January 2015

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2014

(AZERBAIJAN)

Articles 4, 5, 6, 21, 22, 26, 28 and 29
of the Revised Charter

This text may be subject to editorial revision.

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

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

The following chapter concerns Azerbaijan, which ratified the Charter on 2 September 2004. The deadline for submitting the 7th report was 31 October 2013 and Azerbaijan submitted it on 4 February 2014.

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

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

Azerbaijan has accepted all provisions from this group except Article 2§1, 2§2, 2§3, 2§4, 2§5, 2§6 and 2§7.

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

The conclusions on Azerbaijan concern 16 situations and are as follows:

- 2 conclusions of conformity: Articles 4§2 et 21.
- 13 conclusions of non-conformity: Articles 4§1, 4§3, 4§4, 4§5, 5, 6§1, 6§2, 6§3, 6§4, 22, 26§1, 26§2 and 28.

In respect of the 1 other situation related to Article 29, 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 Azerbaijan 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 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

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

It previously concluded (Conclusions 2010) that the situation in Azerbaijan was not in conformity with Article 4§1 of the Charter on the ground that the national minimum wage was manifestly unfair.

The report states that, under Order of the President of the Republic No. 1866 of 1 December 2011 on the increase in the monthly minimum wage (MMW), the MMW was set at 93.50 Azerbaijani manat (AZN) from 1 December 2011 onwards. In 2012, the MMW of AZN 93.50 (€94.66) amounted to 27.50% of the gross monthly average wage of AZN 398.20 (€403.14). The "Azerbaijan 2020: Look into the Future" strategy, approved by the Decree of the President of the Republic of 29 December 2012, includes measures to gradually adjust the MMW to the minimum subsistence level defined by the law and to 60% of the average wage needed to ensure a decent standard of living within the meaning of Article 4§1 of the Charter.

The Committee notes from the previous report that in 2008, the MMW was exempt from income tax, but subject to social contributions of 3% and trade union dues of 2%. Monthly incomes of up to AZN 2 000 were subject to income tax at a rate of 14%. Based on this information, the Committee establishes that in 2012, the MMW net of social contributions and trade union dues was AZN 88.83 (€89.93) and the average wage net of social contributions, trade union dues and tax deductions was AZN 322.54 (€326.54).

According to State Statistical Committee figures for 2012 (State Statistical Committee of the Republic of Azerbaijan, Statistical Yearbook: Labour Market, Baku: SSCRA 2013), the gross average income in the private sector (Table 4.2) was AZN 398.40 (€403.34). Among the low pay sectors were agriculture, forestry and fishing (AZN 201.10); water, cleaning and waste processing services (AZN 274.80); estate agencies (AZN 225.60); education (AZN 287.30); health care and social services (AZN 175.10) and art, cinema and entertainment (AZN 211.30). The gross average monthly wage of civil servants in 2012 (Table 5.9) was AZN 446.70 (€452.24). Among the low pay regions were *Absheron* (AZN 307.70); *Ganja-Gazakh* (AZN 322.90); *Shaki-Zagathala* (AZN 318.10); *Lankharan* (AZN 323.40); *Guba-Khachmaz* (AZN 337.10); *Kalbajar-Lachin* (AZN 336.20) and *Daghlig-Shirvan* (AZN 320.90). The ILO Decent Work Country Profile (International Labour Office, Decent Work Country Profile Azerbaijan, Geneva: ILO 2012, pp. 13-15) confirms that there are major disparities in remuneration depending on sector of activity, region and gender. It also confirms that, despite the significant increase in the MMW in recent years, it is still lower than the minimum subsistence level defined by the law and 60% of the average wage.

The Committee points out that, in order to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, wages must be no lower than the minimum threshold, which is set at 50% of the net average wage. This is the case when the net minimum wage is more than 60% of the net average wage. When the net minimum wage lies between 50% and 60% of the net average wage, it is for the State Party to establish whether this wage is sufficient to ensure a decent standard of living (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1). The Committee notes that in the instant case, the MMW net of social contributions and trade union dues

is lower than the minimum threshold, and hence does not amount to a decent remuneration within the meaning of Article 4§1 of the Charter.

The Committee asks for the next report to give the MMW and the average wage net of social contributions, trade union dues and tax deductions, or otherwise to update the information on the rates of imposition. It also asks to what extent the MMW is applied to workers governed by the Merchant Navy Code (2001), the Civil Service Act of 21 July 2000 (No. 926-IQ) and the Special Economic Zones Act of 14 April 2009 (No. 791-IIIG).

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 4§1 of the Charter on the ground that the monthly minimum wage does not ensure a decent standard of living.

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 Azerbaijan.

In its previous conclusion (Conclusion (2010) the Committee asked how much time off was granted in compensation for overtime. It notes from the report and from the supplementary information provided by the Government that Article 165 of the Labour Code does not allow replacement of overtime work with additional time off.

Article 96 of the Labour Code provides for flexible working time arrangements, in which the average working time is calculated over the period of a maximum of one year and the average daily working hours cannot exceed 12 hours. The rules of application of flexible arrangements are defined in collective agreements and Article 102 obliges the employer to conduct exact, accurate recording of working hours and overtime.

The Committee recalls that the right of workers to an increased rate of remuneration for overtime work is subject to exceptions in certain specific cases. These "special cases" have been defined by the Committee as senior state employees and management executives of the private sector (Conclusions IX-2 (1986), Ireland). The Committee asks whether the legislation provides for such exceptions.

According to the report no cases of violation of overtime legislation have been identified by the Labour Inspectorate in 2009-2012.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Azerbaijan is in conformity with Article 4§2 of the Charter.

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 Azerbaijan.

Legal basis of equal pay

The Committee recalls that under Article 4§3 the right of women and men to equal pay for work of equal value must be expressly provided for in legislation (Conclusions XV-2 (2001), Slovak Republic).

The Committee has noted (Article 20, Conclusions 2012) that according to Article 9 of the Law on Gender Equality equal pay should apply to employees working in the same company with the same specialisation fulfilling work of the same value, irrespective of gender. If an individual believes that discrimination on grounds of sex in matters related to pay has occurred, he/she may request that the employer provide evidence that the wage difference is not based on grounds of gender.

The Committee further notes from the report that Article 16 of the Labour Code prohibits discrimination in employment on the basis of, among others, gender.

The Committee requests that the next report provide information on gender discrimination cases (in particular claims for equal pay for work of equal value) brought before the courts or the Ombudsman.

Guarantees of enforcement and judicial safeguards

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, i.e. compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender. In cases of unequal pay, any compensation must, as a minimum, cover the difference in pay (Conclusions XVI-2, Malta).

The Committee further recalls that when the dismissal is the consequence of a worker's complaint concerning equal wages, the employee should be able to file a claim 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 should have the competence to fix the amount of this compensation, not the legislator (Conclusions XIX-3, Germany).

In this regard, the Committee refers to its conclusions on Article 20 (Conclusions 2012) where it noted that victims of gender discrimination are entitled to compensation which is not subject to a limit. The Committee also considered (Conclusion 2012) that the situation was not in conformity with Article 20, as during judicial proceedings in

discrimination cases there was no shift in the burden of proof. The Committee reiterates its finding of non-conformity on this ground.

