March 2018

European Social Charter

European Committee of Social Rights

Conclusions 2018

AZERBAIJAN

This text may be subject to editorial revision.

The following chapter concerns Azerbaijan which ratified the Charter on 2 September 2004. The deadline for submitting the 11th report was 31 October 2017 and Azerbaijan submitted it on 3 April 2018.

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 "Labour Rights":

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

Azerbaijan has accepted all provisions from the above-mentioned group except Article 2.

The reference period was 1 January 2013 to 31 December 2016.

The conclusions relating to Azerbaijan concern 16 situations and are as follows:

– 3 conclusions of conformity: Articles 4§2, 6§3 and 21,

– 13 conclusions of non-conformity: Articles 4§1, 4§3, 4§4, 4§5, 5, 6§1, 6§2, 6§4, 22, 26§1, 26§2, 28 et 29.

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The next 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 2018.

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

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.

In its previous conclusion (Conclusions 2014), the Committee held that the situation was not in conformity with Article 4§1 of the Charter on the ground that the monthly minimum wage did not ensure a decent standard of living and asked the next report to provide information on the monthly minimum wage 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.

The Committee notes from the report that from 2014 to 2016 the net monthly minimum wage amounted to AZN 99.8 (€ 95.81 in 2014, € 95.88 in 2015 and € 58.67 in 2016). In 2014 the net average wage amounted to AZN 377.5 (€ 632.70), in 2015 to AZN 396.5 (€ 356.92) and in 2016 to AZN 423.9 (€ 249.23). The report indicates that the ratio of the net minimum wage to the net average wage amounted to 26.4% in 2014, to 25.2% in 2015 and to 23.5% in 2016. The report does not provide information on the net minimum and the net average wage in 2013. 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, therefore, concludes that the situation 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.

In its previous conclusion (Conclusions 2014), the Committee asked to what extent the monthly minimum wage is applied to employees 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 April 2009 (No. 791-IIIG).

The report does not provide information on whether the monthly minimum wage is applicable to employees governed by the Merchant Navy Code (2001) and the Special Economic Zones Act of April 2009 (No. 791-IIIG). The Committee reiterates its previous question. As regards civil servants, the report provides figures regarding the average nominal wage of civil servants per economic region. However, it does not provide the requested information on the minimum monthly wage. In this regard, the Committee notes from the Governmental Committee's Report Concerning Conclusions of 2014 of the European Social Charter (revised) that the monthly minimum wage in the public sector amounted to 27.5% of the gross monthly average wage of AZN 398.20 (€ 403.14). The Committee asks the next report to provide information and figures on the net minimum and average monthly wage in the public sector.

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 (Conclusions 2014), the Committee concluded that the situation was in conformity with Article 4§2 of the Charter and asked whether the legislation provided for exceptions to the right to an increased rate of remuneration for overtime for certain categories of senior state employees and private-sector management executives.

In reply, the report states that all employees, regardless of their position, must be paid for overtime and that, in accordance with Article 165 of the Labour Code, the pay for each hour of overtime must be at least double the standard hourly rate.

The Committee refers to its previous conclusions (Conclusions 2010 and 2014) for a description of the relevant legislation and finds that the situation is still in conformity with the Charter.

Conclusion

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

Article 16 of the Labour Code prohibits any discrimination of employees on grounds of citizenship, sex, race, religion, nationality, language, place of residence, property status, social-economic origin, age, marital status, conviction, political views, membership of trade-unions or other public unions, position, professional qualities, competency and other factors unrelated with the results of work, as well as direct and indirect granting of privileges and concessions and restrictions of rights on the basis of these factors. Equal employment opportunities for women and men have been established in the legislation.

The Committee previously noted that according to Section 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.

The Committee asks what methods are used to evaluate work and whether these are gender neutral and exclude discriminatory undervaluation of jobs traditionally performed by women. In the meantime, it reserves its position on this issue.

Guarantees of enforcement and judicial safeguards

The Committee recalls that in discrimination cases the burden of proof must be shifted (Conclusions 2004, Romania, Article 20). The shift in the burden of proof consists in ensuring that where a person believes he or she has suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of equal treatment (Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the Additional Protocol).

