November 2008

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2008 (AZERBAIJAN)

Articles 1, 9, 20 and 24
of the Revised Charter

Introduction

The function of the European Committee of Social Rights is to assess the conformity of national law and practice with the European Social Charter and the Revised Charter. In respect of national reports, it adopts "conclusions" and in respect of collective complaints, it adopts "decisions".

A presentation of this treaty as well as statements of interpretation formulated by the Committee figure in the General Introduction to the Conclusions[1].

The Revised European Social Charter was ratified by Azerbaijan on 2 September 2004. The time limit for submitting the 1st report on the application of the Revised Charter to the Council of Europe was 31 October 2007 and Azerbaijan submitted it on 4 December 2007.

This report was the first under the new system for the submission of reports adopted by the Committee of Ministers.[2] It concerned the accepted provisions of the following articles belonging to the first thematic group "Employment, training and equal opportunities":

– the right to work (Article 1),
– the right to vocational guidance (Article 9),
– the right to vocational training (Article 10),
– the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
– the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
– the right of men and women to equal opportunities (Article 20),
– the right to protection in cases of termination of employment (Article 24),
– right of workers to the protection of claims in the event of insolvency of the employer (Article 25).

Azerbaijan has accepted these articles with the exception of Articles 10, 15, 18 and 25.

The applicable reference period was 1 November 2004 – 31 December 2006.

The present chapter on Azerbaijan concerns 7 situations and contains:

– 1 conclusion of conformity: Article 24;
– 1 conclusion of non-conformity: Article 20.

In respect of the 5 other situations concerning Articles 1§1, 1§2, 1§3, 1§4 and 9, the Committee needs further information. The Government is therefore invited to provide this information in the next report on the articles/provisions in question.

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

[2] Decision adopted at the 963rd meeting of the Ministers' Deputies on 3 May 2006.

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

– the right to safe and healthy working conditions (Article 3),
– the right to protection of health (Article 11),
– the right to social security (Article 12),
– the right to social and medical assistance (Article 13),
– the right to benefit from social welfare services (Article 14),
– the right of elderly persons to social protection (Article 23),
– the right to protection against poverty and social exclusion (Article 30).

The deadline for the report was 31 October 2008.

Article 1 — Right to work

Paragraph 1 – Policy of full employment

The Committee takes note of the information provided in Azerbaijan's report.

Employment situation

The Committee notes that according to Eurostat, Azerbaijan experienced strong growth during the reference period (34.5% in 2006, whereas it was 10.1% in 2004).

It requests that the next report state the employment rate.

The Committee notes from another source[1] that unemployment stood at 8.5% in 2005. According to the report, the official figures for female and youth unemployment were 12.2% and 17.7% respectively in 2006. The Committee wishes the next report to show how the situation of young people and women with regard to unemployment has developed throughout the reference period.

It asks for information on the long-term unemployed as a proportion of all unemployed and the youth unemployment rate (among 15-24 year-olds). In the absence of any information in the report, the Committee asks for the statistics on unemployment among persons with disabilities and minorities.

Employment policy

The report indicates that the principal medium-term objectives of the employment policy pursued by the Government are to increase workers' competitiveness, encourage entrepreneurship and combat unemployment.

The Government has also made protection of unemployed and vulnerable persons one of the priorities of its Employment Strategy for 2006-2015 and has set the following specific objectives up to 2010:

– to reduce the level of unemployment significantly;
– to enhance the social protection of vulnerable persons;
– to improve the functioning of the labour market.

Various active measures (training, upgrading of skills, direct job creation) have been taken on behalf of persons with disabilities, women, young people, refugees and the elderly, through schemes to promote youth entrepreneurship, creation of regional training centres, and measures of positive discrimination in access to employment especially.

The report also mentions a programme to develop employment opportunities in the regions, aiming to create 600,000 jobs within five years. The Committee asks to be informed of the results of this programme.

In view of the scarcity of the information in the report, it requests that the next report answer the following questions:

– what is the number of beneficiaries of active measures for all categories of job seekers?
– how much time elapses, on average, between a person's registering as unemployed and being offered the benefit of an active measure for employment?

[1] Website of the International Labour Organisation : www.ilo.org

The Committee also asks whether specific employment programmes in favour of refugees are envisaged and for information on the results in terms of employment obtained by the beneficiaries of training measures.

According to the report, the total figure for expenditure on employment policy was equivalent to 1.7% of the GDP in 2006, whereas it only represented 0.2% of the GDP in 2004. The Government acknowledges, although efforts are being made to reverse the trend, that a far larger share of this amount is spent on passive measures than on active measures (1.4% and 0.3% respectively).

