



March 2023

EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2022

AZERBAIJAN

This text may be subject to editorial revision.

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts conclusions; in respect of collective complaints, it adopts decisions.

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

The following chapter concerns Azerbaijan, which ratified the Revised European Social Charter on 2 September 2004. The deadline for submitting the 15th report was 31 December 2021 and Azerbaijan submitted it on 17 May 2022.

The Committee recalls that Azerbaijan was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to the previous conclusions of non-conformity, deferral and conformity pending receipt of information (Conclusions 2018).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2018) found the situation to be in conformity, there was no examination of the situation in 2022.

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 concerned the following provisions of the thematic group III "Labour Rights":

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

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

The reference period was from 1 January 2017 to 31 December 2020.

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

– 3 conclusions of conformity: Articles 4§2, 6§1, 21.

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

The next report from Azerbaijan will deal with the following provisions of the thematic group IV "Children, families, migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of children and young persons to social, legal 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 December 2022.
Conclusions and reports are available at www.coe.int/socialcharter.

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

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

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 4§1 of the Charter as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion (Conclusions 2018) the Committee considered that the situation was not in conformity with the Charter as the minimum wage did not ensure a decent standard of living.

The Committee’s assessment will therefore relate to the information provided by the Government in response to the questions raised in the previous conclusion as well as the targeted questions with regard to Article 4§1 of the Charter.

Fair remuneration

The Committee notes from the report that in 2020 the minimum net wage in the private sector excluding the oil and gas sector stood at 234 manats (€130) and in other sectors at 227 manats (€136). The net average wage stood at 626 (€349) and 590 manats (€329), respectively. The Committee observes that the net minimum amounted to 38% of the net average wage. The Committee recalls 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 is between 50 and 60% of the net average wage, it is for the state 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. However, if the minimum wage falls below 50% of the average wage, then the Committee considers that it cannot ensure a decent standard of living. Therefore, the Committee considers the situation is not in conformity with the Charter as the minimum wage does not ensure a decent standard of living.

Workers in atypical employment

As part of its targeted questions the Committee asks for information on measures taken to ensure fair remuneration sufficient for a decent standard of living, for workers in atypical jobs, those employed in the gig or platform economy, and workers with zero hours contracts. It also asks about enforcement activities (e.g. by labour inspectorates or other relevant bodies) as regards circumvention of minimum wage requirements (e.g. through schemes such as subcontracting, service contracts, including cross-border service contracts, platform-managed work arrangements, resorting to false self-employment, with special reference to areas where workers are at risk of or vulnerable to exploitation, for example agricultural seasonal workers, hospitality industry, domestic work and care work, temporary work, etc.).

The Committee considers that the requirement that workers be remunerated fairly to ensure a decent standard of living for themselves and their families applies equally to atypical jobs, such as part-time work, temporary work, fixed-term work, casual and seasonal work. In some cases, prevailing wages or contractual arrangements lead to a significant number of so-called working poor, including persons working two or more jobs or full-time workers living in substandard conditions.

The Committee refers in particular to workers employed in emerging arrangements, such as gig economy or platform economy, who are incorrectly classified as self-employed and therefore, do not have access to applicable labour and social protection rights. As a result of

the misclassification, such persons cannot enjoy the rights and protection to which they are entitled as workers. These rights include the right to a minimum wage.

The Committee asks what measures are being taken to ensure fair remuneration of workers in atypical jobs as well as misclassified self-employed persons in platform economy.

Covid-19

As part of its targeted questions, the Committee also asked for specific information about furlough schemes during the pandemic.

The Committee recalls that in the context of the Covid-19 pandemic, States Parties must devote necessary efforts to reaching and respecting this minimum requirement and to regularly adjust minimum rates of pay. The right to fair remuneration includes the right to an increased pay for workers most exposed to Covid-19-related risks. More generally, income losses during lockdowns or additional costs incurred by teleworking and work from home practices due to Covid-19 should be adequately compensated.

The Committee takes note of measures taken to protect workers during the Covid-19 pandemic. It notes in particular that a lump-sum payment in the amount of minimum subsistence were paid to persons who could not earn income in this period. In April-May 2020, 600,000 persons received such lump sum payments. Residents of the regions with a strict quarantine regime received the subsistence payment six times. In 2020 a total of 450 million manats were spent on one-time payments of subsistence aid. In addition, according to Article 146 of the Labour Code in the event of natural disasters or other problems beyond employer's control, workers may be sent in groups on paid or unpaid leave, in accordance with the terms and procedures stipulated in collective agreements or in employment contracts.

The Committee asks whether the financial support provided for workers through furlough schemes was ensured throughout the period of partial or full suspension of activities due to the pandemic. It also asks what was the minimum level of support provided and what proportion of workers concerned were covered under such schemes.

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 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.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted question for Article 4§2 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee found that the situation in Azerbaijan was in conformity with Article 4§2 of the Charter (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the targeted question.

Covid-19

In the context of the Covid-19 crisis, the Committee asked the States Parties to explain the impact of the Covid-19 crisis on the right to a fair remuneration as regards overtime and provide information on measures taken to protect and fulfil this right. The Committee asked for specific information on the enjoyment of the right to a fair remuneration/compensation for overtime for medical staff during the pandemic and explain how the matter of overtime and working hours was addressed in respect of teleworking (regulation, monitoring, increased compensation).

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

The report states that in order to strengthen the social protection of health workers engaged in the fight against the Covid-19 pandemic, they have been given supplements for their salaries as of 1 March 2020.

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.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted question for Article 4§3 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

With respect to Article 4§3, the States were asked to provide information on the impact of Covid-19 pandemic on the right of men and women workers to equal pay for work of equal value, with particular reference and data related to the extent and modalities of application of furlough schemes to women workers.

The Committee recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter and does so every two years (under thematic group 1 “Employment, training and equal opportunities”, and thematic group 3 “Labour rights”).

In its previous conclusion, the Committee found that the situation in Azerbaijan was not in conformity with Article 4§3 of the Charter on the ground that the enforcement of the right to equal pay was not effective, as demonstrated by the persistently high gender pay gap (Conclusions 2018).

