January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

ARMENIA

This text may be subject to editorial revision.

The following chapter concerns Armenia, which ratified the Charter on 21 January 2004. The deadline for submitting the 11th report was 31 October 2016 and Armenia submitted it on 25 April 2017.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of the thematic group "Health, social security and social protection":

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

Armenia has accepted all provisions from the above-mentioned group except Articles 3§§2 to 4, Article 12§§2 and 4, Article 13§§3 and 4, Article 14§1, Article 23 and Article 30.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Armenia concern 6 situations and are as follows:

– 3 conclusions of non-conformity: Articles 3§1, 12§1 and 13§1.

In respect of the 3 other situations related to Articles 12§3, 13§2 and 14§2 the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Armenia under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

Article 3§1

On 1st August 2015, the Government, the Confederation of Trade Unions of Armenia and the Republican Union of Employers of Armenia concluded the Republican Collective Agreement with a view to ensure health and safety of employees during employment. It prescribes the obligations of the parties to social partnership, which includes the improvement of the role of trade unions, as well as the legislation for the purpose of increasing the economic interest and liability of employers, assistance in the drafting and introduction of the rules and norms for ensuring the safety and health of employees, promotion of development of the policy targeted at work safety within organisations, and the introduction of modern systems for monitoring of working conditions.

Article 8§4

Article 148 of the Labour Code has been amended (Law No. HO-96-N of 22 June 2015) and henceforth provides that pregnant women and employees taking care of a child under the age of three may be engaged in night work only with their consent after undergoing a preliminary medical examination and submitting a medical opinion to the employer.

Article 12§3

- The adoption, in 2011 and 2012 of a package of social security services, including compulsory medical insurance, for civil servants and employees working in state non-commercial organisations operating in the fields of education, culture and social security (Decisions No. 1923-N of 29 December 2011 and No. 1691-N of 27 December 2012);
- The extension, in 2015, of free medical care to include emergency heart surgery;
- The increase, as from 2014, of invalidity pensions of the first and second group of disability.

Article 13§1

The Committee notes from the report that in 2014 the Law ’On state benefits’ entered into force and the Law "On social assistance" entered into force on 1 January 2015.In the course of 2012-2015, changes were introduced to the system of family (or social) benefits, mainly concerning the improvement of the procedure and administration of assessment of the level of indigence of families. As a result, families with low income, especially those with a child also acquire the right to family (or social) benefit.

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In addition, the report contains also information requested by the Committee in Conclusions 2015 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right of children and young persons to protection - special protection against physical and moral dangers (Article 7§10)
- the right of employed women to protection of maternity - regulation of night work (Article 8§4)
- the right of children and young persons to social, legal and economic protection - assistance, education and training (Article 17§1)
- the right of migrant workers and their families to protection and assistance - departure, journey and reception (Article 19§2)
- the right of migrant workers and their families to protection and assistance - equality regarding employment, right to organise and accommodation (Article 19§4)
- the right of migrant workers and their families to protection and assistance - equality regarding taxes and contributions (Article 19§5)
- the right of migrant workers and their families to protection and assistance - equality regarding legal proceedings (Article 19§7)
- the right of migrant workers and their families to protection and assistance - guarantees concerning deportation (Article 19§8)
- the right of workers with family responsibilities to equal opportunity and treatment - participation in working life (Article 27§1)
- the right of workers with family responsibilities to equal opportunity and treatment - illegality of dismissal on the ground of family responsibilities (Article 27§3).

The Committee examined this information and adopted the following conclusions:

- 6 conclusions of conformity: Articles 8§4, 17§1, 19§4, 19§5; 19§7and 27§1;

- 1 conclusion of non-conformity: Article 19§2;

- 3 deferrals: Articles 7§10, 19§8 and 27§3.

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The next report will deal with 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).

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to work – policy of full employment (Article 1§1),
- the right to work – freely undertaken work (non-discrimination, prohibition of forced labour, other aspects) (Article 1§2 (5th ground)),
- the right to work – free placement services (Article 1§3),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – employment of persons with disabilities (Article 15§2).
- the right of persons with disabilities to independence, social integration and participation in the life of the community – integration and participation of persons with disabilities in the life of the community(Article 15§3 (2nd ground)).

The deadline for submitting that report was 31 October 2017.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

CONCLUSIONS RELATING TO ARTICLES FROM THE THEMATIC GROUP

‘Health, social security and social protection”

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

General objective of the policy

In its previous conclusion (Conclusions 2015, in conformity with the decision adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on findings of non-conformity for repeated lack of information in Conclusions 2013), the Committee again considered that the situation was not in conformity with the Charter on the ground that it had not been established that there was an adequate occupational health and safety policy.

The report states that Article 82 of the Constitution (with amendments adopted on 6 December 2015, and entered into force on 22 December 2015) lays down that every worker shall, in accordance with law, have the right to healthy, safe and decent working conditions, to limitation of maximum working hours, to daily and weekly rest, as well as to annual paid leave.

The report indicates that, pursuant to the Statute of the Ministry of Health under Annex No. 1 approved by Decision of the Government No. 1300-N of 15 August 2002, the functions of the Ministry of Health include, among others, the development of a healthcare development policy, state target programmes, programmes targeted at the improvement of public health, the prevention and treatment of diseases, and the protection of health and safety at workplace.

The working group set up under Order of the Minister of Health No. 1710-A of 2 July 2015 has developed the "Basis Rules and Standards for the Protection of the Safety and Health of Workers", and the draft Government Decision approving these rules. According to the report, the draft of these rules was developed on the basis of the general study of international experience with respect to ensuring the safety and health of employees. These Rules include principles of risk prevention, assessment of working conditions at workplace based on the assessment of harmful and hazardous factors, procedures for training and instruction of employees, raising awareness of employees by applying safety signs, requirements for ensuring safety when working with hazardous chemical substances, inflammable fluids and at altitude. The report specifies that the adoption of rules will promote the establishment of a coherent field for the regulation of health protection and safety at work, and will provide an opportunity to integrate the basic rules on protection of health and safety of employees in one legal act.

According to the report, the National Strategy for the Protection of Human Rights has been approved by Executive Order of the President NK-159-N of 29 December 2012. It guarantees, among others, the rights to protection of human health, free choice of employment, adequate standard of living and social security in the field of economic, social and cultural rights. Pursuant to the point 32 of this Strategy, the guarantee of free choice of employment shall include ensuring that working conditions comply with the appropriate safety and sanitary requirements for employment.