In its conclusions on Article 20 (Conclusions 2016) the Committee noted that during judicial proceedings in discrimination cases there is no shift in the burden of proof and therefore concluded that the situation was not in conformity with the Charter. The Committee has also noted (Conclusions 2016, Article 1§2) that Section 77 of the Code of Civil Procedure each party to the proceedings shall provide evidence for their claims and objections.

The Committee now notes from the report in this regard that 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 gender. The Committee asks whether this signifies that the onus is on the defendant to prove that no discrimination has occurred.

Methods of comparison

In its conclusion on Article 20 (Conclusions 2016) the Committee asked if the pay whether in equal pay litigation cases it is possible to make comparisons of pay and jobs outside the company directly concerned. The report does provide this information. The Committee reiterates this question and asks in particular whether the law prohibits discriminatory pay in statutory regulations or collective agreements, as well as if the pay comparison is possible outside one company, for example, if such company is a part of a holding company and the remuneration is set centrally by such holding company.

Statistics

In its conclusion on Article 20 (Conclusions 2016) the Committee noted that the ratio of women's average monthly salary to men's was 47.5%. The Committee noted that the gender wage gap was considerable. It asked the next report to provide detailed information on the position of women in employment and training as well as on gender pay gap. Meanwhile, it considered that the situation was not in conformity with Article 20 of the Charter on the ground that the unadjusted gender pay gap was manifestly too high.

The Committee now notes from the report that the analysis and experience show that women do not prefer working at jobs requiring physical labour, or special attire or overtime work. They prefer instead lighter jobs with less responsibility. Therefore, more than half of women workers work at state funded areas where salaries are below the national average monthly salary (for example, education, culture, health, recreation and art). However, according to the report, this shall not be assessed as discrimination in payment of salaries.

According to the report, women's average monthly salary to men's average monthly salary ratio was 54,7% in 2014, 53,9% in 2015 and 50,3% in 2016. The analysis of appeals regarding labour rights made to the Commissioner for Human Rights (672 appeals in 2014, 960 in 2015, 958 in 2016) shows that no appeal was received on discrimination in employment, including gender-based discrimination (particularly, in terms of equal pay for equal work) and sexual and emotional harassment. From 2014 to June of 2017 none of court cases was on labour disputes based on discrimination (based on gender equality and sexual orientation).

The Committee notes that the gender pay gap has only slightly improved compared to the previous reference period (47,5%) but however it has worsened during this reference period. The Government's argument concerning the career choices of women (towards lighter and less responsible jobs), together with the absence of any awareness raising about the meaning and importance of gender equality in general, cannot be seen as conducive to promoting equality and guaranteeing equal opportunities. The Committee observes that the gender pay gap remains persistently high, which demonstrates that the enforcement of the right to equal pay is not effective. Therefore, the situation is not in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 4§3 of the Charter on the ground that the enforcement of the right to equal pay is not effective, as demonstrated by the persistently high gender pay gap.

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.

In its previous conclusion (Conclusions 2014), the Committee held that the situation was not in conformity with Article 4§4 of the Charter, on the grounds that notice periods were not reasonable in several circumstances and that there was no notice period provided for in certain circumstances.

The report does not indicate any change to the situation during the reference period. The Committee, therefore, reiterates its previous conclusion of non – conformity as regards notice periods and/or severance pay for termination of employment on account of being called up for military service or long-term illness or disability, beyond te] years of service (severance pay of two months' wages); termination of employment on grounds stipulated in the employment contract (one months' notice period), beyond three years of service; dismissal during the probationary period (three days' notice). It also reiterates its previous conclusion of non-conformity due to lack of notice periods in cases of dismissal for professional incompetence or lack of qualifications without further justification; 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. Meanwhile, the Committee takes note of the information contained in the report concerning changes in the legal framework regarding notice periods and/or severance pay (Law No 675-VQD, dated May 31, 2017 on "Making Amendments to the Labour Code of the Republic of Azerbaijan"), which took place outside the reference period and will assess them in the next reporting cycle concerning Article 4§4 of the Charter.