The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity.

Obligations to guarantee the right to equal pay for equal work or work of equal value

Legal framework

The report states that Article 9 of the Law on Gender Equality of 2006 provides for equal pay for men and women with the same qualifications, performing equal work of equal value, in equal working conditions, in the same company.

The Committee already found that this wording was narrower than the principle set out in the Charter. The Committee therefore refers to its conclusion on Article 20 (Conclusions 2020), in which it considered that the obligation to recognise the right to equal pay had not been complied with and accordingly noted that the situation was not in conformity with the Charter on the ground that there was no explicit statutory guarantee of equal pay for women and men for work of equal value. Since there was no change in the situation during the reference period, the Committee reiterates that the situation is not in conformity with the Charter.

Effective remedies

In its previous conclusion, the Committee noted that if an individual believes that discrimination on grounds of gender in matters related to pay has occurred, he or she may ask the employer to provide evidence that the wage difference is not based on grounds of gender. The Committee asked whether that meant that the defendant was required to prove that there had been no discrimination (Conclusions 2018).

The report does not contain any information regarding the burden of proof in cases of gender pay discrimination.

In this regard, the Committee refers to its previous conclusion on Article 20 (Conclusions 2020), in which it noted that the situation in Azerbaijan was not in conformity with Article 20 (c) of the Charter on the ground that domestic law does not provide for a shift in the burden of proof in gender pay discrimination cases.

Since there was no change in the situation during the reference period, the Committee concludes that it is not in conformity with the Charter on this point.

Pay transparency and job comparisons

In its previous conclusion, the Committee asked what methods were used to evaluate work and whether these were gender neutral and exclude discriminatory undervaluation of jobs traditionally performed by women. In the meantime, the Committee reserved its position on this issue (Conclusions 2018).

The report does not provide the requested information. In this connection, the Committee refers to the comments by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2017 (106th session of the International Labour Conference) concerning Convention No. 100 on Equal Remuneration (1951) noting that remuneration of workers is determined by the results of their job, personal efficiency and the level of qualifications.

In its conclusions regarding Articles 20 and 4§3 (Conclusions 2012, 2016, 2018 and 2020), the Committee asked whether in equal pay litigation cases, it was possible to make pay comparisons across companies and whether domestic law prohibited pay discrimination in company-level or collective agreements. The report does not provide the requested information.

In the light of the above, the Committee concludes that it has not been established that in equal pay litigation cases domestic law allows pay comparisons to be made across companies.

The Committee asks that the next report provide information on the specific measures provided for in national legislation concerning pay transparency in the labour market, and in particular, the possibility for workers to receive information on the pay levels of other workers and the information available on pay.

Statistics and measures to promote the right to equal pay

The report states that the average monthly salary for men was 670.2 manats (€343 at the rate of 31 December 2018) in 2018, 764.8 manats (€402 at the rate of 31 December 2019) in 2019 and 830.2 manats (€398 at the rate of 31 December 2020) in 2020, while the average salary for women was 360.8 manats (€185) in 2018, 443.4 manats (€233) in 2019 and 525.6 manats (€252) in 2020. The Committee notes that women's average monthly earnings amounted to 53.8% of men's in 2018, 58% in 2019 and 63% in 2020. It notes that the gender wage gap, defined as the difference between average monthly earnings, has decreased over the reference period (from 46.2% in 2018 to 37% in 2020), but remains extremely wide.

As Azerbaijan has accepted Article 20.c, the Committee examines policies and other measures to reduce the gender pay gap under Article 20 of the Charter.

The impact of Covid-19 on the right of men and women workers to equal pay for work of equal value

In response to the question on the impact of Covid-19, the report states that the rights of men and women to equal pay for equal work are protected by law and discrimination in employment is not tolerated.

The Committee refers to its statement on Covid-19 and Social Rights of 24 March 2021.

Conclusion

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

- there is no explicit statutory guarantee of equal pay for women and men for work of equal value;
- domestic law does not provide for a shift in the burden of proof in gender pay discrimination cases;
- it has not been established that in equal pay cases domestic law allows for pay comparisons to be made across companies.

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.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 4§4 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee considered that the situation in Azerbaijan was not in conformity with Article 4§4 of the Charter (Conclusions 2018).

The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions.

The Committee refers to its statement of interpretation on Article 4§4 (2018), where the Committee recalled that a reasonable notice period on termination of employment is regarded as one of the components of fair remuneration. The Committee further recalls that a reasonable notice period is one during which workers are entitled to their regular remuneration and that takes account of the workers’ length of service, the need not to deprive workers abruptly of their means of subsistence, as well as the need to inform workers of the termination in good time so as to enable them to seek a new job. The Committee points out that it is for governments to prove that these elements have been considered when devising and applying the basic rules on notice periods.

Following on from its statement of interpretation on Article 4§4 (2018), the Committee recalls that the question of the reasonableness of the notice periods will no longer be addressed, except where the notice periods are manifestly unreasonable. The Committee will assess this question on the basis of:

1. The rules governing the setting of notice periods (or the level of compensation in lieu of notice):
 - according to the source of the rule, namely the law, collective agreements, individual contracts and court judgments;
 - during any probationary periods, including those in the public service;
 - with regard to the treatment of workers in insecure jobs;
 - in the event of termination of employment for reasons outside the parties’ control;
 - including any circumstances in which workers can be dismissed without notice or compensation.
2. Acknowledgment, by law, collective agreement or individual contract of length of service, whether with the same employer or where a worker has been successively employed in precarious forms of employment relations.

Reasonable period of notice: legal framework and length of service

The Committee asked in its targeted question about information on the right of all workers to a reasonable period of notice for termination of employment (legal framework and practice), including any specific arrangements made in response to the Covid-19 crisis and the pandemic.

In reply to the targeted question, the report indicates that prior to the termination of the employment contract by an employer pursuant to Article 70 (b) of the Labour Code (reduction in the number of staff), the worker should be officially notified by the employer within the following periods: at least two calendar weeks, if the length of service is less than a year; at least four calendar weeks, if the length of service is one to five years; at least six calendar weeks, if the length of service is five to ten years; at least nine calendar weeks, if the length

of service is more than ten years. The report adds that during the notice period, the worker shall be given at least one paid day off a week to enable him to find appropriate work.