The action plan stemming from the National Strategy for the Protection of Human Rights, approved by the Decision of the Government No. 303-N of 27 February 2014, envisages drafting of the Decision of "National Programme for Protection of Work Safety and Health of Employees at Workplace" and submission thereof to the Government until the first quarter of 2015. In its previous conclusion (Conclusions 2015), the Committee asked for information on the implementation of this programme. In response, the report indicates that the Strategy on Protection of Work Safety and Health of Employees at Workplace has been developed. It specifies the approaches and action stages, describes the necessary measures, and sets the time limits for implementation thereof. The protocol decision of the Government has also

been drafted. It provides for the approval of the Strategy on Protection of Work Safety and Health of Employees at Workplace and the Action Plan for Protection of Work Safety and Health of Employee at Workplace for the period 2016-2018. Since the Action Plan was introduced outside the reference period, the Committee will therefore examine it in its next report. The Committee asks the next report to provide information on the activities implemented and results obtained by the National Strategy.

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes account of stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request.

The Committee underlines that, in accordance with paragraph 1 of Article 3 of the Revised Charter, the main objective policy must be to foster and preserve a culture of prevention in respect of occupational health and safety. Occupational risk prevention must be incorporated into the public authorities' activities at all levels and form part of other public policies (on employment, persons with disabilities, equal opportunities, etc.). The policy and strategies adopted must be regularly assessed and reviewed, particularly in the light of changing risks. It concludes that there is no clearly defined occupational health and safety policy. It asks for a description in the next report of any changes to the legislative and regulatory framework that took place during the reference period. It repeats its request for information on whether policies and strategies are periodically reviewed and, if necessary, adapted in the light of changing risks.

Organisation of occupational risk prevention

In its previous conclusion (Conclusions 2013), the Committee noted that, although the report described some measures intended to organise the prevention of occupational hazards, it did not provide any information on the way in which these measures were implemented in practice, either by the authorities or by companies. The report did not state whether the ILO Guidelines ILO-OSH 2001 were being applied.

The Committee refers to its previous conclusion (Conclusions 2015) for the description of the reorganisation of the State Health Inspectorate, and its functions. The report indicates that the objectives of the new Inspectorate is to ensure state control and supervision over the enforcement of legal acts containing occupational health and safety norms prescribed by the Labour Code and other legal acts.

The Committee notes that the information provided does not suffice to establish that occupational risk prevention is organised at company level, work-related risks are assessed, and preventive measures geared to the nature of risks are adopted. It asks that the next report provide more detailed information on how public authorities and employers put occupational risk prevention into practice. It further asks for information on the measures taken by the Labour Inspectorate to develop an occupational health and safety culture among employers and employees and share its experience in implementing instructions, prevention measures and consultations. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Armenia is in conformity with Article 3§1 of the Charter in this respect.

Improvement of occupational safety and health

In its previous conclusions (Conclusions 2013 and 2009), the Committee asked for the updated information for the reference period, fleshed out with details of activities carried out

in practice (sectoral risk analysis; framing of rules; adoption of recommendations; dissemination of publications; creation of training modules) and backed up by specific examples. It asked (Conclusions 2013 and 2009) for more detailed information on national policy to improve the health and safety of workers through research on the subject, training of qualified professionals, design of training courses and certification of procedures.

The report does not provide any information on the involvement of public authorities in research relating to occupational health and safety, training of qualified professionals, definition of training programmes or certification of processes. The Committee reiterates its requests and considers that if the requested information does not provided in the next report, there will be nothing to establish that the situation in Armenia is in conformity with Article 3§1 of the Charter in this respect.

Consultation with employers' and workers' organisations

In its previous conclusion (Conclusions 2013), the Committee asked for information on how the provisions of the Labour Code, notably Articles 35 and 253, were applied in practice. It also asked whether safety and health at work formed part of the subjects covered by the National Collective Agreement (2009); whether prior consultation of the social partners on the Document on the "Basic Rules and Standards for the Protection of the Safety and Health of Workers" included workers' organisations; and how consultation with employers' and workers' organisations on subjects relating to occupational health and safety took place at company level.

In reply, the report indicates that the specialists of the Ministry of Health, including the State Health Inspectorate, the Ministry of Labour and Social Affairs, the National Institute of Labour and Social Research (state non-commercial organisation), the Confederation of Trade Union and the Republican Union of Employers of Armenia were included in the working group which drafted the the "Basic Rules and Standards for the Protection of the Safety and Health of Workers". The draft was submitted to the interested government agencies and organisations for consideration.

In addition, the report indicates that on 1st August 2015, the Government, the Confederation of Trade Unions of Armenia and the Republican Union of Employers of Armenia concluded the Republican Collective Agreement with a view to ensure health and safety of employees during employment. It prescribes the obligations of the parties to social partnership, which includes the improvement of the role of trade unions, as well as the legislation for the purpose of increasing the economic interest and liability of employers, assistance in the drafting and introduction of the rules and norms for ensuring the safety and health of employees, promotion of development of the policy targeted at work safety within organisations, and the introduction of modern systems for monitoring of working conditions.

Since the report only partially answers its questions, the Committee reiterates all the specific questions concerning consultation with employers' and workers' organisations. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Armenia is in conformity with Article 3§1 of the Charter.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 3§1 of the Charter on the ground that there is no clearly defined policy on occupational health and safety.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

In the case of **maternity benefits**, the Committee refers to its conclusion on Article 8§1 (Conclusions 2015).

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions for a description of the social security system in Armenia. It notes that it rests on collective funding: it is funded by contributions (employers, employees) and by the State budget and that it covers medical care, sickness, unemployment, old age, maternity, invalidity and survivors. It asks whether employment injuries and occupational diseases are also covered and asks the next report to provide all relevant information concerning the categories of persons insured in this respect and their number, out of the total number of active population. The Committee previously noted (Conclusions 2013) that the social security system did not cover family benefits in the meaning of Articles 12 and 16 of the Charter. It refers to its conclusion under Article 13§1 as regards the social assistance benefits available to indigent families, pursuant to the Law on state benefits.

According to official statistics (National Statistical Service of the Republic of Armenia), Armenia's population in 2015 was estimated to be 2 998 600 in total, and the economically active population was estimated to be 1 316 400 (including 1 072 700 employed and 243 700 unemployed), out of a total labour force of 2 106 700.

The Committee previously noted (Conclusions 2015) that primary **healthcare** was provided free of charge to all residents (universal healthcare system). It considered however that the personal coverage of medical care was insufficient, insofar as free access to secondary and tertiary medical care was limited to certain vulnerable groups (children under 7 years of age, family benefits' recipients, disabled people) and people whose level of income was below a very low level, thus excluding a large proportion of the population. In response to this finding, the authorities clarify in the report (see also the Governmental Committee report concerning Conclusions 2013) that other categories of people are fully covered, such as children under 18 years old, under certain conditions (for example those with chronic diseases or without parental care); war veterans, military personnel and their families, including families of military who died in service; women during pregnancy and maternity leave; victims of human trafficking. Free treatment or upon payment of a reduced contribution is applicable in respect of hemodialysis services, treatments for diabetes, tuberculosis, epilepsy, mental diseases, infectious and sexually transmitted diseases, cancer treatments, cardiac treatment, including free of charge emergency heart surgery. Specialised dental care services are also free of charge for people aged 65 and over. As from 2012, a compulsory insurance for secondary and tertiary care applies to civil servants working in the governmental bodies, as well as in governmental organisations in the fields of education, culture, science, and social protection. While taking note of the explanations provided and the progressive extension of the coverage (see also Conclusions 2017, Article 12§3), the Committee notes that the report does not provide information on the proportion of the total population entitled to secondary and tertiary medical care free of charge or at a reduced cost; it accordingly asks for such data to be provided in the next report and considers in the meantime that it has not been established that the social security system covers a significant percentage of the population for the health insurance, as required by the Social Charter.