Conclusion

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

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

The Committee takes note of the information provided in Azerbaijan's report.

1. Elimination of all forms of discrimination in employment

The Committee notes that under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of sex, race, ethnic origin, religion, disability, age, sexual orientation and political opinion (Conclusions 2006, Albania).

The legislation must also cover both direct and indirect discrimination (Conclusions XVIII-1, Austria). With regard to indirect discrimination, the Committee points out that Article E of the Revised Charter prohibits "all forms of indirect discrimination" and that "such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all" (Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §52).

For states such as Azerbaijan that have accepted Article 20, the right to equal treatment and opportunities without discrimination based on sex is considered under this provision.

Under article 25 of the Azerbaijan constitution, all persons have equal rights and freedoms irrespective of race, nationality, religion, sex, origin, possessions, social position, political beliefs or membership of a political party, trade union or social group. Restrictions on or recognition of rights and freedoms based on race, nationality, social status, linguistic origins, beliefs or religion are prohibited. Article 16 of the labour code prohibits discrimination in employment based on citizenship, sex, race, nationality, language, place of residence, social status, social origin, age, family situation, religion, political opinions, beliefs or other factors unrelated to professional qualifications, job performance or professional skills of the employee. Nor is it permitted to grant privileges or restrict rights, directly or indirectly. Special measures on behalf of women, disabled persons, minors and other persons requiring social protection do not constitute discrimination. Persons who consider that they have been discriminated against may appeal to the courts.

The Committee notes that disability and sexual orientation are not explicitly included in the grounds on which the legislation bans discrimination. The Committee considers that these grounds are included under the formula "other factors unrelated to professional qualifications, job performance or professional skills of the employee". It however asks the Government to confirm this interpretation. It also asks to be informed of any measure taken in order to avoid discrimination, in particular on the basis of these grounds.

The Committee has ruled that the discriminatory acts and provisions prohibited by this provision may apply to all aspects of recruitment and employment conditions in general,

including remuneration, training, promotion, transfer, dismissal and other forms of detriment (Conclusions XVI-1, Austria). It asks for information in the next report showing how the aforementioned legal provisions are applied and enforced for each of the forms of employment discrimination prohibited by Article 1§2. It also asks whether there is a national strategy for combating all forms of discrimination in employment.

The Committee asks how the bans on direct and indirect discrimination are enforced.

The Committee has ruled that exceptions to the ban on discrimination may be authorised for essential occupational requirements or to permit positive action (Conclusions 2006, Bulgaria). It asks whether such exceptions are allowed and how they are applied.

The Committee has also ruled that legislation banning discrimination must be effective, and at the minimum must:

– grant authority to set aside, withdraw, revoke or modify any provision in collective agreements, employment contracts and firms' internal regulations that is incompatible with the principle of equal treatment (Conclusions XVI-1, Iceland). The Committee asks what the legislation stipulates in this regard and how it is enforced;
– offer employees who lodge complaints or bring actions in court protection against dismissal or other reprisals by employers (Conclusions XVI-1, Iceland). The Committee again asks what the legislation stipulates in this regard and how it is enforced;
– provide for appropriate and effective remedies in response to allegations of discrimination. When discrimination is established, the compensation must be effective and proportionate and act as a deterrent. Imposing a predetermined upper limit is therefore not compatible with Article 1§2 as in some cases the compensation awarded may not be commensurate with the loss or damage incurred and not sufficiently dissuasive for the employer (Conclusions 2006, Albania). The Committee asks what remedies are available for persons who think they have suffered discrimination and what compensation is possible if discrimination is found to have occurred. It also asks whether there is an upper limit to the compensation.

In disputes relating to an allegation of discrimination in matters covered by the Charter, the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment. It asks for a description in the next report of the situation regarding the burden of proof in disputes concerning allegations of discrimination.

The Committee considers that other means of combating discrimination in accordance with Article 1§2 of the Revised Charter include:

– recognising the right of trade unions to take action in cases of discrimination in employment, including action on behalf of individuals (Conclusions XVI-1, Iceland). The Committee asks whether trade unions have this right;
– the right of collective action by groups with an interest in obtaining a ruling that the prohibition of discrimination has been violated. The Committee asks whether such collective action is possible;
– the setting up of a specialised and independent body to promote equal treatment, especially by providing discrimination victims with the support they need to take proceedings (Conclusions XVI-1, Iceland). The Committee asks whether such a specialised body exists.