In its previous conclusion (Conclusions 2014), the Committee requested information on collective agreements laying down more favorable conditions of notice or compensation in accordance with Article 77, paragraph 6 of the Code.

In reply, the report indicates that collective agreements may provide for more paid leave per week of the notice period for the purpose of looking for new employment.

In its previous conclusion (Conclusions 2014), the Committee, noting that the cumulative duration of successive fixed-term contracts is limited to five years (Article 45, paragraph 1 of the Code), asked the next report to indicate the notice period and/or severance pay applicable in the event of early termination of fixed-term contracts. The report does not provide information in this regard. The Committee, therefore, reiterates its previous question.

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:
  - termination of employment on account of being called up for military service or long-term illness or disability, beyond **ten** years of service;
  - termination of employment on grounds stipulated in the employment contract, beyond three years of service;
  - dismissal during the probationary period;
- No notice period is provided for in the following cases:
  - dismissal for professional incompetence or lack of qualifications without further justification;
  - 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;

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

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

In its previous conclusion (Conclusions 2014), the Committee concluded that the situation was 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 and that guarantees in place to prevent workers form waiving their right to limitation of deduction from wages are insufficient.

According to the report, pursuant to Article 175 of the Labour Code, deductions from wages can be made for:

- taxes, social security contributions and other obligatory payments laid down in law;
- amounts laid down in judicial orders;
- payments for paid leave lost due to the employee's early resignation;
- payments in relation to work trip that were not used;
- amounts overpaid due to incorrect calculations;
- advance payments for other expenses;
- amounts established in collective agreements;
- trade union fees.

Furthermore, pursuant to Article 174§3 of the Labour Code, up to 20% of the employee's wage, upon his/her consent, can be replaced with wage in kind and more specifically with products produced by the employer's enterprise. In this case, alcoholic beverages, tobacco, drugs, psychotropic substances and other products with restricted civil turnover cannot be part of wage in kind. When deductions take place on the basis of legal documents, the limit applicable is the 50% of the employee's wage. In its previous conclusion (Conclusions 2014), the Committee noted that Article 175§1 of the Labour Code allows employees to consent to specific deductions by written agreement, without any provision against the deprivation of means of subsistence being made by statutory provisions, case-law, regulations or collective agreements. The Committee reiterates its previous conclusion and considers that the situation 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 and that guarantees in place to prevent workers from waiving their right to limitation of deductions from wages are insufficient.

The Committee notes from the report that, pursuant to Article 202 of the Labour Code, the pecuniary damage caused to the employer by the employee is determined on the basis of objective criteria (the market value of the property or basis prices). Non-pecuniary damage is determined by the competent courts, in accordance with Article 290 of the Labour Code. In case the liability of the employee extends to the amount of his/her average monthly wage, deductions are decided by the employer. The employee may dispute the employer's decision before the competent courts. In case of damage that extends beyond the employee's average monthly wage and he/she bears the full liability, unless the employee agrees to pay, it is for the court to determine and order deductions, upon the employer's request.

In its previous conclusion (Conclusions 2014), the Committee asked the next report to specify the "other mandatory payments specified by law" (Article 175§2(a) of the Labour Code) and provide 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 requested information on the application of the 20%, 50% and 70% limits to employees who receive the minimum monthly wage, who consent to assign portions of their wages or those whose wages are paid partially in kind (Article 174§3 of the Labour Code).

The report does not provide information in this regard. The Committee, therefore, reiterates its previous questions.

The Committee notes from the NATLEX database of national labour, social security and related human rights legislation, that the Labour Code has been amended several times during the reference period and asks the next report to indicate any amendments as regards provisions of the Labour Code relevant to Article 4§5 of the Charter.

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.

It already examined the situation with regard to the right to organise (forming trade unions and employer associations, freedom to join or not to join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusions. It will therefore only consider recent developments and additional information.

Forming trade unions and employers' organisations

The Committee previously held that the situation in Azerbaijan was 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 (Conclusions 2014, 2016).