As regards **sickness** benefits, the Committee notes from Missceo that a contributory system covers employees and self-employed persons. In response to the Committee's question, the report indicates however that no statistical data are available concerning the coverage. The Committee reiterates its request for data concerning the number of people insured, out of the total active population.

The Committee refers to its previous conclusions as regards the description of the pensions' system, and in particular the different types of **old age**, **disability** and **survivors'** pensions. It notes from Missceo that a contributory and a non-contributory system are available in respect of disability and survivors' pension, with the contributory system covering employees, self-employed persons and owners of agricultural land. A multi-pillar old age pension system (state pension, contributory pension, voluntary contributions pension) applies to all residents. In particular, the report indicates that the voluntary pension component has been in effect since 2011. According to official statistics, in 2015 the number of beneficiaries was 305 600 for the old age labour pension, 2 800 for the privileged conditions (early retirement) labour pension, 1 100 for the long-term service (in civil aviation) labour pension, 128 300 for the disability pension and 10 800 for the survivors' pension. The Committee asks the next report to clarify whether the entire active population is insured (under the contributory or non contributory system) in respect of old age, disability and survivors' risks.

The report indicates that the **unemployment** benefits system was reformed, following the entry into force, on 1 January 2014, of a new Law on employment. It does not provide however the information requested on the percentage of insured persons out of the total number of active population. The Committee furthermore notes that, according to Missceo and ISSA, the unemployment benefits was discontinued in 2015. It asks the next report to clarify this point and to provide details on the system introduced by the new legislation (see also below).

Adequacy of the benefits

The Committee recalls that under Article 12§1, the level of income-replacement benefits should be such as to stand in reasonable proportion to the previous income and should not fall below the poverty threshold defined as 50% of the median equivalised income, as calculated on the basis of the Eurostat at-risk-of-poverty threshold value. In the absence of the Eurostat median equivalised income indicator, the Committee notes from official statistics that, in 2015, the equivalised average income was AMD 61 319 (€116 at the rate of 31/12/2015) per month, and 50% of it represented AMD 30 660 (€58), while 40% of it was AMD 24 528 (€46). The Committee will refer to these thresholds in the assessment of the adequacy of benefits. It notes nevertheless that other national indicators of poverty are also applied in Armenia: the upper poverty line, which was set at AMD 41 698 (€79 at the rate of 31/12/2015) per month, the relative poverty line, which was set at AMD 36 791 (€70), the lower poverty line, which was set at AMD 34 234 (€65) per month and the extreme (food) poverty line which was set at AMD 24 109 (€46) per month. The Committee furthermore notes that in 2015, the minimum wage was set at AMD 55 000 (€104).

Sickness benefits are paid from the second day of sickness for a maximum of three months, which can be extended to six months. An employee taking care of a sick family member is also entitled to sickness benefits (for a maximum of seven days if nursing an adult, 24-28 days if nursing a child and full duration in certain other cases). Self-employed persons are entitled to sickness benefits only for the period of treatment at an in-patient care institution, for a maximum of 60 calendar days in one calendar year.The amount paid corresponds to 80% of the average monthly salary of the employee (but not more than ten times the minimum wage) or the income of the self-employed (but not more than five times the minimum wage). Based on this information, the Committee considers that the level of this benefit is adequate, insofar as its minimum amount, calculated as 80% of the minimum wage – i.e. AMD 44 000 (€83) – is above the poverty level.

As the report does not provide information concerning the social security system in respect of **employment injuries/occupational diseases**, the Committee asks the next report to provide all relevant information on this issue, if this branch is covered by the Armenian social security system (information is needed in particular as regards the conditions for entitlement, the minimum amount of benefits and length of payment).

Inits previous conclusion (Conclusions 2013), the Committee held that the minimum level of **old age** benefit was inadequate. According to Missceo, contributory old age pensions are calculated on the basis of the length of service, the amount of basic pension and a personal coefficient. According to official statistics, the average monthly amount of pension was AMD 40 441 (€76). The Committee asks the next report to provide an estimation of the level of old age labour pension for an employee having worked at minimum wage level, with the minimum contributory period required of 25 years. It reserves in the meantime its position on this point. All residents who do not qualify for a contributory pension are entitled, as from the age of 65, to a non-contributory social pension (see Conclusion 2017 on Article 13§1).

According to the report, the amounts granted in respect of the non-contributory social **invalidity** pension are respectively AMD 21 500 (€41) for a person with first degree disability or a child, AMD 19 000 (€36) for a person with second degree disability and AMD 16 000 (€30) for a person with third degree disability. The Committee notes that the level of these benefits fall largely below the poverty level, it accordingly considers that it is inadequate.

The report does not provide the information requested by the Committee concerning the **unemployment** benefit system, but indicates that an important reform was enacted in 2014, with a view to promote activation measures. According to other sources (Missceo, ISSA) the unemployment benefits were discontinued in 2015 and replaced by employment-promotion measures, including cash assistance to the most disadvantaged categories of jobseekers. The Committee asks the next report to provide comprehensive and detailed information on this legislation and its impact as regards the conditions for entitlement to unemployment benefits, the level of the benefits granted, the length of the benefits and the conditions under which the payment of the benefits can be suspended or withdrawn, in particular as regards the unemployed person's possibility to refuse a job offer not matching his/her previous skills. In the meantime, the Committee considers that it has not been established that the level of unemployment benefits is adequate.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 12§1 of the Charter on the grounds that:

- it has not been established that the social security system ensures an adequate health care coverage;
- the level of social invalidity pension is inadequate;
- it has not been established that the level of unemployment benefits is adequate.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

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

It refers to its previous conclusions for a description of the national social security system and in particular the pension system. As regards changes concerning maternity benefits, the Committee refers to its conclusions on Article 8§1. As regards other branches of social security, the Committee takes note of the legislative developments during the reference period. In particular, the report mentions the following improvements:

- the adoption, in 2011 and 2012 of a package of social security services, including compulsory medical insurance, for civil servants and employees working in state non-commercial organisations operating in the fields of education, culture and social security (Decisions No. 1923-N of 29 December 2011 and No. 1691-N of 27 December 2012);
- the extension, in 2015, of free medical care to include emergency heart surgery;
- the increase, as from 2014, of invalidity pensions of the first and second group of disability.