Regarding discrimination on grounds of nationality, the Committee has ruled that states may make foreign nationals' access to employment subject to possession of a work permit, but they may not issue a general ban on nationals of states party occupying jobs for reasons other than those set out in Article G. The only jobs from which foreigners may

be barred are therefore ones that are inherently connected with the protection of law and order or national security and involve the exercise of public authority (Conclusions 2006, Albania). The Committee asks whether foreign nationals have full access to employment, and in particular whether jobs in the public service are reserved for Azerbaijan nationals and if so how such restrictions are justified.

Finally, the Committee has ruled that excluding persons from the public service, in the form of refusal to recruit or dismissal, because of their previous political activities, is prohibited when it is not "necessary", within the meaning of Article G, because it does not apply solely to departments with responsibilities in the field of law and order and national security or to functions involving such responsibilities (Conclusions 2006, Lithuania). The Committee asks whether such exclusion is possible with regard to past or present political activities and if so in what way it can be deemed necessary, within the meaning of Article G.

2. Prohibition of forced or compulsory labour

The Committee considers that forced or compulsory labour in any form must be prohibited. Failure to apply in practice legislation that is not in conformity with the Revised Charter is not sufficient to bring the situation into conformity with the Revised Charter (Conclusions XIII-3, Ireland).

Forced labour is prohibited under article 35 of the constitution and article 17 of the labour code. The exceptions concern military service, states of emergency and the application of court rulings. Under the criminal code, the use of forced labour is punishable by two years' corrective labour or deprivation of liberty of the same duration. In certain circumstances the sentence may be for five or even ten years. According to the report, no one in Azerbaijan has been found guilty of using forced labour.

Prison work

Article 1§2 of the Revised Charter requires strict regulation of prison work, in terms of remuneration, working hours and so on, particularly when the prisoners work for private employers. Prisoners may only be employed by private companies with their consent and in conditions as close as possible to an employment relationship freely entered into (Conclusions XVI-1, Germany).

Working conditions in prison are governed by the criminal code/execution of judgments code. Prison work is compulsory, except for men over 60, women over 55, disabled prisoners in the first and second categories, women who are more than four months pregnant and women with children living in the prison. Working hours, safety conditions, leave entitlements and pay are in accordance with employment law. Prisoners may be required to work for the prison unpaid for up to eight hours per month or to repair buildings damaged or destroyed by natural disasters or other exceptional events. Deductions from wages are allowed, particularly to cover meals and clothing. At least 25% of their wages must be paid to prisoners.

To complete this information, the Committee asks the Government to answer the questions on prison work in the general introduction to Conclusions 2006, namely:

– Can a prisoner be required to work (irrespective of consent):

  A. for a private undertaking/enterprise?
    i) within the prison?
    ii) outside the prison?
  B. for a public/state undertaking?
    i) within the prison?
    ii) outside the prison?

– What types of work may a prisoner be obliged to perform?
– What are the employment conditions and how are they set?

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

Several other practices may cause problems from the standpoint of Article 1§2:

Part-time work

There must be various legal safeguards attached to part-time work. The Committee needs to know whether there is a minimum working week and whether there are rules to avoid undeclared work in the context of overtime and ones requiring equal pay, in all its aspects, between part-time and full-time workers (Conclusions XVI-1, Austria).

The Committee notes that the report fails to deal with this matter. It therefore asks for information in the next report on the legal safeguards attached to part-time work and how they are applied.

Requirement to accept the offer of a job or training

The Committee considers that in general the conditions to which the payment of unemployment benefits is subjected, including any obligations to take up offered employment, should be assessed under Article 12§1 of the Charter (or Article 12§3 in the case of new developments). However, in certain cases and under certain circumstances the loss of unemployment benefits on grounds of refusal to accept offered employment could amount, indirectly, to a restriction on the freedom to work and as such the situation would be assessed under Article 1§2 (See General introduction to Conclusions 2008, §10).

The Committee has ruled that the right to earn a living in an occupation freely entered upon means that for a reasonable initial period job seekers must be able to refuse job offers that do not correspond to their qualifications and experience without risking the loss of their unemployment benefits (Conclusions 2004, Cyprus). The Committee asks for information in the next report on this subject.

Privacy at work

The Committee asks for information to enable it to determine how far human freedom and dignity are protected by legislation and the courts against intrusions into personal or private life that may be associated with or result from the employment relationship (see observations on Article 1§2, general introduction to Conclusions 2006, §§13-21).