According to the report trade union activity in multinational companies is still "not satisfactory", employers hinder the establishment and operation of trade-unions. However the report states that the activities of the Confederation of Trade Unions of Azerbaijan and the Government to promote trade unions in multinational companies continues. Nevertheless the Committee finds that the situation is still not in conformity with the Charter on this point.

Freedom to join or not to join a trade union

The Committee previously asked to be kept informed of any cases concerning discrimination on grounds of trade union membership. The Committee renews its request for information on any cases of anti-union discrimination.

Trade union activities

The Committee previously found the situation to be in conformity on this issue.

Representativeness

The Committee recalls that there are no representativity criteria for consultation or collective bargaining.

Personal scope

The Committee previously concluded that the situation was not inconformity with the Charter on the grounds that members of the police did not have the right to form and join trade unions or professional associations for the protection on their economic interests.

No new information is provided in the report. Therefore the Committee reiterates its previous conclusion.

The Committee refers to its general question on the right of members of the armed forces to organise.

Conclusion

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

- the right to form and join trade unions is not ensured in practice in multinational companies;
- all members of the police force are denied the right to organise

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 previously concluded that the situation in Azerbaijan was not in conformity with Article 6§1 of the Charter on the ground that it had not been established that the promotion of joint consultation between workers and employers on most matters of mutual interest covered by Article 6§1 was ensured (Conclusions 2014, 2016). It requested complete information on how joint consultation is promoted between employers and employees on issues of mutual interest, apart from safety and health at work. It recalls that consultation must cover all matters of mutual interest, and particularly: productivity, efficiency, industrial health, safety and welfare, and other occupational issues (working conditions, vocational training, etc.), economic problems and social matters (social insurance, social welfare, etc.). It also asked for updated information on the new tripartite commission.

The report provides no relevant information on the above mentioned issues therefore the Committee reiterates its previous conclusion of non conformity.

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 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 previously concluded that the situation in Azerbaijan was not in conformity with Article 6§2 of the Charter on the ground that there was no adequate promotion of voluntary negotiations between employers or employers' organisations and workers' organisations (Conclusions 2014, 2016). In particular it requested information about collective bargaining in the civil service.

The report provides very general information on the procedure for collective bargaining, and no information on the subjects requested. Therefore the Committee reiterates its previous conclusion.

The Committee again requests information on collective bargaining in the civil service, and information on the collective agreement coverage rate.

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 not adequate promotion of voluntary negotiations between the social partners.

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 previously found the situation to be in conformity with the Charter (Conclusions 2016).

The report provides information on “forced” arbitration. The Committee seeks clarification of the situation and asks whether, in certain circumstances recourse may be had to compulsory arbitration at the request of one of the parties and if under what circumstances.

The Committee recalls that any form of compulsory recourse to arbitration is a violation of this provision, whether domestic law allows one of the parties to refer the dispute to arbitration without the consent of the other party or allows the Government or any other authority to refer the dispute to arbitration without the consent of one party or both. Such a restriction is only allowed within the limits prescribed by Article G (Conclusions 2006, Moldova).

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Azerbaijan is in conformity with Article 6§3 of the Charter.

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 previously found the situation to be in conformity with the Charter in this respect.

Entitlement to call a collective action

The Committee previously noted that pursuant to Article 262 of the Labour Code a 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 asked for confirmation that the decision to call a strike is not solely reserved to a trade union. It also recalled that to be in conformity 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.

The Committee finds the information provided in the report to be unclear and again requests information on who has the right to call a strike.

Specific restrictions to the right to strike and procedural requirements

The Committee previously found that the restrictions on the right to strike for employees working in essential services did not comply with the conditions established by Article G of the Charter and therefore the situation was not in conformity.

It recalls that Article 281 of the Labour Code, prohibits strikes in the following sectors: hospitals, energy providers, water supply services, telephone service providers, air traffic control and fire fighting facilities.

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.

Further the Committee found that the restrictions on the right to strike for public officials did not comply with the conditions established by Article G of the Charter. The Committee recalls that employees of legislative authorities, relevant executive authorities, courts and law enforcement authorities may not go on strike. It also noted that pursuant to Article 20(1)(7) of the Law on Public Service, a public servant is prohibited from taking part in strikes.