The Committee notes however that the unemployment benefits scheme has been substantially reconfigured, as from 2015, as a result of a reform of the employment policy, following the adoption of a new Law on Employment, which entered into force on 1 January 2014. According to the report, the new policy provides for several new programmes aimed at promoting employment by supporting in particular the employment of persons who are not competitive in the labour market. Under the new legislation, a financial assistance can be provided to these persons, as well as support for making use of the services of non-state employment agencies, for starting small entrepreneurial activities, or a compensation for employers recruiting such persons or adapting their workplace for them. The report does not provide however any information on the criteria and conditions of entitlement to the financial assistance and its amount. It furthermore does not explain what has been the impact of the reform on the unemployed people who are no longer entitled to unemployment benefits. According to the report, the status of unemployed is now an important factor in the assessment of the level of indigence of the family and the granting of social assistance (family) benefits. The Committee recalls in this connection that, in order to comply with the Charter, any modifications should not undermine the effective social protection of all members of society against social and economic risks and should not transform the social security system into a basic social assistance system. Therefore any changes to a social security system must ensure the maintenance of a basic compulsory social security system which is sufficiently extensive.

The Committee recalls that a restrictive evolution in the social security system is not automatically in violation of Article 12§3. The assessment of the situation depends on the nature of the changes (field of application, conditions for granting allowances, amounts of allowance, etc.); the reasons given for the changes and the framework of social and economic policy in which they arise; the extent of the changes introduced (categories and numbers of people concerned, levels of allowances before and after alteration); the necessity of the reform; the existence of measures of social assistance for those who find themselves in a situation of need as a result of the changes made (this information can be submitted under Article 13); the results obtained by such changes. In the light thereof, the Committee asks the next report to provide more detailed information on any change to the social security system, and in particular on the reform of employment policy, in the light of the criteria mentioned above and specifying the effect of the changes on the personal scope of the system and the minimum level of income replacement benefits. It reserves in the meantime its position on this point.

Conclusion

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

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

The Committee notes from the report that in 2014 the Law ’On state benefits’ entered into force and the Law "On social assistance" entered into force on 1 January 2015.

The right to family (or social) benefit is determined on the basis on the indirect method of assessment of the level of indigence of the family. According to the Law "On state benefits", the family whose poverty score is higher than the marginal poverty score, shall be granted the right to family (or social) benefit. The family poverty score is calculated in accordance with the procedure prescribed by the Government, having regard to the proxy variables characterising poverty, i.e. the social group of each member of the family (disabled, pensioner, child, unemployed, adult capable of working, etc.), the number of family members incapable of work, conditions at home, average monthly income, etc.

Since 2008, the marginal poverty score for recognition of the right to family (or social) benefit has been reduced from 33.00 to 30.00 and it has remained unchanged until 2015. Families above the marginal poverty score acquire the right to family (or social) benefit, and families under the marginal poverty score may be included in the three-month emergency assistance list. The amount of the three-month emergency assistance is equal to the base amount of the family (or social) benefit. The Committee notes from MISSCEO that since 2014 the basic amount of assistance stood at AMD 17,000 (€32) per month.

According to the report in the course of 2012-2015, changes were introduced to the system of family (or social) benefits, mainly concerning the improvement of the procedure and administration of assessment of the level of indigence of families. As a result, families with low income, especially those with a child also acquire the right to family (or social) benefit. The Committee notes that the number of families having actually received benefits has gone up from 95,161 in 2012 to 103,745 in 2015.

As regards elderly persons, in its previous conclusion (Conclusions 2015) the Committee found that the social assistance provided to elderly persons without resources was not adequate. It asked for clarification on whether old age benefits for elderly people who do not fulfil the required insurance period are supplemented by other social benefits, including social benefits for families and housing benefits. It notes from the report that pensioners living alone and receiving a pension are granted a benefit of up to AMD 40 500 (in 2015), which means that their total income constitutes a pension in the amount of AMD 40 500, plus a benefit in the amount of AMD 16 000. Unemployed pensioners living alone (or having no guardians as prescribed by law) and receiving a pension are granted a benefit of up to AMD 109 000 (in 2015), which means their total income constitutes a pension in the amount of AMD 109 000, plus a benefit in the amount of AMD 16 000. The Committee understands that a pensioner living alone, who is still employed may receive the pension allowance of AMD 40,500, plus AMD 16,000 in benefit, while an unemployed pensioner living alone may receive 109,000 in pension allowance plus 16,000 in benefit. The Committee asks if this understanding is correct. The Committee also asks the next report to clarify the total amount of pension benefit and social assistance that a single elderly person without resources may receive. In the meantime, the Committee reserves its position as regards elderly persons.

The report further states that family benefits are designated for families with a family member under the age of 18, and social benefits are designated for families with no family member under the age of 18, provided that the grounds prescribed by the same law and the relevant decisions of the Government are satisfied. In this regard, the Committee recalls that under Article 13§1 of the Charter it examines the situation of a single person without resources. Therefore, it does not take into account the supplements paid to families for one

or several children. It asks the next report to provide more precise information regarding the 'family benefit' and/or 'social benefit' that would be paid to a single person meeting the eligibility criteria on the basis of the poverty score.

As regards medical assistance, it is previous conclusion the noted that free medical services were provided for households included in the family benefit system who have been attributed a poverty score of 36 or higher. It noted however from the WHO survey that in 2009 25% of the poorest people could not access the medical services they needed and asked the next report to comment on this observation.

The Committee notes from the report that the list of socially insecure and separate (special) groups of the population having the right to receive medical aid and services free of charge or on preferential terms guaranteed by the state has been approved by Annex 1 to Decision of the Government No 318-N of 4 March 2004. During the reference period, amendments were made to the list and the benefit recipients included in the system of family (or social) benefit and having the poverty score of 30.00 and more have also been included (previously 38.00). However, the Committee notes from WHO that private financing constitutes about half of total health expenditures in Armenia and most of that comes directly out of the consumer's pocket. In the current economic downturn, fewer and fewer people can afford it.

In this regard, the Committee also refers to its conclusion under Article 12§1 of the Charter where it the Committee notes that the report does not provide information on the proportion of the total population entitled to secondary and tertiary medical care free of charge or at a reduced cost. The Committee asks for more detailed information concerning the nature and extent of health services that are accessible and affordable for persons without resources. It holds that if this information is not provided in the next report, there will be nothing to establish that the situation is conformity with the Charter.