The report further adds that if an employment is terminated under Article 70 paragraphs a) (liquidation of the company) and b) (reduction in the number of staff), the employer shall pay the worker a severance pay: in the amount of the average monthly salary, if the length of service is less than one year; at least 1.4 times the average monthly salary, if the length of service is one to five years; at least 1.7 times the average monthly salary, if the length of service is five to ten years; at least twice the average monthly salary, if the length of service is more than ten years. The Committee asks that the next report confirm that this severance pay is made in addition to notice periods.

The report also states that the employer can terminate employment in relevant cases by paying the worker with his consent: 0.5 times the average monthly salary instead of a required two-calendar-week notice; 0.9 times the average monthly salary instead of a required four-calendar-week notice; 1.4 times the average monthly salary instead of a required six-calendar-week notice; twice the average monthly salary instead of a required nine-calendar-week notice; at least one monthly salary instead of a notice period specified under the second part of Article 56 of the Labour Code.

As regards the specific arrangements made in response to the Covid-19 crisis and the pandemic, the Committee takes note of the measures adopted to ensure that workers work in accordance with the law; to ensure that the salaries of the workers in the public sector are maintained; to prevent unjustified reduction in the number of workers by the employers.

In its previous conclusion the Committee found that the situation in Azerbaijan was not in conformity with Article 4§4 of the Charter on the grounds that the notice period is not reasonable in the following cases: (i) long-term illness or disability, in case of more than ten years of service (severance pay of two months' wages); (ii) termination of employment on grounds stipulated in the employment contract (one month's notice period), in case of more than three years of service (Conclusions 2018).

The report does not contain information concerning the previous conclusion of non-conformity. The Committee therefore reiterates its previous conclusion of non-conformity in this respect.

In its previous conclusion the Committee reiterated its request for information on the notice period and/or severance pay applicable in the event of early termination of fixed-term contracts (Conclusions 2018). The report does not contain the information requested. The Committee therefore reiterates its request and considers that, should the next report not provide the information requested, there will be nothing to establish that the situation in Azerbaijan is in conformity with Article 4§4 of the Charter in this respect.

Notice periods during probationary periods

In its previous conclusion the Committee found that the situation in Azerbaijan was not in conformity with Article 4§4 of the Charter on the ground that the notice period was not reasonable in case of dismissal during the probationary period (three days' notice). (Conclusions 2018).

In reply to the Committee's question the report states that according to Article 53 of the Labour Code one of the parties may terminate an employment contract before the end of trial period by notifying the other party in writing with a three-day notice. The Committee notes that there have been no changes as regards the notice period during probationary period. The Committee therefore reiterates its previous conclusion of non-conformity in this respect.

Notice periods with regard to workers in insecure jobs

The Committee previously found that the situation was in conformity with Article 4§4 of the Charter in this respect (Conclusions 2018).

Notice periods in the event of termination of employment for reasons outside the parties' control

The Committee previously found that the situation was in conformity with Article 4§4 of the Charter in this respect (Conclusions 2018).

Circumstances in which workers can be dismissed without notice or compensation

The Committee previously found that the situation was in conformity with Article 4§4 of the Charter in this respect (Conclusions 2018).

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 manifestly unreasonable in the following cases:

- termination of employment on account of long-term illness or disability, beyond ten years of service;
- termination of employment on grounds stipulated in the employment contract, in case of more than three years of service;
- dismissal during the probationary period.

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.

The Committee recalls that no targeted questions were asked for Article 4§5 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information, were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In its previous conclusion the Committee found that the situation was not in conformity with the Charter on the following grounds:

- 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 deductions from wages are insufficient.

The Committee recalls that the deductions envisaged in Article 4§5 can only be authorised in certain circumstances which must be well-defined in a legal instrument (for instance, a law, regulation, collective agreement or arbitration award (Conclusions V (1977), Statement of Interpretation on Article 4§5). The Committee further recalls that deductions from wages must be subject to reasonable limits and should not *per se* result in depriving workers and their dependents of their means of subsistence (Conclusions 2014, Estonia). With a view to making an in-depth assessment of national situations the Committee has considered it necessary to change its approach. Therefore, the Committee asks States Parties to provide the following information in their next reports:

- a description of the legal framework regarding wage deductions, including the information on the amount of protected (unattachable) wage;
- Information on the national subsistence level, how it is calculated, and how the calculation of that minimum subsistence level ensures that workers can provide for the subsistence needs of themselves and their dependents.
- Information establishing that the disposable income of a worker earning the minimum wage after all deductions (including for child maintenance) is enough to guarantee the means of subsistence (i.e., to ensure that workers can provide for the subsistence needs of themselves and their dependents).
- a description of safeguards that prevent workers from waiving their right to the restriction on deductions from wage.

Deductions from wages and the protected wage

The report reiterates that according to Article 176 of the Labour Code, the total amount of all deductions may be exceed 20% of the wage and 50% in cases provided for by the relevant legislation.

The Committee asks the next report to demonstrate that the protected wage, i.e. the portion of wage left after all authorised deductions, including for child maintenance, in the case of a worker earning the minimum wage, will never fall below the subsistence level established by the Government.

Waiving the right to the restriction on deductions from wage

The Committee has previously noted (Conclusions 2018 and 1014) that Article 175, paragraph 1 of the Code permits workers to consent to specific deductions by written agreement, and Article 175, paragraph 6 of the Labour Code permits workers to assign portions of their wages to third parties, without provision against the deprivation of means of subsistence being made by statutory provisions, case law, regulations or collective agreements. The Committee

considered that the situation was not in conformity with the Charter on this ground. In the absence of any new information in the report, the Committee reiterates its previous finding of non-conformity on the ground that the guarantees in place to prevent workers from waiving their right to limitation of deductions from wages are insufficient.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 4§5 of the Charter on the ground that the guarantees in place to prevent workers from waiving their right to limitation of deductions from wages are insufficient.

