when making decisions that may affect the employees' legal position. With respect to decisions on matters explicitly referred to in the Labour Code, the employer shall obtain their prior consent. The employer is obliged to consider the proposals submitted by the employees' representatives and to respond to them in writing within one month at the latest.

In its previous conclusion (Conclusions 2010) the Committee asked for information on the applicable rules regarding the participation of employees in the determination of working conditions, work organisation and working environment within undertakings where there is no trade union representation or elected representative. In the same vein, it asked what the proportion of firms is in which there is no trade union representation, and what the proportion of such enterprises is in which representatives have been elected pursuant to Article 23 of the Labour Code. It further asked what the rules governing the elections of these representatives are.

The Committee recalls that workers and/or their representatives (trade unions, workers' delegates, health and safety representatives, works councils) must be granted an effective right to participate in the decision-making process. In this regard, the Committee already asked twice for information on whether and in which way the proposals made by employees' representatives have to be taken into consideration by the employer when taking decisions related to working conditions, work organisation and working environment. It also asked for further details on how and within what intervals consultations with employees on the matters covered by Article 22 are carried out in practice, and when do decisions taken by the employer require the prior consent of the employee's representative.

In view of the repeated lack of answers to all these questions, the Committee concludes that the situation is not in conformity with the Charter, on the ground that it has not been established that the right of workers to take part in the determination and improvement of working conditions and working environment is effective.

Protection of health and safety

The Committee recalls that according to the Appendix, Article 22 "affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of bodies in charge of monitoring their application" and 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 of the Charter. For the States who have accepted Articles 3 and 22, this issue is only examined under Article 22. The Committee recalls that for the States who have accepted Articles 3 and 22, this issue is only examined under Article 22.

Following amendments to the Labour Code on 24 June 2010, Article 253 of the Labour Code provides that an employer is obliged to inform and consult the employees on all matters related to the analysis, planning, implementation and supervision of measures aimed at ensuring the safety and health of employees at the workplace. The employer must involve employees' representatives in the discussion of issues concerning the health and safety of employees. The Committee already asked twice for information on the applicable rules regarding the participation of employees in the determination of the conditions for the protection of health and safety at the work place within undertakings where there is no trade union representation or elected representative. In view of the absence of an answer to this question, the Committee concludes that the situation is not in conformity with the Charter, on the ground that it has not been established that the right of workers to take part in the determination and improvement of the protection of health and safety is effective.

In addition, the employer has the right to set up a Commission dealing with health and safety issues. This Commission aims at ensuring the participation of employees in decisions on matters of health and safety. The Commission is composed of an equal number of trade union representatives or elected representatives and employer's representatives. The Commission organises its sittings at least every three months. The sitting of the Commission shall have a quorum for participation of more than half of the members. The Committee reiterates its question regarding the proportion of undertakings having established such a Commission.

The Committee asks that the next report provides detailed information on this Commission.

Organisation of social and socio-cultural services and facilities

Pursuant to Article 22 of the Labour Code, workers' participation concerns *inter alia* the organisation of social and socio-cultural services within the undertaking. In addition, section 15 of the Law on Trade Unions provides that the objectives of a trade union shall, *inter alia*, be "to submit proposals to the employer on improvement of working conditions and recreational facilities of employees".

The Committee asks again what these services are, and how the participation of employees in their organisation takes place.

Enforcement

The Committee noted in its previous conclusion that, according to Article 33 to 35 of the Labour Code, state control and supervision of observation of the obligations established by labour legislation or collective agreements shall be exercised by the relevant state bodies, in particular the State Labour Inspectorate, and non-state supervision by trade unions and employers. The Committee requests the next report to indicate what the effect is of this non-state supervision. Furthermore, Article 38 of the Labour Code provides that the protection of labour rights shall be exercised by the court and carried out by the representatives of the employees. The Committee requests the next report to explain the meaning of this provision.

In its previous conclusion (Conclusions 2010) the Committee asked for the second time by what means non-governmental supervision of the employers' obligations in connection with the

participation of employees in the determination of working conditions in the undertaking may be exercised by the trade unions and what the trade unions' competences are in this respect. It further asked whether trade unions and employees' representatives may challenge any violation of the workers' right to participation before competent courts or administrative bodies, and which are the competent courts or administrative bodies in this respect and what are the remedies available.

In view of the lack of answers to these questions, the Committee concludes that the situation is not in conformity with the Charter, on the ground that it has not been established that workers' representatives have legal remedies when their right to take part in the determination and improvement of working conditions and working environment is not respected.

The Committee also asked for further details on the powers and functions of the State Labour Inspectorate in this respect. Pursuant to Section 10 of the Law on State Labour Inspectorate, the Inspectorate has the power:

- to analyse the reasons for the violation of the labour legislation and to submit proposals to the employer on the elimination of the violation and the restoration of violated rights;
- to carry out control and supervision of the observance of the labour legislation and other legal acts containing norms of labour law by the employers;
- to require from the employer to take relevant measures to eliminate the violations and deficiencies in the work organisation during examination and/or inspections, which may endanger the life or health of employees;
- to bring an action before the court in the cases and the manner prescribed by the legislation. The Committee requests the next report to indicate whether the action before the court concerns the right of workers to take part in the determination and improvement of working conditions and the working environment.