Level of benefits

- Basic benefit: according to MISSCEO and the report the base amount of benefit stood at AMD 17,000 (€32) in 2015. As regards the elderly persons, the Committee notes that they receive AMD 56,500 or AMD 125,000.
- Additional benefits: the Committee notes from MISSCEO that there is no allowance for housing or heating. The Committee takes note of the supplements paid to families for emergencies, as well as for each family member under 18 years of age.
- Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value): in the absence of the Eurostat median equivalised income indicator, the Committee notes from official statistics that, in 2015, the equivalised average income was AMD 61 319 (€116 at the rate of 31/12/2015) per month, and 50% of it represented AMD 30 660 (€58). The Committee will refer to these thresholds in the assessment of the adequacy of benefits. It notes nevertheless that other national indicators of poverty are also applied in Armenia: the upper poverty line, which was set at AMD 41 698 (€79 at the rate of 31/12/2015) per month, the relative poverty line, which was set at AMD 36 791 (€70), the lower poverty line, which was set at AMD 34 234 (€65) per month and the extreme (food) poverty line which was set at AMD 24 109 (€46) per month.

The Committee considers that the amount of basic benefit at AMD 17,000 falls below the poverty threshold and, therefore, is not adequate.

Right of appeal and legal aid

In its previous conclusion the Committee asked the next report to confirm that legal aid and advice is available for persons without resources in their appeal procedures. The Committee

reiterates its question and holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee will henceforth examine whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to persons unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

In its previous conclusion the Committee asked what criteria applied to nationals of States Parties lawfully resident in Armenia in order to benefit from social assistance on an equal footing with nationals.

It notes from the report that pursuant to Article 18 of the Law "On social assistance", any person residing in the Republic of Armenia, i.e. foreign nationals with a resident status, stateless persons, as well as persons holding a refugee status in the Republic of Armenia, in case of presence of the grounds prescribed by law shall have the right to social assistance. They enjoy the same rights as the citizens where they meet the requirements prescribed by the Law "On social assistance". The Committee asks whether nationals of States Parties lawfully resident in Armenia are subject to length of residence requirement to be eligible for social assistance.

Foreign nationals unlawfully present in the territory

The Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need (including medical condition). It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187). The Committee asks the next report to confirm that the legislation and practice comply with these requirements.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 13§1 of the Charter on the ground that the level of social assistance paid to a single person without resources is not adequate.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

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

In its previous conclusion (Conclusions 2015) the Committee noted that under the Law on social assistance, it did not appear that beneficiaries of social assistance are discriminated in their exercise of social and political rights. It asked next report to confirm that this is the case.

The Committee notes that the report does not provide any information in this respect. The Committee asks whether the provisions enshrining the principle of equality and prohibiting discrimination in the exercise of political or social rights are interpreted in practice in such a way as to prevent discrimination on the basis of receipt of social or medical assistance. In the meantime the Committee reserves its position on this issue.

Conclusion

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

Article 14 - Right to benefit from social services

Paragraph 2 - Public participation in the establishment and maintenance of social services

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

In its previous conclusion (Conclusions 2013), the Committee asked if and how the State helps voluntary organisations working in the social services field and, in particular, whether they are entitled to financial assistance or tax benefits.

The report indicates that Armenia is developing an integrated social services system with the involvement of different actors providing social services (including non governmental organisations), with the aim of improving the provision of services delivered to the beneficiaries. In this regard, was adopted on 26 July 2012 the Decision of the Government of the Republic of Armenia No 952- N , which approved the plan for the introduction of an integrated social services system and envisaged the implementation of a pilot programme for the provision of integrated social services. With the introduction of this integrated social services system, since 2013, were created 18 territorial centres for the provision of comprehensive social services. Extensive training courses have been organised for the employees of the bodies included within the composition of territorial centres. In this respect the Committee asks that the next report provides updated information on the impact on the social services provision after the approval of the plan for integrated social services system.

The report underlines that for the purpose of ensuring the necessary legal basis for the introduction of an integrated social services system, about 30 legal acts have been adopted following adoption of the Law of the Republic of Armenia "On social assistance"(17 December 2014). In particular Article 20 of the Law of the Republic of Armenia "On social assistance", lays down the basic principles of social assistance, including co-operation based on the collaboration and joint activity among different actors (e.g. non governmental organisations) involved in the delivery of social assistance.

The report indicates that, outside the reference period, was adopted the Order of the Minister of Labour and Social Affairs of the Republic of Armenia No 25-N of 11 February 2016 that lays down the standard form of the Agreement on Social Co-operation to be established at national and territorial level. These Agreements on Social Co-operation between the Government and representatives of international and local non-governmental organisations have been signed, since 2016 by 45 organisations and imply the establishment of a joint network for the exchange of information on the social sphere and implementation of activities for the purpose of detecting social needs, preventing risks, increasing the effectiveness of case management and making the provision of social assistance more targeted. In this respect, the Committee asks that the next report provides updated information on the impact on the social services provision after the adoption of the Agreement on Social Co-operation.

In its previous conclusion (Conclusions 2013), the Committee also asked the next report to provide pertinent figures, statistics or any other relevant information to demonstrate the participation of the voluntary sector to the provision of social services, as well as the effective access of individuals to these services. The Committee notes that the report does not provide this information and therefore, it reserves its position on this point. The Committee considers that if this information is not provided in the next report, there will be nothing to establish that the situation in Armenia is in conformity with Article 14§2 of the Charter.

In its previous conclusion (Conclusions 2013), the Committee asked the next report to explain what are the procedures and what conditions voluntary organisations have to satisfy before they can offer their services to users and, in particular, whether a system of authorisation or accreditation has been set up. It also asked how the standard of services provided by voluntary organisations is monitored. The Committee notes the recent efforts (outside the reference period), to ensure the more efficient organisation of social services in

general and in particular by involving non-governmental organisations in the provision of social services. However, the report does not provide the requested information. Therefore, the Committee reserves its position on this point. It holds that if such information is not provided in the next report ; there will be nothing to establish that the situation is in conformity with the Charter

Conclusion

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

CONCLUSIONS RELATING TO CONCLUSIONS OF NON-CONFORMITY DUE TO A REPEATED LACK OF INFORMATION IN CONCLUSIONS 2015

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Armenia in response to the conclusion that it had not been established that the legislation protects all children below 18 years of age from all forms of sexual exploitation and that adequate measures are taken to protect and assist street children.

Protection against sexual exploitation

In its previous conclusion (Conclusions 2015) the Committee noted that the Criminal Code does not precisely define 'child' and 'minor'. The Committee considered that with the information at its disposal, it had not been established that all acts of sexual exploitation of children, including simple possession of child pornography are criminalised with all children below 18 years of age. The Committee asked the next report to provide information about the precise legislative basis criminalising all forms of sexual exploitation with all children under 18 years of age.

According to the report, as prescribed by the legislation, as well as by international acts ratified and treaties signed by the Republic of Armenia, a child is any human being below the age of 18.