Article 5 - Right to organise

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

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to the targeted questions for Article 5 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee concluded that the situation in Azerbaijan was not in conformity with Article 5 of the Charter on the grounds that: (i) the right to form trade unions is not ensured in practice in multinational companies; (ii) all members of the police force are denied the right to organise.

The Committee also recalls that in the General Introduction of Conclusions 2018, it posed a general question under Article 5 and asked States to provide, in the next report, information on the right to organise for members of the armed forces.

The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, to the targeted questions and to the general question.

Prevalence/Trade union density

In its targeted question the Committee asked for data on trade union membership prevalence across the country and across sectors of activity.

In reply to the targeted question, the report states that within the 2018-2020 period, 428 new trade unions were established, uniting 34,978 trade union members.

Personal scope

In its previous conclusion, the Committee found that the situation was not in conformity with Article 5 of the Charter on the ground 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 (Conclusions 2018).

In reply to the previous conclusion of non-conformity, the report states that the Law on police does not contain provisions restricting the right of police officers to join trade unions to protect their economic and social interests. The report also states that civilian employees working for the police and law enforcement agencies have the right to organize and may become members of trade unions.

The Committee takes note of the information provided and asks whether in practice members of the police have formed and joined trade unions.

In its previous conclusion, the Committee requested all States to provide information on the right of members of the armed forces to organise (Conclusions 2018 – General Question).

In reply to the targeted question, the report states that the Law on Trade Unions does not allow persons in the military service to join trade unions. The report also states that despite this, every military unit and every enterprise working with military unit has an operating trade union that is represented in the United Trade Unions Committee of the Ministry of Defense of the Republic of Azerbaijan. The Committee asks that the next report provide detailed information on the prerogatives of these trade unions. The Committee reserves its position on this point.

The Committee recalls that Article 5 of the Charter allows States Parties to impose restrictions upon the right to organise of members of the armed forces and grants them a wide margin of appreciation in this regard, subject to the terms set out in Article G of the Charter. However,

these restrictions may not go as far as to suppress entirely the right to organise, such as through the imposition of a blanket prohibition of professional associations of a trade union nature and prohibition of the affiliation of such associations to national federations/confederations (European Council of Trade Unions (CESP) v. France, Complaint No.101/2013, Decision on the merits of 27 January 2016, §§80 and 84).

The Committee recalls that it has previously considered that the complete suppression of the right to organise (which involves freedom to establish organisations/trade unions as well as freedom to join or not to join trade unions) is not a measure which is necessary in a democratic society for the protection of, inter alia, national security (*Confederazione Generale Italiana del Lavoro* (CGIL) v. Italy, Complaint No. 140/2016, decision on the merits of 22 January 2019, §92).

Restrictions on the right to organize

In its targeted question, the Committee asked for information on public or private sector activities in which workers are denied the right to form organisations for the protection of their economic and social interests or to join such organisations.

In reply to the targeted question, the report states that, according to Article 58 of the Constitution of the Republic of Azerbaijan, in principle, everyone has the right to organise. The report further states that, according to Article 19 of the Labour Code, a trade union may be established on a voluntary basis without discrimination among employees or without obtaining prior permission from employers. Employees may join the appropriate trade union and engage in trade union activity to protect their labour and socio-economic rights and legal interests. Article 19 of the law “On Civil Service” establishes that joining trade unions is among the basic rights of civil servants.

The report further adds that the rights, duties, and powers of trade unions are determined by the Law of the Republic of Azerbaijan on trade unions and their statutes. Article 1 of the law on Trade Unions requires at least seven persons to form a trade union. According to Article 3 of the law, workers, pensioners and students have the right to create trade unions on a voluntary basis without discrimination or prior permission, as well as to join the appropriate trade union and engage in trade union activity to protect their labour and socio-economic rights and legal interests. Article 5 of the law prohibits state bodies and officials from restricting the rights of trade unions and interfering with their activities.

Forming trade unions and employers’ organisations

In its previous conclusion, the Committee found that the situation was not in conformity with Article 5 of the Charter on the ground that it had not been established that, in practice, the free exercise of the right to form trade unions is ensured in multinational companies (Conclusions 2018). The report does not contain any information in this respect. The Committee therefore reiterates its previous conclusion of non-conformity on this point.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 5 of the Charter on the ground that the right to form and join trade unions is not ensured in practice in multinational companies.

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 recalls that no targeted questions were asked for Article 6§1 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In its previous conclusion, the Committee considered 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 was ensured (Conclusions 2018).

The report notes that in 2016, a Tripartite Commission on Social and Economic Affairs was established, comprising five members each from the Government, the Confederation of Trade Unions, and the National Confederation of Employers’ Organisations. The main objectives of the Tripartite Commission include consulting on draft legislation in the field of social and labour relations, employment and social security, coordinating work on drafting a General Collective Agreement, and assisting in the regulation of social and labour relations at the national level. The report further presents an illustrative list of items connected to employment and social protection that have been presented for consultation before the Tripartite Commission. The Committee asks if the mandate of the Tripartite Commission covers questions related to the public service, and, if not, whether joint consultative bodies otherwise exist in the public service. The Committee further asks if joint consultation also takes place at regional/sectoral and enterprise level.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Azerbaijan is in conformity with Article 6§1 of the Charter.

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 recalls that no targeted questions were asked for Article 6§2 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

The Committee also recalls that in the General Introduction to Conclusions 2018, it posed a general question under Article 6§2 of the Charter and asked States to provide, in the next report, information on the measures taken or planned to guarantee the right to collective bargaining for self-employed workers and other workers falling outside the usual definition of dependent employee.

In its previous conclusion, the Committee considered 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 the social partners (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity and to the general question.

The Committee notes that it has repeatedly adopted conclusions of non-conformity with Article 6§2 of the Charter based on the absence of basic information regarding the collective bargaining machinery in Azerbaijan (Conclusions 2014, 2018). In its previous conclusion, the Committee asked for information on collective bargaining in the civil service and on the collective agreement coverage rate. Other than stating that a General Collective Agreement applying from 2020 to 2022 had been adopted based on tripartite negotiations taking place at the national level, the report is silent on the questions raised by the Committee, or on collective bargaining in Azerbaijan more broadly.