Restrictions linked to the fight against terrorism

The Committee asks whether there is legislation to combat terrorism (or incitement to terrorism) that bars individuals from certain occupations, and if so in which cases and according to what modalities is such legislation applied.

Conclusion

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

Paragraph 3 – Free placement services

The Committee takes note of the information provided in Azerbaijan's report.

The national employment service is principally responsible for providing information and implementing the employment policies, and also for counselling, offering training, finding work for unemployed job seekers and helping employers fulfil their needs. The services used by its clients are free of charge.

During the reference period the public employment services consisted of a national agency and 84 local employment centres spread over the entire territory. The Committee also notes the existence of regional training centres. It requests information on staff numbers for all public employment services.

The Committee notes a certain contradiction in the figures given by the report regarding the total number of job vacancies notified. It asks that the report confirm whether the total number of job vacancies notified to the public employment services did indeed increase during the reference period, rising from 119,498 in 2005 to 150,874 in 2006.

The Committee asks that the next report also indicate the placement rate, that is the ratio between the number of placements and the number of job vacancies notified by employers to the public employment services.

It wishes furthermore to know the average time taken to fill a vacancy.

A number of private employment agencies operate in Azerbaijan. Since 2002, their activity has no longer been subject to the grant of a permit from the Ministry of Labour and Social Protection of Population. According to the report, co-ordination meetings between the Ministry and the agency managers are regularly organised.

The Committee wishes to know how the Ministry assesses whether the private agencies satisfy the conditions necessary to launch such an agency, and whether the coordination meetings allow the Ministry to evaluate how those agencies are functioning (fees, staff, etc.).

Under the 2001 Law on Employment, trade unions and employers' organisations participate in the management of the National Employment Agency and help to implement national employment policy. Social partners may set up local co-ordination committees, through which they can make known their stance on raising funds or obtaining subsidies for the creation or preservation of jobs.

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

Paragraph 4 – Vocational guidance, training and rehabilitation

The Committee takes note of the information provided in Azerbaijan's report.

Under Article 1§4 of the Revised Charter, the Committee considers vocational guidance, continuing training for workers and the rehabilitation of persons with disabilities.

As Azerbaijan has accepted Article 9 of the Revised Charter (right to vocational guidance), the Committee refers to its conclusion under that article, in which it defers its conclusion. The Committee here only deals with continuing vocational training and training for persons with disabilities in view of the fact that Azerbaijan has not accepted Articles 10§3 and 15§1 of the Revised Charter. The Committee deals with the following questions under Article

1§4, looking in turn at continuing training and the guidance and training of persons with disabilities:

– the existence on the labour market of training services for employed and unemployed persons or of training aimed specifically at persons with disabilities;
– access, i.e. how many people make use of these services;
– the existence of legislation explicitly prohibiting discrimination on the ground of disability in the field of training.

Continuing vocational training

According to the employment legislation, all citizens, including the unemployed, are entitled to vocational training. The employment service co-operates with the education ministry to offer unemployed persons some fifty vocational training programmes to reflect the needs of the labour market and employers. Several public and private regional centres with modern educational facilities provided vocational training to about 1,000 unemployed persons during the reference period.

However, the Committee asks for the next report to provide information on continuing vocational training for unemployed persons.

The Committee wishes to know what is the demand for training placements and whether training supply meets training demand. In the event that companies organise training courses, the Committee asks whether employees' training costs are covered by the company or the trainees themselves.

Guidance and training for persons with disabilities

Persons with disabilities receive vocational training for 24 occupations and 69 specialties in training and rehabilitation centres, to enable them to find appropriate work. Disabled persons wishing to go into business can enrol in basic business courses run by the employment services. Each year, ten blind persons receive training in the Baku regional vocational centre, leading to such occupations as bookbinding and tailoring. Similar training is organised, under the auspices of the ministry of labour and social protection, for young disabled persons in residential institutions. In 2006, 109 persons found employment, following such training.

The Committee asks whether the training on offer satisfies demand.

According to the report equal treatment is guaranteed to all the persons concerned including nationals of other states party residing or working legally in Azerbaijan, and this applies equally to persons with disabilities.

Conclusion

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

Article 9 – Right to vocational guidance

The Committee takes note of the information provided in Azerbaijan's report.

As Azerbaijan has not accepted Article 15 of the Charter, measures relating to vocational guidance for persons with disabilities are dealt with here.

Vocational guidance within the education system

a. Functions, organisation and operation

Under the Employment Act, secondary school pupils and students in higher education are entitled to free vocational guidance. Counselling forms part of the public services and is provided through the vocational guidance offices in the cities of Baku, Ganja, Nakhchivan and Mingachevir.