The Committee notes from the information provided by the Government that Article 289 of the new draft Criminal Code provides for the prohibition of dissemination of pornographic materials or objects. Part 2 of the mentioned Article concerns the punishment prescribed for the production, dissemination of child pornography or storage of child pornography on the computer system or computer data storage system or through other means. The Committee asks the next report to inform about the entry into force of the draft law. It also asks how the draft law regulates protection of children against sexual exploitation -i.e. child prostitution and child pornography. In the meantime, the Committee reserves its position on this issue.

Protection from other forms of exploitation

In its previous conclusion the Committee considered that it had not been established that measures taken to protect and assist street children were adequate.

The Committee notes from the information provided by the Government that on 10 August 2015, the Government adopted the Strategy for solving the problem of children involved in begging and vagrancy, which envisages reducing the number of such children and developing systematic approaches for the solution of the problems in the field, implementing comprehensive measures for their detection, ensuring the implementation of actions required for the integration of such children into the society.

With a view to preventing begging and vagrancy among minors, as well as improving the work carried out by the officers of the police, the subdivisions under Yerevan administration of the police and marz administrations pay occasional inspection visits in the city of Yerevan and marzes.With a view to providing the relevant assistance to minors involved in begging and vagrancy, police officers co-operate with local self-government bodies, institutions and non-governmental organisations.

Some of the children involved in begging and vagrancy detected as a result of the measures implemented by the police are referred to the Children's Support Centre by the Service for Juvenile Cases of the police. There minors receive relevant medical, psychological and

moral and social assistance from a multi-specialty council (consisting of psychologists, pedagogues, social workers).

Minors involved in begging and vagrancy are also referred to community rehabilitation centres, where long-term preventative treatment is provided to both minors and their parents. The case of each minor who has been referred to the centre is examined individually, the reasons and conditions are revealed and measures for their elimination are undertaken.

The inter-agency working group established on the basis of the Order of the Head of the Police, No 3837-A of 7 November 2013 carried out its activities in the course of 2014-2016 with a view to detecting children involved in begging. The working group discusses the problems of minors involved in begging and vagrancy and their families. It prepares and submits relevant motions to the competent bodies for re-enrolment of minors concerned in schools. The Committee asks the next report to provide statistical data on the incidence of street children.

Conclusion

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

Article 8 - Right of employed women to protection of maternity

Paragraph 4 - Regulation of night work

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Armenia in response to the conclusion that it had not been established that regulations on night work offered sufficient protection for the employed women who are pregnant, have recently given birth or are nursing their infant (Conclusions 2015, Armenia).

In response to the Committee's finding, the report indicates that Article 148 of the Labour Code has been amended (Law No. HO-96-N of 22 June 2015) and henceforth provides that pregnant women and employees taking care of a child under the age of three may be engaged in night work only with their consent after undergoing a preliminary medical examination and submitting a medical opinion to the employer. According to the report, this implies that a medical exam and the submission of its result to the employer is now a mandatory requirement in all cases when a pregnant woman or a woman taking care of a child under the age of three has to perform night work, when an employee performing night work becomes pregnant, or when she returns to night work following maternity leave.

The report also indicates that, under Article 258 of the Labour Code, when a pregnant woman or a woman taking care of a child under the age of one needs to undergo a medical examination during working time, the employer shall be obliged to release her from the performance of work duties, while maintaining the average salary which shall be calculated on the basis of the average hourly rate. In addition, according to the report, when providing obstetric and gynaecological aid and services during prenatal care for pregnant women and during postnatal care for puerperal women, obstetrician-gynaecologists advise women performing night work to avoid night work and issue a relevant statement of information to be presented to the employer.

The report furthermore recalls that medical examinations are provided in general for all employees, under Article 249 of the Labour Code, before undertaking work at night and on shifts and at regular intervals afterwards. In accordance with Decision No. 1089-N of 15 July 2004, there is no specific prohibition to perform night work during pregnancy or the breastfeeding period, but these situations are included in the list of general medical contra-indications for permitting employment connected with harmful and dangerous factors in the industrial environment and working process. In this respect, the report clarifies that, according to the Armenian sanitary rules (approved by Order No. 756-N of the Minister of Health, of 15 August 2005), depending on the number and duration of the shifts and the rest schedule, night work can constitute harmful (stressful) working conditions.

In the light of the information submitted, the Committee considers that the situation is in conformity with Article 8§4 of the Charter.

Conclusion

The Committee concludes that the situation in Armenia is in conformity with Article 8§4 of the Charter.

Article 17 - Right of children and young persons to social, legal and economic protection

Paragraph 1 - Assistance, education and training

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The legal status of the child

The Committee takes note of the information submitted by Armenia in response to the conclusion that it had not been established that there is no discrimination between children born within and outside the marriage (Conclusions 2015, Armenia). It notes in particular that the legislation makes no distinction between children born to married parents and children born to unmarried parents. All children are equal before the law. The Committee asks the next report to provide the relevant legislative basis guaranteeing this equality.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Armenia is in conformity with Article 17§1 of the Charter as regards the legal status of the child.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 2 - Departure, journey and reception

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October on conclusions of non-conformity for repeated lack of information in conclusions 2015.

The Committee takes note of the information submitted by Armenia in response to the conclusion that it had not been established that appropriate measures were taken to facilitate the departure, journey and reception of migrant workers.

According to the report, there are seven Migration Resource Centres (MRC) operating under the aegis of the State Employment Agency of the Ministry of Labour and Social Affairs of the Republic of Armenia. The MRCs raise awareness on migration issues, provide (potential) emigrants with pre-migration consulting services and assist returning migrants in re-integration into the labour market. The report provides few examples of projects and programmes carried out in 2016 (out of the reference period). In this regard, the report points out that emigrants are considered as vulnerable groups, pursuant to the law on employment adopted in 2014; thus, they may, in priority order, be engaged in all 13 annual state programmes for employment assistance. About 2019 returning migrants have applied to the State Employment Agency, 286 of whom have been engaged in the annual employment programmes.

The report adds that the State Employment Agency, in co-operation with the International Organisation for Migration and the NGO "Caritas" in Armenia, is developing a Mobile MRC, the aim of which is to raise the level of awareness of the population about employment and migration programmes, to assess the needs of migrants, as well as to carry out the registration of residents of remote regions in a more effective manner, as a result of which citizens will be more informed and protected.

Finally, the report states that the Policy Concept for the integration of persons recognised as refugees and having received asylum in the Republic of Armenia, as well as long-term migrants was approved on 21 July 2016 (out of the reference period). The goal of the Concept is to fill the existing gap in the migration policy of the Republic of Armenia by defining target groups of immigrants and the possible directions for their integration, taking into account the best international practices in this sector.

The Committee understands that most services available are dedicated in priority to immigrants and/or emigrants of Armenian origins. The ECRI's Fourth report further confirms this understanding, as it considers that in general "the existing elements of integration policies and programmes described above place too much focus on people of ethnic Armenian origin and on the agreed principle that their ethnic background makes integration efforts pointless".