The report provides no information on the situation therefore the Committee reiterates its previous conclusion.

The Committee refers to the general question on the the right of members of the police to strike.

Consequences of a strike

The Committee previously found the situation to be in conformity with the Charter in this respect.

Conclusion

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

- restrictions on the right to strike for employees in essential services are too extensive and go beyond the limits permitted by Article G of the Charter;
- the prohibition on the right to strike for public servants does 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.

The Committee previously found that the situation was in conformity with the Charter and requested information on the scope of the right to information and consultation and on remedies.

Personal scope

In its previous conclusions (Conclusions 2014), the Committee asked to indicate in the next report the exact provisions dealing with the right of all workers to be informed and consulted independently of the legal form or size of the undertaking. The report does not provide any information on this point, the Committee accordingly reiterates its request.

Material scope

In its previous conclusion, the Committee also asked to indicate how regularly the information on working conditions, salaries, economic development of the undertaking and application of collective agreements must be provided and if it has to be in writing. The report states that pursuant to Article 31 of the Labour Code, control mechanisms over the implementation of provisions are set in a collective agreement. The Committee understands that the intervals and form are exclusively regulated in collective agreements and asks for confirmation. It also asks how the information must be provided if there is no collective agreement in place in the undertaking.

Remedies

In reply to the Committee's question on which specific provision deals with the right to appeal, the report indicates that Article 292 of the Labour Code grants the employee the right to file a claim for restoration of his/her violated right. Moreover, Article 294§2 provides that a body dealing with individual labour disputes can be established under the trade-union organizations at the enterprises according to the terms of collective agreement (Article 31).

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

In its previous conclusions (Conclusions 2014 and 2016), the Committee found that it had 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. The report does not provide any information on this issue. The Committee therefore concludes that the situation is not in conformity with the Charter on the ground that employees are not granted an effective right to participate in the decision-making process within the undertaking with regard to working conditions, work organization and working environment.

Protection of health and safety

In its previous conclusion (Conclusions 2014), the Committee requested information on the authority carrying out state control. In reply, the report states that in case the number of employees at an industrial enterprise exceeds 50, occupational safety services shall be established at that enterprise for the purpose of overseeing the provisions of legislation on organization of labour and occupational safety. The occupational safety services shall include experts on health and safety rules and labour legislation. Occupational safety experts are entitled to oversee the compliance with health and safety rules at work, to give mandatory instructions to the officials of an enterprise regarding the elimination of discovered violations, and present reports to the employer on the application of disciplinary measure towards employees breaching legislation on occupational safety. It also states that according to Article 237§2 of the Labour Code, trade unions have right to take to the state bodies the issue of involvement of the accused person to liability under law, if officials violate health and safety rules at work or conceal work-related accidents.

Organisation of social and socio-cultural services and facilities

The Committee refers to its previous conclusions (Conclusions 2014) and notes that the situation as regards organisation of social and socio-cultural services and facilities has not been changed during the reference period. The Committee asks the next report to provide an updated description of the situation.

Remedies

In its previous conclusions (Conclusions 2014 and 2016), the Committee found that it had not been established that legal remedies were 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. The report does not provide any information on this issue. The Committee therefore concludes that the situation is not in conformity with the Charter on this ground.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 22 of the Charter on the grounds that

- the right to participate in the decision-making process within undertakings with regard to working conditions, work organization and working environment, is not effectively guaranteed;

- legal remedies are not 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

In its previous conclusion (Conclusions 2014), the Committee took note of the employers' legal obligations to prevent discrimination based on sex and sexual harassment under Article 7.2.5 of the Gender Equality Act and Article 12 and 31 of the Labour Code and asked what concrete steps had been taken to implement these provisions. It also asked the next report to explain more clearly to what extent social partners are involved in prevention activities aimed in informing workers about the nature of sexual harassment and the available remedies. The Committee took furthermore note of certain awareness raising activities and training sessions regarding gender equality and asked the next report to indicate more explicitly the measures specifically concerning sexual harassment.

The report does not provide the requested information. The Committee, therefore, reiterates all its previous questions 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.