The Committee further refers to the recent International Labour Organization (ILO) assessment of Azerbaijan under Convention no. 98 (Observation (CEACR) – adopted 2019, published 109th International Labour Conference session, 2021), which reiterated a longstanding objection of that organisation concerning the participation of state bodies in the process of collective bargaining on conditions of employment (also see this Committee’s Conclusions 2010 and 2014). The ILO called again for appropriate measures to be adopted, including of a legislative nature, in order to encourage and promote collective bargaining between trade unions and employers and their organizations, without the involvement of public authorities.

The Committee, therefore, reiterates its requests for detailed information on the collective agreements concluded in the private and public sector at enterprise, sectoral and national levels, and on the number, and share, of employees covered by these agreements. Meanwhile, the Committee concludes that the situation in Azerbaijan is not in conformity with Article 6§2 of the Charter on the ground that the promotion of collective bargaining is not sufficient.

As the report does not provide any relevant information in relation to the above-mentioned general question, the Committee reiterates its request for information on the measures taken or planned to guarantee the right to collective bargaining for self-employed workers and other workers falling outside the usual definition of dependent employee.

Covid-19

In reply to the question regarding the special arrangements related to the pandemic, the report does not provide any information.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 6§2 of the Charter on the ground that the promotion of collective bargaining is not sufficient.

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 recalls that no questions were asked for Article 6§3 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In its previous conclusion, the Committee found that the situation in Azerbaijan was in conformity with Article 6§3 of the Charter pending receipt of the information requested. It asked for clarification in the next report concerning “forced” arbitration and, in particular, whether in certain circumstances recourse could be had to compulsory arbitration at the request of one of the parties and if so, under what circumstances (Conclusions 2018).

In its report the Government states that under the Regulation on Compulsory Arbitration (approved by Decision No. 10-1 of 25 March 1999 of the Board of the Ministry of Labour and Social Protection of the Population), arbitration is compulsory in sectors where strikes are prohibited by legislation if the parties are unable to resolve a collective labour dispute through conciliation. The sectors concerned are as follows: hospitals, water and electricity supply services, telecommunications, air traffic control, rail traffic management and fire services. The collective labour dispute is submitted for compulsory arbitration at the request of one of the parties to the dispute to the directorate of the aforementioned ministry.

The Committee recalls that any form of compulsory recourse to arbitration constitutes a violation of Article 6§3, whether domestic law allows one of the parties to defer the dispute to arbitration without the consent of the other party or allows the Government or any other authority to defer the dispute to arbitration without the consent of one party or both. An exception of this sort is possible however if it meets the requirements of Article G, i.e. if it (i) is prescribed by the law, (ii) pursues one or more legitimate aims and (iii) is necessary in a democratic society to achieve these aims (in other words, the restriction to the right is proportionate to the legitimate aim pursued).

The Committee also recalls that it examines restrictions to the right to strike of employees in the above sectors in its conclusion under Article 6§4 of the Charter. Just as it considers that such restrictions are too broad and exceed the limits set by Article G of the Charter, the Committee concludes that compulsory recourse to arbitration does not fall within the limits of Article G and constitutes a restriction to the right to bargain collectively which is not in conformity with Article 6§3 of the Charter.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 6§3 of the Charter on the ground that the circumstances in which compulsory arbitration is permitted go beyond the limits set by Article G 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.

The Committee recalls that no targeted questions were asked for Article 6§4 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

The Committee also recalls that in the General Introduction to Conclusions 2018, it posed a general question under Article 6§4 and asked States to provide, in the next report, information on the right of members of the police to strike and any restrictions.

In its previous conclusion, the Committee considered that the situation in Azerbaijan was not in conformity with Article 6§4 of the Charter on the grounds that i) restrictions on the right to strike for employees in essential services were too extensive and went beyond the limits permitted by Article G of the Charter and ii) the prohibition on the right to strike for public servants did not comply with the conditions established by Article G of the Charter (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity and to the general question.

Right to collective action

Entitlement to call a collective action

In its previous conclusion, the Committee asked for confirmation that the decision to call a strike is not solely reserved to a trade union and requested information on who has the right to call a strike.

The Government provides no information in the report. The Committee therefore reiterates its questions and points out that should the next report not provide the information requested, there will be nothing to show that the situation is in conformity with Article 6§4 of the Charter.

Restrictions to the right to strike, procedural requirements

In its previous conclusion, the Committee considered that the situation was 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 went beyond the limits set by Article G of the Charter and the prohibition on the right to strike for public servants did not comply with the conditions established by Article G of the Charter.

The Government states that according to Article 281 of the Labour Code, strikes are prohibited in certain service sectors, such as hospitals, power generation, water supply, telephone communications, air traffic control and firefighting sectors which are vital to human health and safety, and that such prohibition is in line with international standards.

The Committee notes that the Governmental Committee already issued a warning on both grounds of non-conformity. The Committee notes that there has been no change in the situation concerning restrictions on the right to strike for employees in essential services and strongly reiterates its conclusion of non-conformity on this point. The Committee also notes that the report provides no information on the right to strike for public servants; however, as it appears from other sources, there is a prohibition under Article 20.1.17 of the Law on Public Service for public servants to take part in strikes and other actions violating the works of the state authority. In these circumstances, the Committee strongly reiterates its conclusion of non-conformity on this point.

Right of the police to strike

The Committee notes that the Government has not answered the general question asked in the General Introduction to Conclusions 2018. It therefore reiterates its question and requests that the next report provide information on the right of members of the police to strike and any restrictions.

Covid-19

In the context of the Covid-19 crisis, the Committee asked all States to provide information on:

- specific measures taken during the pandemic to ensure the right to strike;
- as regards minimum or essential services, any measures introduced in connection with the Covid-19 crisis or during the pandemic to restrict the right of workers and employers to take industrial action.