The Committee recalls that Article 19§2 requires States Parties to adopt special measures for the benefit of migrant workers, beyond those which are provided for nationals to facilitate their departure, journey and reception (Conclusions III (1973), Cyprus). The Committee also recalls that reception must include not only assistance with regard to placement and integration in the workplace, but also assistance in overcoming problems, such as short-term accommodation, illness, shortage of money and adequate health measures (Conclusions IV (1975), Germany). Reception means the period of weeks which follows immediately from their arrival, during which migrant workers and their families most often find themselves in situations of particular difficulty (Conclusions IV, (1975) Statement of Interpretation on Article 19§2).

In this regard, the Committee previously asked for information on services available for newly arrived migrants to support them upon reception in Armenia. The report provides however no information on this matter. The Committee accordingly requests that the next

report provide a full and up-to-date description of the situation, having regard to the assessment criteria mentioned above. It considers in the meantime that no appropriate measures have been taken to facilitate the departure, journey and reception of foreign workers.

The Committee recalls that the situation concerning other aspects covered by Article 19§2 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 19§2 of the Charter on the ground that no appropriate measures have been taken to facilitate the departure, journey and reception of foreign workers.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 4 - Equality regarding employment, right to organise and accommodation

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in conclusions 2015.

The Committee takes notes of the information submitted by Armenia in response to the conclusion that it had not been established that migrant workers enjoy equal rights with respect to membership of trade unions and collective bargaining.

The Committee recalls that sub-heading b of Article 19§4 requires States to eliminate all legal and de facto discrimination concerning trade union membership and as regards the enjoyment of the benefits of collective bargaining (Conclusions XIII-3 (1995), Turkey). This includes the right to be founding member and to have access to administrative and managerial posts in trade unions (Conclusions 2011, Statement of interpretation on Article 19§4(b)).

According to the report, everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of labour interests, pursuant to Article 45 of the Constitution of the Republic of Armenia as amended in December 2015. Article 3, point 3 of the Labour Code enshrines the following three principles:

- Legal equality of parties to employment relations, irrespective of their national origins, nationalities or affiliation to political parties, trade unions or non-governmental organisations;
- Right to freedom of association of employers and employees, including the right to form or join trade unions and employers' associations;
- Freedom to collective bargaining.

The report adds that voluntary participation (membership) in trade union is, under Article 3, point b) of the Law on trade unions, secured for anyone, including migrant workers. The Committee asks the next report to provide further details on the implementation of this right in practice.

In light of the above, the Committee considers the situation to be in conformity with the Charter on this point.

The Committee recalls that the situation concerning other aspects covered by Article 19§4 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Armenia is in conformity with Article 19§4.b of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 5 - Equality regarding taxes and contributions

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in conclusions 2015.

The Committee takes note of the information submitted by Armenia in response to the conclusion that it had not been established that no discrimination against migrant workers occurs in relation to employment taxes and contributions.

The report states that any natural person, with or without resident status in Armenia, shall be considered as income taxpayer, pursuant to Section 3 of the Law on Income Tax. In particular, pursuant to this law, a person is considered to be "resident" if he/she has been residing in Armenia for at least 183 days within the tax year (from 1 January to 31 December) or if his/her family or economic interests are concentrated in Armenia.

Residents are taxed on all income earned inside and outside Armenia. Non-residents are liable to pay personal income tax on income whose source is in Armenia.

The report points out that residents and non-residents' salaries, including foreign nationals, and their incomes equivalent thereto shall be taxed in the same way, based on the scale defined by Article 10(1)1 of the abovementioned law – once a month, and no kind of peculiarity (difference) of taxation is provided.

The report also points out that employees born on 1st January 1974 and later shall pay social contributions in Armenia, pursuant to Article 5(1)1 and (3) of the Law on Funded Pensions. This also concerns foreign nationals and stateless persons holding a residence permit who pay social contributions on a general basis, through the procedure established for the citizens of Armenia, unless otherwise provided for by a multi- or bilateral agreement.

Conclusion

The Committee concludes that the situation in Armenia is in conformity with Article 19§5 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 7 - Equality regarding legal proceedings

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in conclusions 2015.

The Committee takes notes of the information submitted by Armenia in response to the conclusion that it had not been established that migrant workers are secured treatment not less favourable than that of Armenian nationals in respect of relevant legal proceedings through the provision of legal aid, interpretation and translation services.

The Committee recalls that States Parties must ensure that migrants have access to courts, to lawyers and legal aid on the same conditions as their own nationals (Conclusions I (1969), Italy, Norway, United-Kingdom).

It further recalls that any migrant worker residing or working lawfully within the territory of a State Party who is involved in legal or administrative proceedings and does not have counsel of his or her own choosing should be advised that he/she may appoint counsel and, whenever the interests of justice so require, be provided with counsel, free of charge if he or she does not have sufficient means to pay the latter, as is the case for nationals or should be by virtue of the European Social Charter. Whenever the interests of justice so require, a migrant worker must have the free assistance of an interpreter if he or she cannot properly understand or speak the national language used in the proceedings and have any necessary documents translated. Such legal assistance should be extended to obligatory pre-trial proceedings (Conclusions 2011, Statement of interpretation on Article 19§7).

According to the report, Article 63 of the Constitution of the Republic of Armenia, adopted through a referendum held on 6 December 2015, guarantees the right to a fair trial and public hearing within a reasonable time period, by an independent and impartial court to anyone, including migrant workers. The conditions under which a person is entitled to apply to civil and administrative courts are defined in Articles 2 of the Code of Civil Procedure and 3 of the Code of Administrative Procedure, respectively.

The Committee previously noted in its conclusion (Conclusions 2011) that the Advocacy Act guaranteed legal assistance free of charge in cases prescribed by the Criminal Code and Civil Code. In this regard, it asked what categories of cases are covered by legal assistance and what conditions are required for individuals to be eligible for free legal assistance. According to Article 64 of the Constitution of Armenia, "[e]veryone shall have the right to receive legal aid. In cases prescribed by law, legal aid shall be provided at the expense of state funds. With a view to ensuring legal aid, advocacy based on independence, self-governance and legal equality of advocates shall be guaranteed. The status, rights and responsibilities of advocates shall be prescribed by law."

Pursuant to Article 6(3) of the Advocacy Act, legal aid may be provided free of charge if agreed with the advocate. The report further indicates that under Article 4 of this Act, the State shall provide migrant workers with free legal aid in accordance with the criteria listed under Article 41(5) of the Act. Legal aid includes, *inter alia*, legal advice, draft of official materials and representation or defence in civil, criminal, administrative and constitutional cases (Article 41 (2) of the Advocacy Act).

Article 10(1) of the Code of Criminal Procedure also guarantees for everyone the right to receive legal aid. Legal aid provided to suspects and accused by an assigned counsel shall be remunerated at the expense of the State Budget, unless the counsel agreed to provide legal aid free of charge. The body conducting criminal proceedings shall take a reasoned decision on exempting the suspect or the accused from payment for legal aid in whole or in part (Article 165 (2) and (3) of the Code of Criminal procedure).