Liability of employers and remedies

The Committee refers to its previous conclusions (Conclusions 2010, 2014) as regards the definition of sexual harassment under the Gender Equality Act of 2006. It notes that this act prohibits sexual harassment only in respect of a person of opposite gender and asks the next report to clarify whether the legal framework also prohibits sexual harassment which is directed against a person of the same gender.

The Committee took note (Conclusions 2014) of the employers' liability under the abovementioned provisions of the Labour Code and the Gender Equality Act and of the protection against retaliation which was provided under the Equal Opportunities Act and the Gender Equality Act. It notes from the report that protection against retaliation is also provided under Article 205 of the Code of Administrative Offences (officials putting pressure on employees or bullying them for reporting sexual harassment on the part of the employer or manager are liable to a fine between 1500 and 2500 manats).

As regards the employers' liability in respect of sexual harassment involving third persons, the Committee noted that the employer was liable for all damages sustained by the employee victim of sexual harassment, under Article 195(g) and 290(3) of the Labour Code, but reiterated its request for detailed information on the employer's liability in respect of sexual harassment involving third persons. As the report does not provide this information, the Committee asks again the authorities to clarify whether the employers' liability applies both when the employee is subject to sexual harassment by a third person (such as independent contractors, self-employed workers, visitors, clients) and when a third person is subject to sexual harassment by an employee. The Committee recalls that, under Article 26§1 of the Charter, it must be possible for employers to be held liable when harassment occurs in relation to work, or on premises under their responsibility, even when it involves, as a perpetrator or a victim, a third person not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc. In the light of the available information, the Committee considers that, in relation to the employer's responsibility, it has not been established that there are sufficient and effective remedies against sexual harassment in relation to work and considers therefore that the situation is not in conformity with Article 26§1 on this point.

The Committee also requested comprehensive and detailed information on all the remedies available to alleged victims of sexual harassment, in particular those referred to in the previous conclusions (procedures before the employer and the Ombudsman and judicial procedures for damages), and relevant data and examples of case-law on sexual harassment cases dealt by the different procedures. In this respect, the report refers to the procedures for damages available respectively under Articles 292 and 294 of the Labour Code, according to which an employee can apply to a court or a body dealing with pre-court labour disputes for the restoration of his/her violated rights. The setting up and functioning of bodies dealing with individual pre-court disputes are regulated by collective agreement. The report also refers to the "National Human Rights Commissioner" (Ombudsman), set up by the Constitutional Law of 28 December 2001. It furthermore indicates that under Article 205 of the Code of Administrative Offences, employees who are victims of sexual harassment have the right to recourse to the courts requesting compensation for damage and imposition of fines against officials. The Committee asks the next report to provide more comprehensive information in this regard, in particular to clarify whether Article 205 of the Code of Administrative Offences applies to civil servants and state employees when the perpetrator of sexual harassment is a public official. It furthermore reiterates its request for more detailed information on all the remedies available, in the light of relevant data and examples of decisions on sexual harassment cases. It 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.

Burden of proof

In its previous conclusions (Conclusions 2014), the Committee held that the situation was 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. As the report does not indicate any changes during the reference period in this respect, the Committee reiterates its previous conclusion of non-conformity.

Damages

The Committee previously noted (Conclusions 2014) that employees subject to sexual harassment could claim compensation for damages occurred under Section 17(2) of the Gender Equality Act or Articles 191-192 of the Labour Code, provided that a reasonable connection could be established between the defendant's breach of the law and the consequences suffered. It also noted that the courts awarded damages on a case by case basis and asked the next report to provide relevant examples of case law, including with regard to the awarding of damages, concerning sexual harassment.

The report states that during the reference period the Ombudsman received no complaint related to sexual harassment at work. The Committee asks the next report to comment on this point and to provide any relevant caselaw or other evidence of the effectiveness of remedies, whether judicial, administrative or otherwise, in particular as regards to the range of damages awarded in cases of sexual harassment.

In its previous conclusion (Conclusions 2014), the Committee noted that employees who are victims of sexual harassment are entitled to rescind the employment contract (Article 69 of the Labour Code and Section 12 of the Gender Equality Act) and 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 asked the next report to 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. As the report does not

provide this information, the Committee reiterates its question 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.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 26§1 of the Charter on the grounds that:

- it has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against sexual harassment in relation to work;
- 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.