According to section 15 of the Law on State Labour Inspectorate, the Inspectorate has the right to submit to employers (or their representatives) motions subject to mandatory consideration for the purpose of eliminating violations of the labour legislation and other legal acts containing norms of labour law and restoring the violated rights of employees.

The Committee asked twice what the sanctions are in the event that the employer does not respect the employees' right to participation in the determination of the decision-making process in the enterprise and whether workers individually or their representatives are entitled to some kind of compensation in case of a breach of their right to take part in the determination and improvement of the working conditions and the work environment. Given the lack of information, the Committtee concludes that the situation is not in conformity with the Charter, on the ground that it has not been established that sanctions exist for employers who fail to fulfill their obligations under this Article.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 22 of the Charter on the grounds that it has 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;
- the right of workers to take part in the determination and improvement of the protection of health and safety 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;

- sanctions exist for employers who fail to fulfill their obligations under this Article.

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

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

Protection granted to workers' representatives

The Committee recalls that representation of workers in employment relations is mainly ensured by trade unions. In enterprises where no trade union is active, the staff assembly shall elect representatives to represent the employees' interests in collective negotiations between the employer and the respective sectoral or territorial trade union.

The report indicates that Article 119 of the Labour Code provides that an employer may not dismiss an employee representative without the consent of the State Labour Inspector except in certain circumstances. The Committee notes that under Article 119 an employer may dismiss an employee representative, without the consent of the Labour Inspectorate *inter alia* where "the employee no longer enjoys the employer's confidence". The Committee considered in its previous conclusion (Conclusions 2010) that such a provision may be open to abuse and asked for further information on how this provision has been interpreted by the courts. In this regard the report indicates what is meant by "employer's confidence". According to Article 122 of the Labour Code it may have the following meanings:

- the employee, while dealing with funds or goods, has committed acts that have made the employer incur material damages;
- the employee, while carrying out teaching and educating functions, has committed an act that is incompatible with the continuation of the given task;
- the employee has released state, official, trade or technological secrets or has informed the competing organisation.

The Committee understands that the notion of "employer's confidence" is limited to those three examples and asks confirmation of its understanding.

The Committee understands from the report and from the legislation examined (the Labour Code) that protection is afforded to workers' representatives only during their mandate, but not after the end of period of their office as workers' representatives.

The Committee recalls that the rights recognised in the Charter must take a practical and effective, rather than purely theoretical form (International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §59). To this end, the protection afforded to workers' representatives shall be extended for a reasonable period after the effective end of period of their office (Conclusions 2010, Statement of Interpretation on Article 28). The Committee has, for example, found the situation to be in conformity with the requirements of Article 28 in countries such as Estonia (Conclusions 2010) and Slovenia (Conclusions 2010), where the protection is extended for one year after the end of the mandate of workers' representatives or in Bulgaria (Conclusions 2010) where the protection granted to workers' representatives is extended for six months after the end of their mandate. The Committee considers, therefore, that the situation is not in conformity on the ground that the protection granted to workers' representatives is not extended for a reasonable period after the end of period of their mandate.

As regards protection of employees against prejudicial acts other than dismissal, the Committee refers to its previous conclusion (Conclusions 2010) where it noted that sections 23 and 25 of the Trade Unions Act stipulate that a violation of trade union's or its representatives' rights or the persecution of the leaders and representatives of the trade union by state bodies, local self-

governing bodies, employers and other organisations and their officials is prohibited and triggers their liability as regulated in the corresponding legislation, unless explicitly permitted by law. Pursuant to Article 26 of the Labour Code, an employer must respect the rights of the employees' representatives and shall not interfere with their activities. The Committee already asked twice for more detailed information on protection of workers' representatives against prejudicial acts other than dismissal. In view of the lack of information in the report, the Committee concludes that the situation is not in conformity with the Charter, on the ground that it has not been established that workers' representatives are granted adequate protection against prejudicial acts other than dismissal.

Facilities granted to workers' representatives

The Committee recalls that the facilities granted to workers' representatives may include for example those mentioned in the ILO Recommendation R143 concerning protection and facilities to be afforded to workers representatives within the undertaking, adopted by the ILO General Conference of 23 June 1971. These include: 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 authorisation to post bills or notices in one or several places to be determined with the management board; and the authorisation to distribute information sheets, factsheets and other documents on general trade unions' activities. Other facilities may also be included, 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 and Conclusions 2003, Slovenia). The Committee also recalls that the participation in training courses on economic, social and union issues should not result in a loss of pay. Training costs should not be borne by the workers' representatives (Conclusions 2010, Statement of Interpretation on Article 28).

The Committee notes from its previous conclusion (Conclusions 2010) that section 23 of the Trade Unions Act provides that employers shall afford trade unions with the necessary facilities for the performance of their functions as set out in their statute or in collective agreements. The Committee referred to its interpretative statement on the facilities to be granted to workers' representatives mentioned above as well as to its question on travel expenses and asked the next report to provide all the necessary information. In view of the lack of information, the Committee concludes that the situation is not in conformity on the ground that it has not been established that facilities granted to workers' representatives are adequate.

Conclusion

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

- the protection granted to workers' representatives is not extended for a reasonable period after the end of period of their mandate;
- 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.