Methods of comparison and other measures

The Committee notes from the report that in 2009 the average wages of women amounted to 58,6% of that of men and 46,2% of that of men in 2012. The Committee notes the downward trend in wage equality and considers that the unadjusted pay gap is manifestly too high and therefore, finds that the situation is not in conformity with the Charter.

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

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 4§3 of the Charter on the following grounds that:

- there is no shift in the burden of proof in discrimination cases;
- the unadjusted gender pay gap is manifestly too high.

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 Azerbaijan.

It deferred its previous conclusion (Conclusions 2010) pending receipt of confirmation that the severance pay provided for in Article 77, paragraph 3 of the Labour Code of 1 February 1999 is effectively paid in addition to continued payment of wages during the notice period and that leave of absence to seek new employment is granted in practice. It also requested information on the maximum period for which an employee may receive severance pay; the maximum amount of severance pay by category of employee; grounds for immediate dismissal and other grounds for terminating employment; and the notice periods applicable to employees on probation, those working part-time and those on fixed-term contracts.

In reply, the report states that the labour inspectorate did not find any breaches of Article 77, paragraph 2 of the Code, as amended by Law No. 608-IIIQD of 16 May 2008, which entitles employees to one day's paid leave per week of the notice period for the purpose of looking for new employment.

Reasonable notice

The Committee notes the grounds for termination of employment provided for in Article 70 of the Code:

a. Liquidation of the undertaking;
b. Reduction in the number of staff;
c. Decision by the certification committee that the worker does not possess the qualifications required for the job;
d. Professional incompetence or serious, inexcusable professional misconduct within the meaning of Article 72 of the Code: unauthorised absence without good reason, working under the influence of alcohol or narcotic or psychotropic drugs; serious breach of duties causing significant pecuniary damage, etc.;
e. Unsatisfactory performance during the probationary period.

Only dismissal on account of a reduction in the number of staff (ground provided for in Article 70(b) of the Code) confers entitlement to two months' advance notice, with maintenance of wages, regardless of length of service (Article 77, paragraph 1 of the Code).

The Committee also notes that dismissal upon the liquidation of the undertaking or a reduction in the number of staff (grounds provided for in Article 70(a) and (b) of the Code) gives rise to the payment of severance pay equivalent to an average monthly wage, plus payment of the average monthly wage for the second and third months after dismissal (Article 77, paragraph 3 of the Code). According to the report, the amount of severance pay is not limited, and the rules for calculating severance pay and the amount of the average monthly wage are determined by the employer (Article 77, paragraph 5 of the Code). Collective agreements may establish more favourable conditions of notice or severance pay (Article 77, paragraph 6 of the Code).

The Committee also notes the existence of other grounds for terminating employment, provided for in Article 68, paragraph 2 of the Code:

a. (...)
b. (...)
c. A change in terms and conditions of employment, as permitted under Article 56, paragraph 1 of the Code in the event of a need to reorganise production and staffing, where the worker refuses that change;
d. A change in the ownership of the undertaking, in accordance with Article 63, paragraph 1 of the Code;
e. Grounds beyond the control of the parties, as specified in Article 74, paragraph 1 of the Code: the worker is called up for military service; reinstatement of a former worker by a judicial decision; duly recognised long term illness or disability; withdrawal of the worker's driving licence or ban on performing certain duties or activities; disability recorded in a judicial decision; reinstatement of a former worker after military service;
f. Grounds stipulated in the employment contract, as provided for in Article 75, paragraph 1 of the Code: termination with the parties' mutual consent; duly recognised damage to the worker's health attributable to the occupation performed; a strong probability that the worker will contract an occupational disease on the job; a commitment by the employer to rehire the worker following a termination of employment caused by a reduction in the volume of work.

Among these grounds for terminating employment, only a change in the terms and conditions of employment or the grounds stipulated in the employment contract (grounds set out in Article 68, paragraph 2(c) and (f) of the Code) entitle the worker to one month's advance notice, with maintenance of wages, regardless of length of service (Article 56, paragraph 2 of the Code). Severance pay equivalent to three months' wages is also due in the event of a change in the terms and conditions of the contract, and severance pay equivalent to two months' wages in the event that the worker is called up for military service or is suffering from a long-term illness or disability (grounds set out in Article 74, paragraph 1(a) and (c) of the Code) (Article 77, paragraph 7 of the Code).

The Committee recalls that, in accepting Article 4§4 of the Charter, States Parties undertake to recognise workers' entitlement to a reasonable period of notice in the event of termination of employment (Conclusions XIII-4 (1996), Belgium), its reasonable nature being primarily assessed by reference to length of service. Where it is permitted to pay compensation in lieu of the notice period, that compensation must be at least equivalent to the wage that would have been paid during the corresponding period. The Committee considers that in the instant case the notice period, together with any compensation, are reasonable within the meaning of Article 4§4 of the Charter in certain circumstances, but inadequate in the following circumstances:

- Dismissal upon the liquidation of the undertaking or a reduction in the number of staff (grounds set out in Article 70(a) and (b) of the Code) and termination of employment on account of a change in the terms and conditions of employment (ground set out in Article 68, paragraph 2(c) of the Code), beyond seven years of service;
- Termination of employment on certain grounds beyond the control of the parties (ground set out in Article 68, paragraph 2(e) of the Code), namely military service or long-term illness or disability (grounds set out in Article 74, paragraph 1(a) and (c) of the Code), beyond five years of service;

- Dismissal on grounds stipulated in the employment contract (ground set out in Article 68, paragraph 2(f) of the Code), beyond three years of service.

The Committee notes that paid leave for the purpose of seeking new employment during the notice period is granted in practice. It asks that the next report contain information on collective agreements laying down more favourable conditions of notice or compensation in accordance with Article 77, paragraph 6 of the Code.

Application to all workers

In accordance with its Articles 4 and 5, the Code governs all employment relations in the public and private sectors on the territory, including ships sailing under the national flag; offshore installations; foreign undertakings; as well as stateless persons. It also applies, subject to special rules, to members of the public prosecution service and the law enforcement authorities. Article 6 of the Code, however, excludes from its scope military personnel, judges, members of Parliament, elected municipal representatives and foreigners employed by foreign undertakings or foreign public bodies.

The report indicates that the rules on notice, severance pay and the probationary period are identical whether the person works full or part time (Article 94, paragraph 5 of the Code). Dismissal during the probationary period (ground set out in Article 70(e) of the Code), which is limited to three months, gives rise to the application of a reduced notice period of three days (Article 51, paragraph 1 of the Code).

The Committee recalls that the protection afforded by the notice period and/or compensation in lieu thereof must benefit all workers, regardless of the type of employment contract, whether indefinite or fixed term, (Conclusions XIII-4 (1996), Belgium) or the ground of dismissal (Conclusions XIV-2 (1998), Spain). The protection also applies to the probationary period (General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §§ 26 and 28). It considers that in the instant case, part-time workers are granted protection by a notice period and/or compensation, but the three day notice period applicable in the event of dismissal during the probationary period is insufficient in the light of Article 4§4 of the Charter.