Prevention

In its previous conclusion (Conclusions 2014), the Committee noted that, pursuant to Article 31 of the Labour Code, collective agreements shall include the mutual obligations of the parties regarding, inter alia, assistance in providing information and conducting explanatory work with regard to humiliation of employees, open hostile and offensive actions in the workplace or in connection to work and prevention of such actions, taking all the necessary measures to protect employees from such treatment, and asked what concrete steps had been taken to implement these provisions. It also asked 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 were involved in the adoption and implementation of such measures.

The report refers to Articles 12 and 16 of the Labour Code, which prohibit discrimination respectively on the ground of gender and on other grounds (citizenship, sex, race, religion, nationality, language, place of residence, property status, social-economic origin, age, marital status, convictions, political views, membership of trade-unions or other public unions, position, professional qualities, competency and other factors unrelated to the job performance). However, the report does not provide the requested information. The Committee, therefore, reiterates all its previous questions 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.

Liability of employers and remedies

The Committee previously (Conclusions 2014) noted that, although no specific provision explicitly prohibited moral (psychological) harassment as such, Articles 12, 16 and 31 of the Labour Code prohibited discrimination in the workplace and set the employer's obligation to ensure equal treatment and to protect employees from all forms of humiliation and all open hostile and offensive actions in the workplace or in connection with work. It also took note of the employer's liability under Articles 288 and 290 of the Labour Code for the damages sustained by the employee.

The report does not reply to the Committee's question (Conclusions 2014) concerning safeguards to protect plaintiffs against potential reprisals. The Committee also asked (Conclusions 2010, 2014) if the employer's liability may be incurred when 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 when such third parties are victims of harassment by an employee. As the report does not provide the information requested, the Committee reiterates its questions. The Committee recalls that, under Article 26§2 of the Charter, it must be possible for employers to be held liable when harassment occurs in relation to work, or on premises under their responsibility, even when it involves, as a perpetrator or a victim, a third person not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc. In the light of the lack of information, the Committee considers that it has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against moral (psychological) harassment in relation to work and considers therefore that the situation is not in conformity with Article 26§2 on this point.

In its previous conclusion (Conclusions 2014) the Committee had noted that 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, could 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 could abstain from work in accordance with Article 295 of the Labour Code. It had however requested clarifications, in the light of the applicable provisions and of the relevant case law, on the judicial and non-judicial remedies and procedures which were effectively available to employees who consider themselves to have suffered moral (psychological) harassment.

In this respect, the report refers to the procedures for damages available respectively under Articles 292 and 294 of the Labour Code, according to which an employee can apply to a court or a body dealing with pre-court labour disputes for the restoration of his/her violated rights (the setting up and functioning of such bodies are regulated by collective agreement). The report also refers to the "National Human Rights Commissioner" (Ombudsman), set up by the Constitutional Law of 28 December 2001. The Committee reiterates its request for more detailed information on all the remedies available, in the light of relevant data and examples of decisions on moral (psychological) harassment cases. It 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.

Burden of proof

The Committee previously asked for information regarding the burden of proof in harassment cases (Conclusions 2010, 2014). It notes from the report that under Article 192 of the Labour Code it is up to the plaintiff to prove the infliction of damage and the amount of material damage suffered, and it's up to the employer to prove that (s)he's not guilty for the damage inflicted. 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, therefore, considers that the situation is not in conformity with the Charter on the ground that no shift in the burden of proof applies in moral (psychological) harassment cases.

Damages

The Committee previously noted (Conclusions 2014) that under Article 290§3 of the Labour Code, the employer was liable for all damages sustained by the employee and that claims for damages could be introduced before a court, which would 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 and asked the authorities to confirm that these provisions applied to damages resulting from moral (psychological) harassment in the workplace. It also requested relevant examples of case law in the field of moral (psychological) harassment.