The Committee points out that in its Statement on Covid-19 and social rights adopted on 24 March 2021, it specified that Article 6§4 of the Charter entails a right of workers to take collective action (e.g. work stoppage) for occupational health and safety reasons. This means, for example, that strikes in response to a lack of adequate personal protective equipment or inadequate distancing, disinfection and cleaning protocols at the workplace would fall within the scope of the protection afforded by the Charter.

The Government states that during the Covid-19 pandemic, no case of organisation of strikes was detected.

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 go beyond the limits set by Article G of the Charter;
- the prohibition on the right to strike for public servants goes beyond the limits set 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 recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 21 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

The Committee recalls that Article 21 secures the right of workers to information and consultation within the undertaking, so that they are enabled to influence the company decisions which substantially affect them and that their views are considered when such decisions are taken, such as changes in the work organisation and in the working conditions.

In its previous conclusion, the Committee found that the situation in Azerbaijan was in conformity with Article 21 of the Charter (Conclusions 2018). It will therefore restrict its consideration to the Government’s replies to the targeted question.

For this examination cycle, the Committee requested information on specific measures taken during the Covid-19 pandemic to ensure the respect of the right to information and consultation. It requested, in particular, specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis, whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

The report states that meetings of the Tripartite Commission were held during Covid-19 pandemics and significant social projects and issue discussed with social partners. The decisions adopted at these meetings were submitted to the Government.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021 in that it recalled that social dialogue has taken on new dimensions and new importance during the Covid-19 crisis. Trade unions and employers’ organisations should be consulted at all levels on both employment-related measures focused on fighting and containing Covid-19 in the short term and efforts directed towards recovery from the economically disruptive effects of the pandemic in the longer term. This is called for at all levels, including the industry/sectoral level and the company level where new health and safety requirements, new forms of work organisation (teleworking, work-sharing, etc.) and workforce reallocation, all impose obligations with regard to consultation and information of workers’ representatives in terms of Article 21 of the Charter.

Conclusion

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.

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 22 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

The Committee recalls that Article 22 secures the right of workers to participate, by themselves or through their representatives, in the shaping and improvement of their working environment.

In its previous conclusion (Conclusions 2018), the Committee found that the situation in Azerbaijan was not in conformity with the Charter. The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of non-conformity and questions raised in its previous conclusion, and to the targeted questions.

In its previous conclusion, the Committee concluded that the situation was not in conformity with Article 22 on the ground that employees were not granted an effective right to participate in decision-making process within the undertaking with regard to working conditions, work organisation and working environment.

The report states in response that the right of employees to participate in the determination and improvement of working conditions and production environment is regulated by labour legislation. The main legislative acts ensuring the effectiveness of participation in the determination and improvement of working conditions and the production environment are the Labour Code of the Republic of Azerbaijan and the Law on Trade Unions. According to Article 43, para 2, item a) of the Labour Code, the terms of labour conditions – working and rest time, salary and supplements to it, duration of work leave, occupational safety, compulsory state social insurance and other mandatory insurances, are stipulated as the main terms of the employment contract.

The Committee considers that the information provided is not sufficient for it to assess whether the situation is in conformity with the Charter in this regard. It reiterates its request for information on how employees participate in the decision-making process within the undertaking with regard to working conditions, work organisation and work environment, and what measures are adopted or encouraged by the competent authorities in order to enable workers or their representatives to exercise this right effectively. The Committee reiterates its conclusion of non-conformity.

In its previous conclusion the Committee found the situation not to be in conformity with Article 22 on the ground that legal remedies were 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. The report does not provide any information in this regard and the Committee reiterates its conclusion of non-conformity on this point.

For this examination cycle, the Committee requested information on specific measures taken during the Covid-19 pandemic to ensure the respect of the right to take part in the determination and improvement of the working conditions and working environment. It requested, in particular, specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

The Committee notes that the report does not provide any information in this respect. The Committee refers to its statement on Covid-19 and social rights of 24 March 2021 in that it

recalled that social dialogue has taken on new dimensions and new importance during the Covid-19 crisis. Trade unions and employers' organisations should be consulted at all levels on both employment-related measures focused on fighting and containing Covid-19 in the short term and efforts directed towards recovery from the economically disruptive effects of the pandemic in the longer term. This is called for at all levels, including the industry/sectoral level and the company level where new health and safety requirements, new forms of work organisation (teleworking, work-sharing, etc.) and workforce reallocation, all impose obligations with regard to consultation and information of workers' representatives in terms of Article 22 of the Charter.

Conclusion

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

- employees are not granted an effective right to participate in the decision-making process within the undertaking with regard to working conditions, work organisation and working environment, and
- 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.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 26§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee concluded that the situation in Azerbaijan was 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 (Conclusions 2018).

The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions.

Prevention

For this monitoring cycle, the Committee welcomed information on awareness - raising and prevention campaigns as well as on action taken to ensure that the right to dignity at work is fully respected in practice.

The Committee previously noted the employers’ legal obligations to prevent gender discrimination and sexual harassment under Article 7.2.5 of the Gender Equality Act and Articles 12 and 31 of the Labour Code (Conclusions 2014). The Committee asked what concrete steps had been taken to implement these provisions, what awareness-raising activities concerning sexual harassment had been implemented and to what extent social partners were involved in prevention activities carried out to inform workers about the nature of sexual harassment and possible remedies (see Conclusions 2014 and Conclusions 2018). In its previous conclusion, the Committee reiterated all its previous questions and stressed that should the information not be included in the next report, there would be nothing to establish that the situation is in conformity with the Charter in this respect (Conclusions 2018).

The report provides no information in response to the above-mentioned questions. Given the lack of information, the Committee concludes that the situation is not in conformity with Article 26§1 of the Charter on the ground that it has not been established that there is adequate prevention of sexual harassment in relation to work.

Liability of employers and remedies

In its previous conclusion, the Committee referred to its previous conclusions (Conclusions 2010, 2014) as regards the definition of sexual harassment under the Gender Equality Act of 2006. It noted that this act only prohibits sexual harassment in respect of a person of the opposite gender and asked the next report to clarify whether the legal framework also prohibits sexual harassment which is directed against a person of the same gender (Conclusions 2018). The report does not respond to the above-mentioned question.