The Committee also considers that serious, inexcusable professional misconduct within the meaning of Article 72 of the Code (ground laid down in Article 70(d) of the Code) amounts to a serious offence, the sole exception justifying immediate dismissal without notice or severance pay (Conclusions 2010, Albania), but the same does not apply to professional incompetence (another ground laid down in Article 70(d) of the Code). Lack of notice and/or compensation is also not in conformity with Article 4§4 of the Charter in the following situations: dismissal of a worker lacking qualification for the job (ground set out in Article 70(c) of the Code); termination of employment in the event of a change of ownership (ground set out in Article 68, paragraph 2(d) of the Code); termination of employment on certain grounds beyond the control of the parties (ground set out in Article 68, paragraph 2(e) of the Code), namely the reinstatement of a former worker by a judicial decision; withdrawal of the worker's driving licence or ban on performing certain duties or activities; disability recognised by a judicial decision; or reinstatement of a former worker after military service (grounds specified under Article 74, paragraph 1(b), (d) to (f) of the Code).

The Committee, noting that the cumulative duration of successive fixed-term contracts is limited to five years (Article 45, paragraph 1 of the Code), asks that the next report indicate the notice period and/or compensation applicable in the event of early termination of such contracts.

Conclusion

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

- The notice period is not reasonable in the following cases:
    - dismissal on the ground of liquidation of the undertaking or reduction in the number of staff and termination of employment on account of a change in the terms and conditions of employment, beyond seven years of service;
    - termination of employment on account of being called up for military service or long-term illness or disability, beyond five years of service;
    - termination of employment on grounds stipulated in the employment contract, beyond three years of service;
    - dismissal during the probationary period;
- There is no notice period provided for in the following cases:
    - dismissal for professional incompetence or lack of qualifications;
    - termination of employment in the event of a change of ownership of the undertaking or the reinstatement of a former worker following a judicial decision or after military service;
    - termination of employment on account of withdrawal of the worker's driving licence or ban on performing certain duties or activities;
    - termination of employment in the event of disability recorded in a judicial decision.

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 Azerbaijan.

It deferred its previous conclusion (Conclusions 2010) pending receipt of information on the method of calculating and repairing damage caused to the employer by the worker; on the portions of wages that may be deducted and their application to workers with the lowest pay and to workers who have been sentenced to imprisonment or corrective labour, or where deductions are ordered to cover maintenance payments or in compensation of bodily harm, the death of a breadwinner or damage caused by criminal acts; on how the workers' and their dependants' minimum means of subsistence is secured; on examples of deductions for which the workers' written consent is required and on the guarantees in place to prevent workers from waiving their right to limitation of deductions from wages.

In reply, the report states that, in accordance with Article 202, paragraphs 1 to 3 of the Labour Code of 1 February 1999, as amended by Law No. 608-IIIQD of 16 May 2008, the damage caused to the employer corresponds to actual losses. The pecuniary damage is assessed on the basis of the purchase price or the market value of the property at the time of the damage, while non-pecuniary damage is assessed in accordance with Article 290, paragraph 3 of the Code. The worker's liability is in principle limited to the monthly wage (Article 198 of the Code), subject to exceptions whereby it is extended to the full amount of the damage (Article 199, paragraph 1 of the Code) or to agreements for the preservation of work tools and equipment (Article 200, paragraph 1 to 5 of the Code). Following an investigation, it is for the employer to determine the wage deductions to be applied where the amount of the damage is lower than the worker's monthly wage, under court supervision (Article 205, paragraphs 1 to 3 of the Code). Where the amount of the damage exceeds the monthly wage, unless the worker agrees to pay, it is for the courts to determine and order deductions at the request of the employer (Article 205, paragraph 2 of the Code).

The Committee notes that, apart from the limits of 20% or 50% of wages provided for in Article 176, paragraph 1 of the Code, 50% of wages constitutes an absolute limit applicable in the event of simultaneous deductions (Article 176, paragraph 2 of the Code). According to the report, while these limits do not apply to the wages of workers sentenced to prison or corrective labour, nor to deductions ordered to cover maintenance payments or in compensation of reparation of bodily harm, the death of a breadwinner or damage caused by criminal acts (Article 176, paragraph 3 of the Code), section 65, paragraph 3 of the Enforcement Measures Act nonetheless limits the portion of wages than can be attached to recover such maintenance or compensation payments to 70% of total earnings. The Committee also notes from the report that Article 175, paragraph 2(i) of the Code now authorises the deduction of trade union membership fees.

The Committee recalls that the purpose of Article 4§5 of the Charter is to guarantee that workers benefiting from the protection afforded by this provision are not deprived of means of subsistence (Conclusions XVIII-2 (2007), Poland). It considers that, in the instant case, the limits on deductions from wages applicable in the event of enforcement of judicial decisions or of simultaneous deductions (Article 176, paragraphs 1 and 2 of the Code) still allow situations in which workers receive only 50%

of the monthly minimum wage (MMW), an amount that does not permit them to provide for themselves or their dependants. The same applies to the 70% of total earnings that may be attached for the recovery of certain maintenance or compensation debts (section 65, paragraph 3 of the Enforcement Measures Act).

The Committee also recalls that, pursuant to Article 4§5 of the Charter, workers may not waive their right to limitation of deductions from wages, nor may determination of wage deductions be left merely to the discretion of the parties to the employment contract (Conclusions 2005, Norway). While negotiations on the subject are not prohibited in themselves, they must be subject to rules established by statutory provisions, case law, regulations or collective agreements (Conclusions XIV-2 (1998), United Kingdom). The Committee notes that in the instant case, Article 175, paragraph 1 of the Code permits workers to consent to specific deductions by written agreement, and Article 175, paragraph 6 of the Code permits workers to assign portions of their wages to third parties, without provision against the deprivation of means of subsistence being made by statutory provisions, case law, regulations or collective agreements. It accordingly considers that these provisions of the Code are not in conformity with Article 4§5 of the Charter.

So as to examine whether all the circumstances in which deductions from wages are permitted are set out in a legal instrument, the Committee asks that the next report stipulate the "other mandatory payments specified by law", as provided for in Article 175, paragraph 2(a) of the Code, and contain supplementary information on any other circumstances (tax debts; a decline in activity; deductions for health expenses, and so on) that may lead to deductions from wages. It also requests information on the application of the 20%, 50% and 70% limits to workers receiving the MMW who consent to assign portions of their wages or to those whose wages which are paid partly in kind in accordance with Article 174, paragraph 3 of the Code.

Conclusion

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

- following all authorised deductions, the wages of workers with the lowest earnings do not enable them to provide for themselves or their dependants;
- guarantees in place to prevent workers from waiving their right to limitation of deduction from wages are insufficient.

Article 5 - Right to organise

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

Forming trade unions and employers' organisations

The Committee refers to its previous conclusion (Conclusions 2010) for a description of the general legal framework related to the forming of trade unions and employers' organisations.

In its previous conclusion, the Committee asked whether there are formalities other than producing the statutes, and whether there are any fees for registration. The report indicates that according to the Law on the state registration of legal entities the registration of trade unions and employers' organisations do not require any other formality than the payment of state duties which amount to approximately to €10,50.

The Committee notes from its previous conclusion that pursuant to Section 12 of the Trade Unions Act, trade unions can require from the authorities that they respect trade union rights. The authorities are under an obligation to consider such requests and inform trade unions about any results within a month. In this regard, the Committee asked for more information on how this procedure works in practice. It also asked whether there is provision in domestic law for a right of appeal to the courts to ensure that the right to organise is upheld. The report states that if no result is obtained within a month, the trade union can apply to the court in order to protect the persons whose rights are violated.