The Committee asks for information in the next report on the organisation of vocational guidance in the education system, including for the disabled persons, and for a description of how it operates in practice. It asks whether guidance services are provided within schools and education establishments.

b. Expenditure, staffing and number of beneficiaries

The report states that the budget for vocational guidance and training was € 145,000 in 2005 and € 146,300 in 2006. There were five members of staff in total, spread between the centres in Baku, Ganja, Nakhchivan and Mingachevir, and they had qualifications in education, economics and psychology. The total number of beneficiaries of vocational guidance was 2,640 in 2005 and 3,180 in 2006. The report does not state, however, what proportion of the GDP and how many staff are assigned to the school guidance system and how many people benefit from it.

The Committee asks for the next report to provide detailed information on expenditure, staffing and the number of beneficiaries of vocational guidance in the education system.

Vocational guidance in the labour market

a. Functions, organisation and operation

Under the Employment Act, jobseekers, unemployed people and people without appropriate training are entitled to free individual or collective vocational guidance counselling in the country's vocational guidance offices or the regional branches of the national employment service.

The Committee asks whether the vocational guidance on offer satisfies demand. It also asks for information in the next report on the organisation of vocational guidance in the labour market for the disabled persons.

b. Expenditure, staffing and number of beneficiaries

The only figures provided in the report are those of the total budget for vocational guidance and training (€ 145,000 in 2005 and € 146,300 in 2006), the total number of staff (five for the whole country) and the total number of beneficiaries (2,640 in 2005 and 3,180 in 2006); it does not give any details concerning the proportion of the budget and the staff assigned specifically to vocational guidance in the labour market or the number of beneficiaries thereof.

The Committee asks for the next report to provide detailed information on expenditure, staffing and the number of beneficiaries of vocational guidance in the labour market.

Dissemination of information

A computer programme and a multi-media tool provide advice to jobseekers on over 300 occupations and specialisations. It is used successfully by the employment services.

The Committee asks whether vocational guidance information is also available in other forms (in-house information, publications, brochures, catalogues, etc.).

Equal treatment of nationals of the other States Parties

Under Article 13 of the Labour Code and section 6.2.8 of the Employment Act, foreign nationals and stateless persons living in Azerbaijan have the same rights and duties as Azerbaijani citizens, without discrimination, in their dealings with the employment services.

Conclusion

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

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

The Committee takes note of the information provided in Azerbaijan's report.

Equal rights

The principle of equal treatment for men and women is enshrined in Article 25 of the Constitution of the Azerbaijan Republic, where it is also stated that any limitations of rights and freedoms on the ground of sex are prohibited. This principle is also embodied in the provisions of the Labour Code, the Law on Gender Equality, and other texts.

One of the main pieces of legislation in this area is the Law on Gender Equality adopted on 10 October 2006, which aims at eliminating all forms of discrimination based on sex and at creating equal opportunities for men and women in political, economic, social, cultural and other spheres of public life. Article 7 of the Law deals with equal treatment as regards access to employment, working conditions, career development and vocational training. There are provisions in the Law to ensure there is no discrimination on grounds of sex in the selection criteria for access to jobs (for example, the prohibition to set out different requirements for men and women in vacancy announcements or to ask for data on civil status or private life of the person seeking the job).

The Labour Code also deals with questions of equal treatment in employment. Article 16 stipulates that a person subject to discrimination has the right to seek recourse in a court of law. As to where the burden of proof lies in gender discrimination cases, the report states that under Article 6 of the Law on Gender Equality, when men and women are treated differently in employment, "the employer should justify, at the demand of the employee, that different treatment was not linked to sex". The Committee asks whether the latter provision refers to an adjustment of proof in a judicial process. It recalls that the burden of proof required under Article 20 consists in ensuring that where a person believes he or she has suffered as a result of non-compliance with the principle of equal treatment and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of equal treatment.

The report lacks information on three essential points concerning the legal framework on gender equality. Firstly, the Committee asks if the law makes provision for the protection of employees – against dismissal or other retaliatory action by the employer – for having complained or brought legal proceedings on grounds of a breach of the principle of equal treatment. Secondly, it also wishes to receive information on remedies available to women who have been discriminated against, and recalls that under Article 20 anyone who suffers discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender. Compensation should therefore not be subject to an upper limit as this prevents it from being proportionate to the damage suffered and hence adequate. Thirdly, the Committee asks if the right of women and men to "equal pay for work of equal value" is enshrined in legislation, as required under Article 20.