The Committee also asked for updated information on the planned amendments to the Advocacy Act. According to the report, the Bill intends to better take into account the peculiarities of the rights of foreign advocates, to specify the procedures for the training of advocates, to extend the scope of persons entitled to free legal aid, to allow non-advocates to exercise public defence and to regulate in a more comprehensive manner several procedural issues. The Committee understands from the report that free legal aid is not provided to foreigners and asylum seekers lodging an appeal to a decision on expulsion. It asks the next report to confirm whether this understanding is correct and under what other circumstances, if any, free legal aid is not provided to foreigners.

The Committee also understands that the Bill has not been adopted yet. Therefore, it asks the next report to specify when it will be adopted.

Finally, the Committee asked for more information on the arrangements provided for interpretation and translation in criminal proceedings, including as regards the bearing of the cost.

The report states that legal proceedings are conducted in Armenian. However, and where the person concerned lacks knowledge of Armenian, the Court shall ensure provision of translation services at the expense of the State, in criminal, civil and administrative cases. Free translation services (at the expense of the State) shall also be provided to natural persons taking part in administrative cases and certain civil cases prescribed by law if they prove that they are unable to pay for such services due to their financial situation (Article 19 of the Judicial Code).

The Committee notes that a new Code of Civil Procedure is being drafted and asks the next report to provide updated information on its adoption.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Armenia is in conformity with Article 19§7 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 8 - Guarantees concerning deportation

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in conclusions 2015.

The Committee takes note of the information submitted by Armenia in response to the conclusion that it had not been established that migrants lawfully residing in Armenia shall not be expelled unless they endanger national security or offend against public interest or morality.

The Committee recalls that where expulsion measures are taken, they cannot be in conformity with the Charter unless they are ordered, in accordance with the law, by a court or a judicial authority, or an administrative body whose decisions are subject to judicial review. Any such expulsion should only be ordered in situations where the individual concerned has been convicted of a serious criminal offence, or has been involved in activities which constitute a substantive threat to national security, the public interest or public morality. Such expulsion orders must be proportionate, taking into account all aspects of the non-nationals' behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate (Interpretative statement on Article 19§8, Conclusions 2015).

In response to the Committee's request for clarifications (Conclusions 2015) concerning expulsion on health grounds, the report states that, according to Section 8(1)(d) of the Foreigners Act, the fact that a person suffers from an infectious disease threatening public health can only constitute a ground for refusing a visa to a person entering Armenia, but cannot be used as a ground for expelling a person already residing in Armenia. The Committee notes however that Section 8 of the Act also applies to the revocation of an entry visa and asks the next report to confirm that the revocation of an entry visa cannot be ordered on grounds of health, unless the person refuses to undergo suitable treatment. As regards the infectious diseases justifying the prohibition of entry of foreigner or stateless persons in Armenia, the report indicates that, pursuant to Decision No. 49-N of 25 January 2008, the list includes, *inter alia* the plague (lung form), cholera, active tuberculosis of respiratory organs (all forms with pathogen release), tropical malaria, atypical form of pneumonia, new subtypes of influenza, viral hemorrhagic fevers (Ebola, Marburg, Lassa), and Middle East Respiratory Syndrome (Coronavirus).

In its previous conclusion (Conclusions 2015), the Committee noted that, under Article 21§1d of the Foreigners Act, a residence permit may be revoked in case of absence from the country for more than six months, which in turn can lead to the deportation from the country, pursuant to Sections 30 and 31 of the same Act. In response to the Committee's request for clarifications on this point, the report confirms that Section 31 of the Foreigners Act provides for the expulsion of a foreigner where the latter fails to voluntarily leave the territory of Armenia in cases provided for by Section 30 of the same Act, i.e. when he/she does not have a valid residence status. Prior to any expulsion, the police shall notify the person about the decision concerning his/her residency status and the time-limit for either getting a valid residence status, leave the country or lodge an appeal against that decision. The Committee asks the next report to provide information on the time-limit granted to foreigners in this connection.

According to the report, even in case of failure to leave, the expulsion is not carried out automatically, but an action on expulsion is filed with the court, after examining whether any of the circumstances listed under Section 32 applies to the case at issue, which would oppose to the expulsion (see below). The report points out that foreigners who do not have a

valid residence status in Armenia are usually subject to administrative sanctions, e.g. fines, rather than expelled, unless they pose a threat to the national security or public interest.

The report indicates that the same procedure and considerations apply to expulsions on grounds of threat to national security and public order; it also indicates that, as from 2014, only two persons had been expelled on this ground and a third case was under examination. In particular, the report states that, in case of serious and/or substantial threat to national security and public order, the National Security Service delivers an opinion in this respect but a court decision is required in order for an expulsion order to be served. According to the report, during the consideration of each expulsion case, the court assesses whether the expulsion is in conformity with the obligations undertaken under international treaties, with reference to the circumstances under which the expulsion is prohibited. In this respect, the Committee notes that Section 32 of the Foreigners Act prohibits collective expulsions as well as expulsion involving a risk of violation of the foreigner's human rights, in particular persecution, torture, ill-treatment or death. Expulsion is also prohibited for minors whose parents reside in Armenia and for foreigners having a minor under their care or those who are above 80 years of age. The Committee asks the next report to clarify whether, as regards the risk of violation of human rights, the courts also take into account the Charter's requirements under Article 19§8, namely that the proportionality of expulsion be determined by considering all aspects of the non-nationals' behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State, including the individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period. It reserves in the meantime its position on this issue.

Conclusion

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

Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

Paragraph 3 - Illegality of dismissal on the ground of family responsibilities

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Armenia in response to the conclusion that it has not been established that the compensation for unlawful dismissal due to family responsibilities is adequate.

In its previous conclusion the Committee noted that there was a ceiling to the pecuniary damage which could be paid to an employee unlawfully dismissed on the ground of parental responsibilities. It asked whether compensation for non-pecuniary damage could be sought through other legal avenues (e.g. non-discrimination legislation).

According to Article 265 of the Labour Code in case of termination of the employment contract without a lawful ground or in violation of the procedure prescribed by the legislation, the rights of the employee shall be restored. An average salary for the entire period of forced idleness shall be paid in favour of the employee. As regards the compensation for non-pecuniary damage through other legal means (for instance, legislation prohibiting discrimination), the Ministry of Justice has undertaken the development of comprehensive legislation for combating discrimination with the support of the Eurasia Partnership Foundation (with the financial support of the Government of the Kingdom of the Netherlands). The draft law is scheduled to be adopted during the year 2017. The Committee asks the next report to provide information regarding the draft law. In the meantime, it reserves its position on this issue.

Conclusion

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