In view of the lack of information on these issues, the Committee found that it had not been established that in Azerbaijan employees were given appropriate and effective protection against moral (psychological) harassment in the workplace or in relation to work (Conclusions 2014, 2016).

In this respect, the report states that during the reference period the Ombudsman received no complaint related to moral (psychological) harassment at work and does not provide any further information concerning the pecuniary and non-pecuniary damages effectively awarded to victims of moral (psychological) harassment and the possibility for them to obtain their reinstatement in case they have been unfairly dismissed or pressured to resign in the context of moral (psychological) harassment. The Committee asks the next report to provide information on these issues and, in view of the lack of information, considers that it has not been established that the redress granted in practice is adequate and effective. It accordingly considers that the situation is not in conformity with Article 26§2 of the Charter on this point.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 26§2 of the Charter on the grounds that:

•it has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against moral (psychological) harassment in the workplace or in relation to work;

•no shift in the burden of proof applies in moral (psychological) harassment cases under the Labour Code;

•it has not been established that appropriate and effective redress (compensation and reinstatement) is guaranteed in cases of moral (psychological) harassment.

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.

Types of workers' representatives

Workers may be represented in Azerbaijan by a trade union, which historically has been the most common form of employee representation, or by similar structures elected by all employees. The Committee asks that the next report provide more detailed information on how these structures are formed and what are their specific functions.

Protection granted to workers' representatives

The Committee has previously observed that protection of workers' representatives from dismissal is granted solely during the exercise of their mandate and found it to be in non-conformity with the Charter (Conclusions 2014 and 2016). In the light of the lack of information in the present report as to any change of this situation, the Committee reiterates its conclusion.

As regards the protection from prejudicial acts other than dismissal, the report explains that an employer is not allowed to undertake disciplinary measures against participants of collective bargaining during the period of negotiations. Albeit positive, this information is not sufficient for the Committee to conclude that the protection of workers' representatives from any forms of detrimental treatment is sufficient and effective, in particular outside the performed collective bargaining activity. The Committee recalls that prejudical acts may entail, for instance, denial of certain benefits, training opportunities, promotions or transfers, discrimination when issueing lay-offs or assigning retirment opnions, being subcjected to shifts cut-dwn or any other taunts or abuse.

In the light of the above, the Committee considers that it has not been demonstrated that the situation is in conformity with the Charter on this point.

Facilities granted to workers' representatives

In its previous conclusions (Conclusions 2010), the Committee has noted the exhaustive list of facilities which could be made at the disposal of the workers' representatives when carrying out their duties (premises, materials, paid time off). It requests the next report to provide updated information on this point.

Conclusion

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

- protection against dismissal granted to workers' representatives is not extended for a reasonable period after the end of their mandate,
- it has not been established that protection afforded to workers' representatives against prejudicial acts short of dismissal is adequate.

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

In its previous conclusion (Conclusions 2014), the Committee found that the definition of redundancies was restrictive.

Prior information and consultation

In its previous conclusion, the Committee asked for more information on the social measures to be taken by employers when they reduced staff numbers. In reply, the report states that the Labour Code provides for agreements on retraining to be signed by mutual consent between employers and employees. Moreover, employers must enter into written undertakings to renew the employment contracts of employees dismissed due to a decrease in production or services. The report further states that, although this is not stipulated in the Labour Code, employees dismissed during staff cutbacks are offered work again if vacancies become available in the companies.

The report also indicates that in the case of the dismissal of employees who are trade union members, employers must seek the consent of the trade union concerned. In this connection, Article 80 of the Labour Code provides that, during staff cutbacks or redundancies, employees' employment contracts are terminated following receipt of the consent of the trade union organisation of which they are members.

Preventive measures and sanctions

The Committee asked what preventive measures existed to ensure that redundancies did not take effect before employers' obligation to inform the workers' representatives had been fulfilled. As there is no reply in the report, the Committee reiterates its question. Given the repeated failure to provide the information requested, the Committee finds that it has not been established that there are measures that would prevent redundancies from being put into effect before the obligation to inform and consult has been fulfilled.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 29 of the Charter on the ground that it has not been established that there are measures that would prevent redundancies from being put into effect before the obligation to inform and consult has been fulfilled.