It is not prohibited under the Charter for States to entrust certain jobs and occupational activities to persons of one sex, if this is due to the nature or the conditions in which such jobs and activities are carried out. Such exceptions are however subject to strict interpretation.

The Committee notes that under Article 241 of the Labour Code, "employment of women is prohibited in labour intensive jobs, in hazardous workplaces, as well as in underground tunnels, mines and other underground work". The Committee considers that while the

prohibition for women to work in mines responds historically to a concern for protection, it cannot be considered as positive action or as a measure aimed at ensuring equal opportunities, as it is not favourable for women, on the contrary it restricts their access to certain jobs. Whilst the 1961 Charter did prohibit the employment of women workers in underground mining, as well as in other dangerous, unhealthy or arduous work, this was modified in the Revised Charter, where the prohibition for women to carry out such jobs was limited to the case of maternity. Therefore, bearing in mind social developments which have operated since the drafting of the original Charter, the Committee considers there is no longer a justification for excluding women from all labour intensive jobs or from employment in underground mining. Article 241 of the Labour Code, by containing such a prohibition, is therefore contrary to the principle of equality enshrined in Article 20 of the Revised Charter.

Specific protection measures

The Labour Code establishes that pregnancy or having a child under the age of 3 is a forbidden ground for refusing to sign an employment contract with a woman (Article 241).

Position of women in employment and training

The report states that the employment rate of women in 2006 was 48.1%. It also indicates that 51% of persons registered as unemployed that year were women. The Committee wishes to receive updated information in the next report on female employment, unemployment and part-time employment rates.

It also asks for information on any pay gap between women and men, i.e. the difference between the average pay level of male and female employees.

Measures to promote equal opportunities

The State Committee on Women's Issues was established by a Presidential Decree in 1998 with a view to implementing the State policy on gender equality (since 2006 it is called State Committee on Family, Women and Gender Issues). The main objectives and purposes of the Committee are the protection of the rights of women, and increasing the participation of women in social and political life.

In June 2000, the National Action Plan on Women Issues for 2000-2005 was adopted. This program was elaborated on the basis of Beijing Strategies taking into consideration the national priorities. It covers political, social, economic, cultural, educational and health spheres, as well as problems of refugee and internally displaced women. The National Action Plan includes both the participation of state structures and NGOs.

The Committee notes from another source[1] that among the reasons for the low participation of women in social, political and public life of the country are the existing traditional stereotypes of the image of woman in society, whose role is limited by the boundaries of family. This situation demands a new approach to the national gender equality strategy. The authorities are presently in the process of building the national machinery to develop gender strategies and to incorporate a gender component in practical activities within the Government.

In this respect, the gender focal points in ministries form part of the working group under the State Committee for Women's Issues which meets every month to elaborate a new gender policy within each ministry, and to discuss what has been done in this field.

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[1]Ministry of Foreign Affairs, Gender issues, on:
http://www.mfa.gov.az/eng/foreign_policy/inter_affairs/human/gender.shtml

The Committee asks the next report to provide information on any steps or measures taken to ensure that more attention is paid to equal pay for men and women in national plans and/or collective agreements.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 20 of the Revised Charter on the ground that legislation prohibits the employment of women in underground mining and all other labour intensive jobs.

Article 24 – Right to protection in cases of termination of employment

The Committee takes note of the information provided in Azerbaijan's report.

Article 24 of the Revised Charter obliges states to establish regulations with respect to termination of employment (at the initiative of the employer) for all workers who have signed an employment contract. To assess whether the regulations applied in cases of termination of employment are in conformity with Article 24, the Committee's examination will be based on:

– the validity of the grounds for dismissal under the general rules on termination of employment and increased protection against dismissal based on certain grounds (Article 24a and the Appendix to Article 24);
– sanctions and compensation in cases of unfair dismissal and the status of the body empowered to rule on such cases (Article 24b).

Scope

Pursuant to Sections 51 and 54 of the Labour Code, employment contracts may be subject to a probationary period of a maximum of three months. Either party may terminate the contract at the end of the probationary period by giving the other party a three days written notice.

It appears from the information provided in the report, that apart from the exception of probationary periods, the provisions of the Labour Code governing termination of employment apply to all employment relationships governed by an employment contract and the Committee asks the next report to confirm that this is actually the case.