The report indicates that during the reference period, the State Labour Inspectorate Service under the Ministry of Labour and Social Protection of Population did not receive any complaints about sexual harassment involving a third party in relation to a person of the same sex.

As regards the employers’ liability in respect of sexual harassment involving third parties, the Committee has repeatedly asked for detailed information on this subject (Conclusions 2010

and 2014). In its previous conclusion, the Committee again asked the authorities to clarify whether the employers' liability applies both when the employee is subject to sexual harassment by a third party (such as independent contractors, self-employed workers, visitors, clients) and when a third party is subject to sexual harassment by an employee (Conclusions 2018). The Committee considered 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 considered therefore that the situation was not in conformity with Article 26§1 on this point (Conclusions 2018).

The report does not provide any information concerning employers' liability in respect of sexual harassment involving third parties. The Committee considers that the situation is not in conformity with Article 26§1 of the Charter on the ground that the existing framework in respect of employers' liability does not provide sufficient and effective remedies in cases of sexual harassment in relation to work when third parties are involved.

The Committee previously noted that procedures for damages were available under Articles 292 and 294 of the Labour Code, according to which an employee can apply to a court or a pre-litigation body for labour disputes to have his/her violated rights restored. It also noted that under Article 205 of the Code of Administrative Offences, employees who are victims of sexual harassment have the right to apply to the courts requesting compensation for damage suffered and for the imposition of sanctions on officials (Conclusions 2018). In its previous conclusion, the Committee asked that the next report 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 also reiterated its request for more detailed information on all the remedies available, in the light of relevant data and examples of decisions taken in sexual harassment cases. The Committee pointed 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 (Conclusions 2018).

The report does not respond to the Committee's questions. Given the lack of information, the Committee concludes that the situation is not in conformity with Article 26§1 of the Charter on the ground that it has not been established that, in relation to the employees' protection, there are sufficient and effective remedies against sexual harassment in relation to work.

With regard to the burden of proof, in its previous conclusions (Conclusions 2014 and Conclusions 2018), the Committee held that the situation was not in conformity with Article 26§1 of the Charter on the ground that the Labour Code did not provide for a shift in the burden of proof in sexual harassment cases. Since the report does not show any changes in this respect during the reference period, the Committee reiterates its previous conclusion of non-conformity.

Damages

In its previous conclusion, the Committee noted that during the previous reference period the Ombudsman received no complaints relating to sexual harassment at work. The Committee asked the next report to comment on this point and to provide any relevant case law or other evidence of the effectiveness of remedies, whether judicial, administrative or otherwise, in particular in relation to the range of damages awarded in sexual harassment cases (Conclusions 2018).

The report indicates that an employer who has violated an employee's rights must pay the employee the full amount of the material damage suffered as determined by the court. The employer shall be financially liable for the moral damage caused to the employee in the course of the employment relationship. The amount of the moral damage caused is determined by the court on the basis of the employee's application and taking into account the extent of the threat to public order, the identity of the employer and employee, the actual arguments of the case and other objective factors necessary for the adoption of a fair decision.

The Committee noted previously that employees who are victims of sexual harassment are entitled to terminate 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 in the case of failure to comply with these requirements (Articles 71, 76 and 79) (Conclusions 2014). It asked whether the right of reinstatement applies only in case of unfair dismissal related to sexual harassment or whether it also applied when the employee had been pressured to resign because of sexual harassment (Conclusions 2014). In its previous conclusion, the Committee reiterated its question and pointed out that should the requested information not be included in the next report there would be nothing to establish that the situation is in conformity with the Charter in this respect (Conclusions 2018).

Given the lack of information in the report on the case law/range of damages awarded in cases of sexual harassment, as well as on the right to reinstatement when the employee has been pressured to resign as a result of sexual harassment, the Committee considers that the situation is not in conformity with Article 26§1 of the Charter on the ground that it has not been established that there is appropriate and effective redress (compensation and reinstatement) in cases of sexual harassment.

Covid-19

In a targeted question, the Committee asked for information on specific measures taken during the pandemic to protect the right to dignity in the workplace and notably with regard to sexual harassment. The Committee welcomed specific information about categories of workers in a situation of enhanced risk, such as night workers, home and domestic workers, store workers, medical staff, and other frontline workers.

The report does not provide any information in response to the above-mentioned targeted question. The Committee reiterates its question.

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 there is adequate prevention of sexual harassment in relation to work;
- the existing framework in respect of employers' liability does not provide sufficient and effective remedies in cases of sexual harassment in relation to work when third parties are involved;
- it has not been established that, in relation to employees' protection, there are sufficient and effective remedies against sexual harassment in relation to work;
- the Labour Code does not provide for a shift in the burden of proof in cases of sexual harassment;
- it has not been established that there is appropriate and effective redress (compensation and reinstatement) in cases of sexual harassment in relation to work.

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.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 26§2 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee concluded that the situation in Azerbaijan was 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 (Conclusions 2018).

The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions.

Prevention

For this monitoring cycle, the Committee welcomed information on awareness - raising and prevention campaigns, as well as on action taken to ensure that the right to dignity at work is fully respected in practice.

In its previous conclusion, the Committee reiterated its questions on the concrete measures taken to raise awareness of moral (psychological) harassment in the workplace, and on how social partners were involved in the adoption and implementation of such measures (see Conclusions 2014 and Conclusions 2018). The Committee pointed 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 (Conclusions 2018).

The report provides no information in response to the above-mentioned questions. Given the absence of information, the Committee concludes that the situation is not in conformity with Article 26§2 of the Charter on the ground that it has not been established that there is adequate prevention of moral (psychological) in relation to work.

Liability of employers and remedies

The Committee has repeatedly asked 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 (contractors or self-employed workers, visitors, clients, etc.) or when such third parties are victims of harassment by an employee (Conclusions 2010, 2014). In its previous conclusion, the Committee reiterated this question. Given the absence of information, it considered that the situation was not in conformity with Article 26§2 on this point on the ground that it had 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 (Conclusions 2018).