The Committee notes from the observation made by the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO-CEACR) that following the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011 alleging that despite adequate protection of trade union rights in law, trade union activities in multinational companies are often reprimanded in practice (Observation (CEACR) – adopted 2011, published 101st ILC session (2012) Right to organise and Collective Bargaining Convention, 1949 (No. 98) – Azerbaijan). The Committee recalls that it had previously noted similar comments made by the ITUC in 2007, which also alleged that employers often delayed negotiations and unions rarely participated in determining wage levels and were often bypassed in the conclusion of bilateral agreements between the Government and multinational enterprises.

The Committee notes that in its report, the Government indicates that as a result of the activity of the Confederation of Trade Unions of Azerbaijan (CTUA), trade unions have been established in 28 multinational companies. The Government recognizes that the CTUA initiatives to establish trade unions are often not sufficient. To address these issues, the Government organizes, on a periodic basis, seminars and conferences with the participation of multinational companies. Even though some progress has been made through awareness raising activities, no concrete measures have been taken to ensure the right to organise in multinational companies. The Committee therefore concludes that the situation is not in conformity on the ground that it has not been established that, in practice, the free exercise of the right to form trade unions is ensured in multinational companies.

Freedom to join or not to join a trade union

The Committee notes from its previous conclusion (Conclusions 2010) that the freedom to join or not to join a trade union is guaranteed by the Constitution and the Labour Code.

Pursuant to Article 16 of the Labour Code all discrimination related to employees' membership of a trade union is prohibited. In addition, Article 79 of the Labour Code provides for the prohibition of dismissal due to an employee's membership in a trade union. If an employee is experiencing discrimination he/she may apply to the court to seek redress. The Committee asked in its previous conclusion information on compensation foreseen by law in case of discrimination and whether such cases have occurred and had been redressed. The report does not provide an answer to these questions. The Committee therefore concludes that the situation is not in conformity on the ground that it has not been established that there is an adequate and proportionate compensation to the harm suffered by a worker discriminated against for having joined a trade union.

Trade union activities

The Committee refers to its previous conclusion (Conclusions 2010) for a detailed description of trade union activities, which it found to be in conformity with Article 5 of the Charter.

Representativeness

In answer to the Committee's question the report confirms that joint consultation and collective bargaining are open to all trade unions without any criteria of representativeness being applied.

Personal scope

In its previous conclusion the Committee asked whether in practice there are any trade unions defending specifically civil servants' economic and social rights. The report indicates that the Union of Public Administration and Public Services Employees is in charge of protecting labour, social and economic rights and interests of employees working in government bodies on a voluntary basis. This Union comprises 1495 trade unions.

In the case of the police, the Committee has stated that it is clear from the second sentence of Article 5 and the preparatory work concerning this provision that, while a State may be permitted to limit the freedom of organisation of members of the police, it is not justified in depriving them of all the guarantees provided for in the article (Conclusions I (1969), Statement of Interpretation on Article 5). In other words, police officers must be free to exercise essential trade union prerogatives, namely the right to negotiate their conditions of service and remuneration and the right of assembly (European Council of Police Trade Unions, complaint No. 11/2001, decision on the merits of 22 May 2002). In addition, compulsory membership of organisations is incompatible with Article 5 (Conclusions I (1969), Statement of Interpretation on Article 5). The Committee further recalls that the right of police members to affiliate to national employees' organisations shall not be restricted if this has as consequence of disallowing them to negotiate on pay, pensions and service conditions represented by

these national organisations (European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, Decision on the admissibility and merits of 2 December 2013, §§ 119 and 121). Moreover, the situation is in conformity with Article 5 even if police members do not have the right to form “trade unions” as long as they are given the right to establish “professional associations” having similar characteristics and competences as trade unions. (European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, § 77).

Concerning the police, the Committee asked in its previous conclusion whether their right to organise is restricted and whether there are trade unions protecting their social and economic rights and interests. The report states that there are no professional organisations nor trade unions protecting the social and economic interests of the police. The Committee therefore concludes that the situation is not in conformity on the ground that the social and economic interests of the police are not protected by professional organisations or trade unions.

Conclusion

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

- it has not been established that, in practice, the free exercise of the right to form trade unions is ensured in multinational companies;
- it has not been established that there is an adequate and proportionate compensation to the harm suffered by a worker discriminated against for having joined a trade union;
- the social and economic interests of the police are not protected by professional organisations or 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 Azerbaijan.

The Committee notes that in 2012 the National Trilateral Social Council on Safe and Healthy Labour Conditions has been established. This Council is composed of the authorized representatives of the Ministry of Labour and Social Protection of Population, Trade Unions Confederation and the National Confederation of Entrepreneurs (Employers) Organisations. The functions of this Council are to ensure the adoption and implementation of action plans related to health and safety at work and to develop methodological guidelines and recommendations on these issues.

Concerning other matters of mutual interest covered by Article 6§1 such as productivity, efficiency, other occupational issues (working conditions, vocational training, etc.), economic problems and social matters (social insurance, social welfare, etc.) the report does not provide any information.

The Committee notes from the observation made by the ILO-CEACR (Observation (CEACR) – adopted 2011, published 101st ILC session (2012) Right to organise and Collective Bargaining Convention, 1949 (No. 98) – Azerbaijan) that the legislation makes a distinction between a "collective agreement", concluded at the enterprise level following bipartite negotiations between workers and employers, and a "collective accord", concluded at industry, territorial or national levels following bipartite (between trade unions and the authorities) or tripartite (between trade unions, employers' organizations and the authorities of the appropriate level) negotiations. The ILO-CEACR recalls that while tripartism is particularly appropriate for the regulation of questions of a larger scope (drafting of legislation, formulating labour policies), the principle of tripartism should not replace the principle of autonomy of workers' organizations and employers (or their organizations) in collective bargaining on conditions of employment. The ILO-CEACR recalls also that, free and voluntary bargaining with a view to the regulation of terms and conditions of employment should be conducted between workers' organizations and an employer or employers' organization and therefore requests the Government to take measures to amend its legislation.

In view of the lack of information and the observation made by ILO-CEACR the Committee concludes that the situation is not in conformity on the ground that it has not been established that the promotion of joint consultation between workers and employers on most matters of mutual interest covered by Article 6§1 is ensured.

Furthermore the Committee wishes the next report to indicate whether there are specific consultative bodies in the public sector and, if so, what their structure is and how they operate.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 6§1 of the Charter on the ground that it has not been established that the promotion of joint consultation between workers and employers on most matters of mutual interest covered by Article 6§1 is ensured.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

The Committee notes from the observation made by the ILO-CEACR (Observation (CEACR) – adopted 2011, published 101st ILC session (2012) Right to organise and Collective Bargaining Convention, 1949 (No. 98) – Azerbaijan) that the legislation makes a distinction between a "collective agreement", concluded at the enterprise level following bipartite negotiations between workers and employers, and a "collective accord", concluded at industry, territorial or national levels following bipartite (between trade unions and the authorities) or tripartite (between trade unions, employers' organizations and the authorities of the appropriate level) negotiations. The ILO-CEACR recalls that while tripartism is particularly appropriate for the regulation of questions of a larger scope (drafting of legislation, formulating labour policies), the principle of tripartism should not replace the principle of autonomy of workers' organizations and employers (or their organizations) in collective bargaining on conditions of employment. The ILO-CEACR recalls also that, free and voluntary bargaining with a view to the regulation of terms and conditions of employment should be conducted between workers' organizations and an employer or employers' organization and therefore requests the Government to take measures to amend its legislation.