Obligation to provide a valid reason for termination of employment

Section 70 of the Labour Code enumerates the grounds upon which an employment contract may be terminated at the employer's initiative, like in the event:

"a) the enterprise is liquidated;
b) there is a cutback in the number of employees in the enterprise;
c) a competent body decides that the employee does not have the professional skills for the job he holds;
d) the employee does not fulfil his job description or fails to perform his duties as defined by the employment contract and job description."

As regards termination of employment contracts following liquidation of the enterprise or because of a cutback of personnel (Section 70 a and b of the Labour Code), i.e. termination based on economic reasons, Section 71 of the Labour Code specifies that if an enterprise is split up, merged with another enterprise, reorganized, its organizational or legal form is changed or the number of employees is reduced, or positions abolished, the possibility of transferring the employee to another job must be looked into by the employer. It appears that only if there is no such possibility the employment contract may be terminated. Furthermore, Section 78 provides for rules on the order in which certain categories of employees should be made redundant or be retained in the event of personnel cutbacks.

As regards the reasons for termination of employment under Section 70 d related to the capacity or conduct of the employee (violation of contract), Section 71 specifies that termination in this context is possible in the event an employee has deliberately or negligently violated his obligations resulting from the employment contract or applicable law. Section 72 of the Labour Code enumerates cases constituting gross violations of work obligations in accordance with the job description. According to Section 186 para. d),

cancellation of the employment contract in accordance with subsection c of Section 70 is considered as being a disciplinary action.

Concerning termination of employment due to lack of professional skills to perform the job (Section 70 c), it is specified that such incapacity has to be decided upon the employers request by the "Certification Commission" as described in Section 65 of the Labour Code, consisting of professionals and trade union representatives. Neither the employer nor the employee's supervisor may be a member of the Commission. Pursuant to Section 67 of the Labour Code, the employment contract of an employee for whom the Certification Commission has rendered a decision on non-compliance with his position may be terminated by an employer in accordance with Article 70. Employers may also transfer employees to another appropriate position with the employee's consent by taking into account the Certification Commission's recommendations. The Committee notes that the decisions of the Certification Commission may be appealed against with the courts. It asks the next report to provide further information on the work and composition of the Certification Commission in particular on how its independence from the employer is ensured. It further asks whether the decision of the Commission on the incapacity of the employee serves as a prima facie evidence that a dismissal was justified on the occasion of a court procedure regarding a dismissal.

Section 74 of the Labour Code furthermore lists a number of grounds of termination of an employment contract which are described as "not depending on the will of the parties" such as in the event:

"a) the employee is called for military or alternative service;
b) the person who held the job previously is reinstated by a legally valid court ruling;
c) the employee cannot perform his job for more than six months because of full and permanent disability unless the law sets a longer period;
d) a court sentences the employee to prison;
e) the employee's incompetence is confirmed by a court decision that has taken legal effect."

The Committee understands that in these cases even though the termination is "not depending on the will of the parties" it is nevertheless in the employer's discretion whether he wants to terminate the employment contract or not and thus termination is effected at the employer's initiative.

As regards termination following a call for military or alternative service (Section 74 a) the Committee asks whether employees have a right to be reinstated after having completed their service. Concerning termination of an employment relationship because of reinstatement of the person previously holding the post (Section 74 b), the Committee asks whether an employee may be dismissed even though reinstatement of the previous holder of the post occurs several months or years after he has taken over the post.

The Committee further notes that in the event employment is terminated because the employee can not perform his/her function due to a complete loss of labour capacity for longer than six months (Section 74 c), the Medical and Social Expert Commission, a Government Agency, establishes the category of disability and the employee is considered to be incapable to perform his/her post for at least a year. The Committee asks to what extent the decisions of this Commission are subject to judicial review. It notes from the report that there is a number of court case examples in this respect by employees claiming their employment relationships have been terminated unlawfully in this context and asks the next report to provide information in this respect.

The Committee recalls that when assessing the conformity of the situation as regards dismissal without notice in the event of permanent disability, it will take account of the following factors and asks relevant information to be included in the next report:

– is dismissal without notice for reasons of permanent invalidity permitted regardless of the origin of the invalidity? In particular, may this occur in cases of employment injuries or occupational diseases?
– are employers required to pay compensation for termination in cases of permanent injury?
– if, despite the permanent invalidity, the worker can still carry out light work, is the employer required to offer a different placement? If the employer is unable to meet this requirement, what alternatives are available?

It notes in this respect that Section 77 para. 7 of the Labour Code stipulates that in the event an employment relationship is terminated because of permanent disability, the employer is obliged to pay to the employee an allowance equal to twice the average monthly wage.