The Committee notes that the observation made by the ILO-CEACR is the same as in 2007. In this regard, the Committee asked in its previous conclusion (Conclusions 2010) to be informed about the measures taken to ensure that free and voluntary bargaining with a view to the regulation of terms and conditions of employment is conducted between workers' organisations and an employer or employers' organisations. In the absence of measures taken to such effect, it also considered that there will be nothing to demonstrate that the situation is in conformity with Article 6§2 of the Charter.

The Committee notes that the report does not mention measures aiming at promoting voluntary negotiations between employers or employers' organisations and workers' organisations. The Committee therefore concludes that the situation is not in conformity on the ground that there is no adequate promotion of voluntary negotiations between employers or employers' organisations and workers' organisations.

The Committee asked in its previous conclusion to be informed on the procedures governing the possible extension of collective agreements. Given the silence of the report on this issue, the Committee reiterates its question.

Finally, the Committee requests that the next report clarify whether the rules on collective bargaining procedures also apply to the public sector or what other regulations allow a participation of employees in the public sector in the determination of their working conditions. In this regard, the Committee points out that civil servants are entitled to participate in the processes that result in the determination of the regulations applicable to them (Conclusions III (1973), Germany). In the meantime, it reserves its position on this issue.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 6§2 of the Charter on the ground that there is no adequate promotion of voluntary negotiations between employers or employers' organisations and workers' organisations.

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

The Committee refers to its previous conclusion (Conclusions 2010), where it found the situation in the private sector to be in conformity with Article 6§3 of the Charter. It asks that the next report provide a full and up-to-date description of the situation.

From a general viewpoint, the Committee recalls that, under Article 6§3, conciliation, mediation and/or arbitration procedures must be introduced to facilitate the settlement of collective labour disputes. They may be established by legislation, collective agreements or industrial practice (Conclusions I (1969), Statement of interpretation on Article 6§3). Such procedures must also exist to settle disputes likely to arise between the public administration and its officials (Conclusions III (1973), Denmark, Germany, Norway, Sweden).

In this regard, the Committee asked in its previous conclusion to be informed on conciliation, mediation and arbitration mechanisms for the public sector. In view of the absence of information, the Committee reiterates its question. In the meantime, it concludes that the situation is not in conformity on the ground that it has not been established that there exist conciliation and arbitration facilities for the public sector.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 6§3 of the Charter on the ground that it has not been established that conciliation and arbitration facilities exist for 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 Azerbaijan.

Collective action: definition and permitted objectives

The Committee notes that the Labour Code guarantees the right to strike and that participation in a strike shall be voluntary, no one may be forced to participate in a strike.

It further notes that employers have the right to lock out under certain conditions, such as in response to an illegal strike, or where the demands of the employees are beyond his production, financial, or other capabilities. An employer must give 10 days written notice to the employees/trade unions and other relevant authorities and must try to reach a settlement before resorting to lock out. Pursuant to Article 285 of the Labour Code, upon the request of employees, the court shall decide if a lockout is legal. If the court declares the lockout illegal, employees must be compensated for damages suffered and the employer shall be held liable for the violation of the law on lockout.

Entitlement to call a collective action

The Committee asked in its previous conclusion (Conclusions 2010) for information on who has the right to call a strike, in particular, it wished to know whether this right is reserved to a trade union. It notes from Article 262 of the Labour Code that the decision to strike shall be made at an employees' meeting or by a trade union. Pursuant to Article 274 of the Labour Code the strike shall be led by a strike committee elected by a general meeting or created by a decision of the trade union. The Committee understands from both these articles that the decision to call a strike is not only taken by a trade union and asks the next report to confirm its understanding. It also recalls that to be in line with the Charter the decision to call a strike can be taken by a trade union only, provided that forming a trade union is not subject to excessive formalities.

Specific restrictions to the right to strike and procedural requirements

Concerning restrictions related to essential services, the Committee notes that according to Article 281 of the Labour Code, strikes are prohibited in the following sectors: hospitals, energy providers, water supply services, telephone service providers, air traffic control and fire fighting facilities. In this respect, in its previous conclusion the Committee asked for information on the extent of the restrictions on the right to strike in these sectors, and whether there is a total ban on all strikes in the sectors listed above.

The Committee notes from the answer provided in the report that there is indeed a total ban on all strikes in these sectors justified by the need to protect people's health and safety.

Under Article 6§4 the right to strike may be restricted provided that any restriction satisfies the conditions laid down in Article G which provides that restrictions on the rights guaranteed by the Charter that are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals.

The Committee recalls also that restricting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health. However, simply banning strikes even in essential sectors – particularly when they are extensively defined, is not deemed proportionate to the specific requirements of each sector, but providing for the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4.

The Committee considers that even if the restriction to the right to strike is prescribed by law (in this case the Labour Code) and serves a legitimate purpose, namely public health and safety, it considers that a total ban on the right to strike in the above mentioned sectors is not proportionate to the aim pursued by the law and therefore necessary in a democratic society. It holds however that the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4. On this basis the Committee concludes that the situation is not in conformity.

Regarding restrictions related to public officials, the Committee notes that according to Article 270(8) of the Labour Code, employees of legislative authorities, relevant executive authorities, courts and law enforcement authorities may not go on strike. It also notes that pursuant to Article 20(1)(7)of the Law on Public Service, a public servant is prohibited from taking part in strikes. The Committee recalls that under Article G, these restrictions should be limited to public officials whose duties and functions, given their nature or level of responsibility, are directly related to national security, general interest, etc. The Committee considers that a total ban on the right to strike for public officials goes beyond the restrictions permitted by Article G of the Charter. The Committee therefore concludes that the situation is not in conformity with Article 6§4 of the Charter.

In view of the precedent paragraphs, the Committee concludes that the situation is not in conformity on the ground that the restrictions to the right to strike for employees working in essential services and public officials go beyond those permitted by Article G of the Charter.

As to the procedural requirements, the Committee notes that if a labour dispute is not settled through conciliation methods then a strike is allowed. Pursuant to Article 272 of the Labour Code the trade union or labour collective calling the strike must inform the employer in writing of the intention to strike at least 10 days before the strike is due to take place. As mentioned above, Article 274 of the Labour Code provides that the strike shall be led by a strike committee elected by a general meeting or created by a decision of the trade union. The strike committee shall have the right to call for a general meeting of employees, to receive information from the employer on items of interest to employees and to use the knowledge of experts on controversial subjects. The strike committee shall perform, for example, the following duties: discuss with the employer, take measures to prevent actions that might interfere with the employer or with employees who decide not to strike, provide security for the entity's property, manage the strike fund.

Consequences of a strike

Pursuant to Article 270.7 of the Labour Code a striking employee cannot be dismissed nor the job or workplace be cut, abolished or reorganised. Article 283 of the Labour Code provides that an employer may pay full or partial wages to striking employees for

the duration of the strike. This provision applies to all workers participating in a strike whether they are members or not of a trade union. According to Article 276 of the Labour Code workers who refuse to participate in a strike shall have the right to continue to work. If this is not possible, the employee's wages shall be paid at the normal rate.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 6§4 of the Charter on the grounds that:

- the restrictions on the right to strike for employees working in essential services do not comply with the conditions established by Article G of the Charter;
- the restrictions on the right to strike for public officials do not comply with the conditions established by Article G of the Charter.

Article 21 - Right of workers to be informed and consulted

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

Legal framework

The right of workers to be informed and consulted is enshrined in law, reflected in the Labour Code and implemented through collective agreements. The exercise of this right is entrusted to the trade unions represented within undertakings or to other representative bodies.

Pursuant to Article 9 of the Labour Code, an employee has the right to obtain information from his/her employer in respect of his/her workplace, position, salary and labour relations. Also according to Article 88 of the Labour Code, upon an employee's request, the employer shall provide to the employee his/her personal file.

Scope

Article 21 of the Charter entitles employees workers and/or their representatives (trade unions, staff committees, works councils or health and safety committees) to be informed of any matter that could affect their working environment, unless the disclosure of such information could be prejudicial to the undertaking. They must also be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly those which could have an important impact on the employment situation in the undertaking.

States may exclude from the scope of this provision those undertakings with a staffing level below a threshold laid down by national legislation or practice. The Committee considers that thresholds comparable with those authorised by Directive 2002/14/EC – undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state – are compatible with the Charter.

In this context, the Committee points out that all categories of worker (all employees holding an employment contract with the company regardless of their status, length of service or place of work) must be included in the calculation of the number of employees enjoying the right to information and consultation (see judgments of the Court of Justice and the European Union, *Confédération générale du travail* and Others, Case No. C-385/05 of 18 January 2007, and *Association de médiation sociale,* Case No. C-176/12 of 15 January 2014).

Personal scope

In its previous conclusion (Conclusions 2010) the Committee asked to be informed on the scope of the legislation, particularly as regards the calculation of these minimum thresholds. In this regard, the Committee notes that pursuant to the legislation all workers have the right to be informed and consulted independently of the legal form or size of the undertaking. The Committee understands that there is no minimum threshold and asks the next report to indicate the exact provision dealing with this issue.

Material scope

The Committee asked in its previous conclusion whether employers are required to provide workers' representatives with regular information on working conditions and employees' pay, work or other legitimate interests, the undertaking's economic development and the application of collective agreements. It also asked how regularly this information must be provided and if it has to be in writing.

The report states that Article 12 of the Law on Trade Unions requires employers to provide information to workers' representatives on working conditions, salaries, economic development of the undertaking and application of collective agreements. If there is no trade union represented in the undertaking, the employer has the same obligations towards employees pursuant to Article 9 of the Labour Code. The Committee repeats its request that the next report indicate how regularly this information must be provided and if it has to be in writing.

In the occupational health and safety field, employers are required, under Article 222 of the Labour Code, to inform employees of the standard rules in this area and what measures they are taking to comply with them. It is for the Ministry of Labour and Social Protection to determine the intervals at which such information must be provided.

Remedies

The Committee notes from its previous conclusion that employees' representatives are empowered to appeal to the relevant courts in respect of alleged breaches of the right to information and consultation. The Committee asks that the next report indicate the provision which deals with the right to appeal.

Supervision

The Committee notes that there is no specific body ensuring that the right of workers to be informed and consulted is respected nor that damages awarded to employees having suffered from the violation of this right.

The Committee notes that Article 58 and 59 of the Code of Administrative Offences provide for the penalization of the employer who fails to fulfil his/her obligation in respect of the right of workers to be informed and consulted.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Azerbaijan is in conformity with Article 21 of the Charter.

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 Azerbaijan.

Working conditions, work organisation and working environment

The Committee recalls that workers and/or their representatives (trade unions, worker's delegates, health and safety representatives, works councils) must be granted an effective right to participate in the decision-making process and the supervision of the observance of regulations in all matters referred to in this provision, such as the determination and improvement of the working conditions, work organisation and working environment.

As the current report fails to provide information on the system for the participation of employees in the determination and improvement of working conditions and the working environment, the Committee concludes that the situation is not in conformity on the ground that it has not been established that workers and/or their representatives have an effective right to participate in the decision-making process within undertakings with regard to working conditions, work organisation or the working environment.

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 that 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 examined only under Article 22.

The Committee notes that workers representatives have a right to take part in the determination and improvement of the protection of health and safety within the undertaking when concluding collective agreements with the employer.

In addition, pursuant to Article 237 of the Law on Trade Union, trade unions have a right to participate in the preparation and the supervision of the implementation of laws and regulations related to the protection of health and safety. In case of a danger to workers' health and safety, trade unions have a right to raise the issue before the authority carrying out state control over the observance of the legislation on the protection of health and safety at work. The Committee wishes the next report to provide information on the authority carrying out state control.

Organisation of social and socio-cultural services and facilities

According to Article 31 of the Labour Code, the organisation of social and socio-cultural services and facilities is covered by collective agreements. Employers are required to finance such activities.

Enforcement

According to Article 9 of the Labour Code a worker may appeal to a court in view of protecting his/her health and safety at work. If an employer fails to create healthy and safe conditions at work as agreed in the collective agreement, Article 238 of the Labour Code provides that he or she shall be prosecuted for his/her civil or criminal wrongdoing. In the same vein, Article 239 of the Labour Code requires the employer to compensate fully or partially the damage suffered by a worker because of his/her responsibility.

In case of breach of the right of workers to take part in the determination and improvement of working conditions, work organisation and working environment, the report does not provide any information concerning legal remedies and sanctions. The Committee therefore concludes that the situation is not in conformity on the ground that it has not been established that legal remedies are available to workers in the event of infringements of their right to take part in the determination and improvement of working conditions and the working environment.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 22 of the Charter on the grounds that it has not been established that:

- workers and/or their representatives have an effective right to participate in the decision-making process within undertakings with regard to working conditions, work organisation or the working environment;
- legal remedies are available to workers in the event of infringements of their right to take part in the determination and improvement of working conditions and the working environment.

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

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

Prevention

Employers have the obligation to take the necessary measures in order to prevent discrimination based on sex and sexual harassment (Section 7.2.5 of the Gender Equality Act and Article 12 of the Labour Code). In addition, under Article 31 of the Labour Code, as amended, a collective contract shall include the mutual obligations of the parties in relation, *inter alia*, to:

- "assistance in provision of information and conducting explanatory work with regard to humiliation of individual employees, open hostile and offensive actions in the workplace or in connection with work and prevention of such actions, taking all the necessary and appropriate measures in order to protect employees from such treatment" and
- "assistance in conducting explanatory work with regard to sexual harassment in the workplace or in connection with work as well as prevention of such harassment, applying all the necessary and appropriate measures in order to protect the employees from such treatment".

The Committee asks what concrete steps have been taken to implement these provisions. It notes that the report makes reference to the trade unions' role in relation to sexual harassment and asks the next report to explain more clearly to what extent social partners are involved in prevention activities aimed at informing workers about the nature of sexual harassment and the available remedies.

In response to the question previously raised by the Committee (Conclusion 2010), the report furthermore refers to a number of awareness raising activities and training sessions held during the reference period in the field of gender equality. According to the report, training sessions on the implementation of the Law on gender equality were held in 2010-2011 and touched upon, *inter alia*, gender based discrimination and violence. The Committee asks the next report to indicate more explicitly the measures specifically concerning sexual harassment.

Liability of employers and remedies

Under Article 26§1 of the Charter, workers must be afforded an effective protection against harassment, including the right to appeal to an independent body, the right to obtain adequate compensation and the right not to be retaliated against for upholding their rights.