Finally, the Committee recalls that a prison sentence delivered by a court, can be a valid ground for termination if such sentence is delivered for employment-related offences. This is not the case with prison sentences for offences unrelated with the person's employment, which cannot be considered valid reasons unless the length of the custodial sentence prevents the person from carrying out their work (Conclusions 2005, Estonia). The report states in this respect that dismissal is permitted on the ground of prison sentences for offences unrelated with the employee's employment in the event of a life sentence or sentences for a certain period of time. The Committee asks the next report to specify as from which duration a prison sentence for reasons not related with the employment would justify termination of employment.

The Committee takes note of the summary of decisions of national courts in dismissal cases showing how the aforementioned valid grounds for termination of employment are interpreted in practice. It notes in particular from the information provided that courts are empowered to review the facts underlying a dismissal that is based on economic grounds invoked by the employer.

Furthermore, the Committee asks whether Azerbaijani law provides for termination of the employment relationship on the grounds of age. In this context it wishes to know how retirement ages (mandatory retirement ages set by statute, contract or through collective bargaining) and pensionable age are fixed in Azerbaijan and what is the consequence on the employment relationship once an employee has reached retirement and/or pensionable age. The Committee asks in particular whether the law prescribes or provides for termination of the employment relationship on the grounds that an employee has reached the retirement age and whether there are specific procedures to be followed or conditions to be fulfilled once an employee reaches the retirement age or whether employees who reach this age are automatically dismissed.

The Committee holds that dismissal on the grounds of age will not constitute a valid reason for termination of employment unless a termination is, within the context of national law, objectively and reasonably justified by a legitimate aim such as legitimate employment policy, labour market objectives or the operational requirements of the undertaking, establishment or service and provided that the means of achieving that aim are appropriate and necessary. It wishes the next report to provide information on whether and how the legal framework complies with this approach.

Sections 83 and 84 of the Labour Code stipulate that notice of termination of an employment contract has to be effected in writing and indicate the grounds for the termination.

Prohibited dismissals

The Committee points out that a series of provisions in the Charter and Revised Charter require more rigorous safeguards against dismissal on certain grounds:

– Articles 1§2; 4 §3 and 20: discrimination;
– Article 5: trade union activity;
– Article 6§4: participation in a strike;
– Article 8§2: maternity;
– Article 15: disability;
– Article 27: family responsibilities;
– Article 28: workers' representation.

Most of these reasons are also listed in the Appendix under Article 24 as reasons which do not justify dismissal. However, the Committee will continue to check whether national situations are in conformity with the Revised Charter in regard to these reasons when it examines the reports on each of these provisions. It thus restricts its examination of more rigorous protection against dismissal to the reasons listed in the Appendix under Article 24 which are not referred to elsewhere in the Revised Charter, namely:

– "the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities". The Committee considers that national legislation should contain an express safeguard, in law or case law, which protects employees against retaliatory dismissal if they turn to the courts or another competent authority to enforce their rights;
– "temporary absence from work due to illness or injury".

Section 74 of the Labour Code specifies that temporary disability for a period of less than 6 months shall not be a valid ground for termination of the employment contract and workers temporarily disabled shall be paid a mandatory social insurance allowance and their workplace and position shall be retained. Section 79 of the Labour Code explicitly prohibits the dismissal of employees that are temporarily disabled and the report indicates that this covers any temporary loss of labour capacity which is understood to cover illness.

As regards retaliatory dismissals the report states that such a dismissal would not be based on the valid reasons for termination of employment as set out in the Labour Code and would therefore be considered as being unlawful by the courts. The Committee asks the next report to provide examples of pertinent case law, establishing that employees are protected against retaliatory dismissal if they turn to the courts or another competent authority to enforce their rights.

Remedies and sanctions

Employees considering that their rights and legally protected interests have been violated may have recourse to the courts (Sections 9 (q), 288, 292, 294 and 295 of the Labour Code).

Pursuant to Section 71 (3) the employer shall be obliged to prove the necessity of terminating the employment contract on the grounds as set out in Section 70 of the Labour Code.

Section 195 of the Labour Code stipulates that employers shall bear full financial liability for damages in the event a court decision has established that the dismissal was unlawful and have to pay compensation for financial and moral damage in the amount set out in the court decision. The Committee asks whether the law provides for a cap on compensation ordered by a court in the case of an unfair dismissal. Section 300 of the Labour Code further specifies that in the event of an unlawful dismissal at the initiative of the employer**,** the court shall decide on the reinstatement of the employee.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Azerbaijan is in conformity with Article 24 of the Revised Charter.