The Committee previously noted in this respect (Conclusion 2010) that the Gender Equality Act of 2006 prohibits sexual harassment (Section 4), defined as "immoral behaviour, humiliating and abusing a person of opposite gender comprising of physical acts (touching, hand touching), offensive remarks, gestures, threats, disgracing advances or offers in employment or service relations". In addition, the report refers to Article 12 of the Labour Code, which sets the employer's obligation to ensure equal treatment, in particular as regards discrimination based on sex and sexual harassment, and to Article 31 of the Labour Code, under which the contract should provide for the

obligation to prevent sexual harassment in the workplace or in connection with work, conduct enquiries related to sexual harassment and adopt all necessary and adequate measures to protect the employees from sexual harassment. The Committee also notes that the Equal Opportunities Act provides that an employer may not subject an employee to harassment on the grounds that the employee has rejected the employer's sexual advances or has reported the employer for sex discrimination. Section 11 of the Gender Equality Act also provides that employees complaining of sexual harassment by their employer or supervisor shall not be exposed to any pressure or persecution.

In its previous conclusion, the Committee recalled that, under the Social Charter, it must be possible for employers to be held liable for sexual harassment involving on the one hand employees under their responsibility as well as persons not employed by them (such as independent contractors, self-employed workers, visitors, clients). It therefore asked whether the employer can be held liable towards the abovementioned categories of persons, and asked for a detailed description of the liability of employers in the above-mentioned cases. The report states that the employer is liable for all damages sustained by the employee victim of sexual harassment, under Article 195(g) and 290(3) of the Labour Code, but does not provide the information requested; the Committee accordingly reiterates its request for detailed information on the employer's liability in respect of sexual harassment involving third persons.

The Committee notes that the report refers to three sorts of procedures:

- a procedure before the employer, whereby the employer examines the employee's written arguments on the damage sustained, its causes and the compensation claimed and can order the dismissal of an employee in accordance with Article 62 of the Labour Code;
- a procedure before the Ombudsman on Human Rights, which can also result in the identification and sanctioning of the person responsible of sexual harassment and the adoption of remedial measures for the victim;
- judicial procedures aimed at the awarding of damages.

The Committee asks that the next report provide comprehensive and detailed information on all the remedies available to alleged victims of sexual harassment, in particular the ones referred to above, their legal basis, the procedures and burden of proof, and to provide relevant data and examples of case-law on sexual harassment cases dealt by these different procedures.

Burden of proof

According to the report, under the Labour Code it is up to the plaintiff, not to the employer, to bear the burden of proof in sexual harassment cases. The Committee has already noted, under Article 20 and Article 4§3 that no shift in the burden of proof applies in gender discrimination cases.

The Committee recalls that, in order to allow effective protection of victims, civil law procedures require a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges. Insofar this does not apply to sexual harassment cases in Azerbaijan, the Committee considers that the situation is not in conformity with Article 26§1 of the Charter.

Redress

The Committee has previously noted that, under Section 17(2) of the Gender Equality Act, employees subject to sexual harassment are entitled to compensation from the employer for the damages occurred. In addition, under Articles 191-192 of the Labour Code, the employer and employee shall be mutually liable for damage caused to each other, intentionally or through negligence, provided that it is proven that there has been damage, that the defendant violated the law and that there is a reasonable connection between the defendant's breach of the law and the consequences suffered. The liability of the parties depends on the identification of the damage and the plaintiff has to prove the damage in order to claim compensation.

According to the report, the courts award damages on a case by case basis, taking into account the degree of guilt, the circumstances of the case, the situation of the employee and any other relevant element, including the reaching of a friendly settlement between the parties. If the prejudice occurred falls under the scope of the criminal jurisdiction, due to action or inaction of the employer or the employee, the court can start a criminal procedure, including the awarding of damages, as applicable. In doing so, the court takes into account the employee's average salary and all legal and other costs incurred. Under Article 151 of the Criminal Code, the coercion of a person to acts of sexual character is punished by a fine of five hundred up to one thousand nominal financial unit (€482 – €963 at the rate of 31 December 2012), or by corrective work for the term of up to two years, or imprisonment for the term of up to three years. Under Article 60(1) of the Code of Administrative Offenses, sexual harassment is liable to a fine from seventy to ninety nominal financial units (€67 – €87 at the rate of 31 December 2012).

The Committee points out that victims of sexual harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer . While taking note of the information provided on the applicable rules, the Committee notes that no example is provided of actual cases of sexual harassment. In order to establish that effective remedies are available, it asks that the next report provide any relevant example of case law, including with regard to the awarding of damages, concerning sexual harassment.

The Committee notes from the report that employees who are victims of sexual harassment are entitled to rescind the employment contract in accordance with Article 69 of the Labour Code and Section 12 of the Gender Equality Act. The report confirms that a right to reinstatement applies if the employee's dismissal has been decided in breach of the relevant provisions of the Labour Code (Articles 68, 69, 70, 73, 74 and 75) or without complying with its requirements (Articles 71, 76 and 79). Under Article 62(5) of the Labour Code, employees who consider themselves to have been dismissed illegally may appeal to the court with a view to obtaining restoration of the breached rights and protection of his/her dignity and honour. The Committee asks that the next report clarify whether a right of reinstatement applies not only in case of unfair dismissal related to sexual harassment but also when the employee has been pushed to resign because of sexual harassment.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 26§1 of the Charter on the ground that no shift in the burden of proof applies in sexual harassment cases under the Labour Code.

Article 26 - Right to dignity in the workplace

Paragraph 2 - Moral harassment

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

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

Prevention

The report indicates that, under Article 31 of the Labour Code, as amended, a collective contract shall include the mutual obligations of the parties in relation, *inter alia*, to assistance in provision of information and conducting explanatory work with regard to humiliation of individual employees, open hostile and offensive actions in the workplace or in connection with work and prevention of such actions, taking all the necessary and appropriate measures in order to protect employees from such treatment. The Committee asks what concrete steps have been taken to implement these provisions.

In its previous report, the Committee asked what specific preventive measures were being taken to raise awareness about the problem of moral (psychological) harassment in the workplace. The report does not contain any information in this respect. The Committee recalls that under Article 26§2, States parties are required to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat moral (psychological) harassment. In particular, in consultation with social partners, they should inform workers about the nature of the behaviour in question and the available remedies. The Committee accordingly asks the next report to indicate explicitly the concrete measures taken to raise awareness of moral (psychological) harassment in the workplace, and to provide information on how social partners are involved in the adoption and implementation of such measures.

Liability of employers and remedies

Although no specific provision seems explicitly to prohibit moral (psychological) harassment as such, the Committee notes from the report that any discrimination in the workplace is forbidden, under Article 16 of the Labour Code. In addition, the report refers to Article 12 of the Labour Code, which sets the employer's obligation to ensure equal treatment and to Article 31 of the Labour Code, under which the contract should provide for the obligation to prevent humiliation of individual employees, open hostile and offensive actions in the workplace or in connection with work, and to adopt all necessary and adequate measures to protect the employees from such treatment.

The report furthermore points out that under Article 290§3 of the Labour Code the employer is liable for all damages sustained by the employee on account of the distribution of false information not corresponding to the reality by the employer or by a person in position being under his subordination about the employee for the purpose of blotting out his/her honor and dignity, humiliating, calumniating him/her, insulting his/her personality as well as the actions contradicting his/her morality, morals, the sense of national pride, his/her belief. In case of violation of rights protected by Article 288 of the Labour Code, the employees, in accordance with Article 292 of the Labour Code, can claim their restoration by seising a competent body dealing with labour disputes, or a court, of the claim, as provided by Article 294 of the Labour Code, or they can abstain from work in accordance with Article 295 of the Labour Code.

The Committee recalls that workers must be afforded effective protection against harassment. This protection must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be retaliated against for upholding these rights. It asks that the next report clarify, in the light of the applicable provisions and of the relevant case law, what judicial and non-judicial remedies and procedures are effectively available to employees who consider themselves to have suffered psychological harassment. It also asks if there are safeguards to protect plaintiffs against potential reprisals. Lastly, as the report fails to answer the question previously raised, the Committee asks again if the employer's liability may be incurred if employees are subjected to harassment in the workplace or in relation to their work by third parties (entrepreneurs or self-employed workers, visitors, clients, etc.) or if such third parties are victims of harassment by an employee.

Burden of proof

The Committee recalls that in order to allow effective protection of victims in harassment cases, civil law procedures require a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges. The Committee previously asked for information regarding the burden of proof in harassment cases (Conclusions 2010). It notes that the report does not reply to this question. Accordingly the Committee repeats it, and points out that in the absence of information in the next report there will be nothing to establish that the situation is in conformity with the Charter in this respect.

Redress

The Committee has noted (see above and Conclusion 2010) that under Article 290§3 of the Labour Code the employer is liable for all damages sustained by the employee and that claims for damages can be introduced before a court, which will compensate material and moral damages taking into account the gravity of the damage sustained, the position of the parties, the factual and other relevant circumstances of the case. The Committee asks the next report explicitly to confirm that these provisions apply to damages resulting from moral (psychological) harassment in the workplace.

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

employer. In addition, the persons concerned must have a right to be reinstated in their post when they have been unfairly dismissed or forced to resign for reasons linked to moral (psychological) harassment. Pointing out that the effectiveness of the legal protection against moral (psychological) harassment depends on how the domestic courts interpret the law as it stands, the Committee repeats its request for relevant examples of case law in the field of moral (psychological) harassment. In the meantime, it considers that it has not been established that in Azerbaijan employees are given appropriate and effective protection against moral (psychological) harassment in the workplace or in relation to work.

Conclusion

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

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 Azerbaijan.

Protection granted to workers' representatives

The Committee notes that the main form of workers' representation is trade union representation. The Committee however wishes the next report to indicate what protection is afforded to workers' representatives who are not trade union members.

According to Article 80 of the Labour Code if dismissal proceedings are started against a trade union representative, the employer must consult the trade union of which he or she is a member and give its reasons. The trade union will then have ten days to reply to the application made by the employer.

The Committee notes from its previous conclusion (Conclusions 2010) that there are no provisions on the protection against prejudicial acts other than dismissal, unless stated otherwise in collective agreements.

The Committee recalls that the rights recognised in the Social 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 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.

In its previous conclusion (Conclusions 2010), the Committee asked to be informed as to how long the protection for workers' representatives lasts after the cessation of their functions. Given the absence of answer to this question, the Committee considers that the situation is not in conformity on the ground that it has not been established that the protection granted to workers' representatives is extended for a reasonable period after the end of the period of their mandate.

Pursuant to Article 80 of the Labour Code, trade union representatives can lodge an appeal before the competent court in case of dismissal.

The Committee recalls that where a dismissal based on trade union membership has occurred, there must be adequate compensation proportionate to the damage suffered by the victim. The compensation must at least correspond to the wage that would have been payable between the date of the dismissal and the date of the court decision or reinstatement (Conclusions 2007, Bulgaria). In this respect, the Committee wishes the next report to provide information on the compensation offered to a trade union representative who has been dismissed unlawfully.

Facilities granted to workers' representatives

The Committee recalls that the facilities 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 (support in terms of benefits and other welfare benefits because of the time off to perform their functions, access for workers representatives or other elected representatives to all premises, where necessary, the access without any delay to the undertaking's management board if necessary, the authorisation to regularly collect subscriptions in the undertaking, the authorization to post bills or notices in one or several places to be determined with the management board, the authorization to distribute information sheets, factsheets and other documents on general trade unions' activities), as well as other facilities such as financial contribution to the workers' council and the use of premises and materials for the operation of the workers' council (Conclusions 2010, Statement of Interpretation on Article 28 and Conclusions 2003, Slovenia). The Committee also recalls that the participation in training courses on economic, social and union issues should not result on 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 that premises and materials may be made available for the use of workers' representatives while carrying out their duties. They may also be granted paid time off during working hours. The current report does not provide any additional information; therefore the Committee asks that the next report indicate if the facilities accorded by the Labour Code do include those mentioned in the paragraph above. Should the next report not provide detailed information on facilities granted to workers' representatives, there will be nothing to show that the situation is in conformity on this point.

In addition, the Committee asked in its previous conclusion for information regarding travelling expenses. Given the lack of an answer, the Committee reiterates its question.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 28 of the Charter on the ground that it has not been established that the protection granted to workers' representatives is extended for a reasonable period after the end of period of their mandate.

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

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

Definition and scope

Article 63 of the Labour Code regulates termination of employment due to collective redundancy – that is, termination affecting several workers within a period of time and decided for reasons which have nothing to do with individual workers. Collective redundancy is defined as termination of employment of more than 50% of all employees in an enterprise with 100-500 employees, 40% in an enterprise of 500-1000 employees and 30% in an enterprise with more than 1000 employees at the same time or at separate times within three months.

The Committee considers that the definition of redundancies is restrictive and asks what is the coverage of employees concerned, i.e. the percentage of employees working in enterprises with more than 100 employees in proportion to all employees.

Prior information and consultation

In its previous conclusion (Conclusions 2010) the Committee took note of Section 11 of the Trade Unions Act as well as Articles 70 and 77 of the Labour Code which regulate prior information and consultation with trade unions and workers in cases of redundancy.

The Committee further notes form the report that the trade union will not give permission for the reduction of the number of employees when the employer has not substantiated the need for redundancy. Article 16 of the Law on Employment also provides that the employer shall submit written information at least three months prior to initiating redundancy to the organs of the relevant trade unions and conduct negotiations about protection of rights and interests of employees. Trade unions may give suggestions to employers regarding delay or temporary cessation of the measures relating to collective redundancies.

The Committee notes that Article 71 of the Labour Code provides that the employer must take certain social measures while reducing the number of employees of staff. In this regard, the Committee recalls that the purpose of the consultation procedure is, among others, to provide support measures and ways and means of mitigating the consequences of redundancy, for example, by recourse to accompanying social measures designed, in particular, to facilitate the redeployment or retaining of the workers concerned. The Committee asks for more information on measures to be taken by the employer.

Preventive measures and sanctions

In its previous conclusion the Committee asked for information regarding preventive measures and sanctions that apply in cases of failure of the employer to fulfil the prior information and consultation obligation.

The Committee notes from the supplementary information provided by the Government that according to Article 53.6 of the Code on Administrative Violations termination of an

employment contract with the employee with violations of labour legislation shall involve a penalty at the rate of 1,500-2000 AZN.

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

The Comittee asks what preventive measures exist to ensure that redundancies do not take effect before the obligation of the employer to inform and consult the workers' representatives has been fulfilled.

Conclusion

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