The report does not provide the requested information as regards the employers’ liability in respect of sexual harassment involving third parties. The Committee considers that the situation is not in conformity with Article 26§2 of the Charter on the ground that the existing

framework in respect of employers' liability does not provide sufficient and effective measures in cases of moral (psychological) harassment in relation to work when third parties are involved.

In its previous conclusion, the Committee reiterated 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 pointed 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 (Conclusions 2018). The report indicates that, during the reference period, the State Labour Inspection Service under the Ministry of Labour and Social Protection of Population did not receive any complaints about the moral harassment of employees.

Given the lack of information on the remedies available and on examples of decisions on moral (psychological) harassment cases, the Committee considers that it has not been established that, in relation to the employees' protection, there are sufficient and effective remedies against moral (psychological) harassment in the workplace or in relation to work.

With regard to the burden of proof, in its previous conclusion, the Committee considered that the situation was not in conformity with the Charter on the ground that no shift in the burden of proof applies in moral (psychological) harassment cases (Conclusions 2018). As the report does not indicate any change to the situation during the reference period, the Committee reiterates its previous conclusion of non-conformity on this point.

Damages

In its previous conclusion, the Committee noted that during the previous reference period the Ombudsman received no complaints relating to moral (psychological) harassment at work. It also noted that no further information was provided concerning the pecuniary and non-pecuniary damages effectively awarded to victims of moral (psychological) harassment and on the possibility for them to obtain reinstatement in the event they had been unfairly dismissed or pressured to resign in the context of moral (psychological) harassment (Conclusions 2018). The Committee asked for the next report to provide information on these points and, in view of the lack of information, considered that the situation was not in conformity with Article 26§2 of the Charter as it has not been established that appropriate and effective redress (compensation and reinstatement) is guaranteed in cases of moral (psychological) harassment (Conclusions 2018).

The report does not provide the requested information. It only indicates that during the reference period, the State Labour Inspection Service under the Ministry of Labour and Social Protection of Population did not receive any complaints about moral harassment of employees. The Committee considers that the situation is not in conformity with Article 26§2 of the Charter on the ground that appropriate and effective redress (compensation and reinstatement) is not guaranteed in cases of moral (psychological) harassment in relation to work.

Covid -19

In a targeted question, the Committee asked for information on specific measures taken during the pandemic to protect the right to dignity in the workplace and notably as regards sexual harassment. The Committee welcomed specific information about categories of workers in a situation of enhanced risk, such as night workers, home and domestic workers, store workers, medical staff, and other frontline workers.

The report does not provide any information in response to the above-mentioned targeted question. The Committee reiterates its question.

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 there is adequate prevention of moral (psychological) in relation to work;
- the existing framework in respect of employers' liability does not provide sufficient and effective remedies in cases of moral (psychological) harassment in relation to work when third parties are involved;
- it has not been established that, in relation to employees' protection, there are sufficient and effective remedies against moral (psychological) harassment in the workplace or in relation to work;
- the Labour Code does not provide for a shift in the burden of proof in cases of moral (psychological) harassment;
- appropriate and effective redress (compensation and reinstatement) is not guaranteed in cases of moral (psychological) harassment in relation to work.

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

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

The Committee points out that no targeted questions were asked in relation to Article 28 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the "Labour rights" thematic group).

In the previous conclusions (Conclusions 2018), the Committee concluded that the situation in Azerbaijan was not in conformity with Article 28 of the Charter on the grounds that protection against dismissal granted to workers' representatives was not extended for a reasonable period after the end of their mandate and that it had not been established that protection afforded to workers' representatives against prejudicial acts short of dismissal is adequate.

In the present conclusion, the assessment of the Committee will therefore concern the information provided by the Government in response to the previous conclusion of non-conformity.

Protection granted to workers' representatives

In Conclusions 2014 and 2016, the Committee had observed that protection of workers' representatives from dismissal was granted solely during the exercise of their mandate and had found it to be in non-conformity with the Charter. In Conclusions 2018, the Committee reiterated its conclusion of non-conformity, as the relevant national report did not submit any information in this respect.

The Committee considers that under Article 28 the protection afforded to worker representatives should extend for a period beyond the mandate. To this end, the protection afforded to workers shall be extended for a reasonable period after the effective end of period of their office (Conclusions 2010, Statement of Interpretation on Article 28). The extension of the protection granted to workers' representatives to at least six months after the end of their mandate is considered reasonable (Conclusions 2010, Bulgaria).

In reply, the report indicates that participants in collective bargaining shall not be subject to dismissal in the course of negotiations.

In the light of the information provided, the Committee reiterates its finding of non-conformity on the ground that the protection afforded to workers' representatives against dismissals is not extended for a reasonable period after the end of their mandate.

As regards the protection from prejudicial acts others than dismissal, in Conclusions 2018, the Committee found that the information provided by the authorities that an employer is not allowed to undertake disciplinary measures against participants of collective bargaining during the period of negotiations was not sufficient to conclude that the protection was effective, in particular outside the performed collective bargaining activity. The Committee recalled that prejudicial acts may entail, for instance, denial of certain benefits, training opportunities, promotions or transfers, discrimination when issuing lay-offs, etc. It therefore considered that it had not been demonstrated that the situation was in conformity with the Charter on this point.

In reply, the report indicates that participants in collective bargaining shall not be subject to disciplinary proceedings, transfer to another job in the course of negotiations.

In the light of the information provided, the Committee reiterates that the situation in Azerbaijan is not in conformity with the Charter on the ground that the protection afforded to workers' representatives against prejudicial acts short of dismissal is not afforded outside the period of collective bargaining activity.

Facilities granted to workers' representatives

The Committee previously took note of the list of facilities which could be made at the disposal of the workers' representatives when carrying out their duties (premises, materials, paid time off) and requested that the next report provide updated information in this respect.

In reply, the report indicates that pursuant to Article 27 of the Labour Code, participants in collective bargaining (representatives of the parties, consultants, experts, conciliators, mediators, specialists, arbitrators and other persons determined by the parties) are exempted from the execution of labour functions for up to three months a year, while retaining average annual salary when carrying out collective bargaining. This period is included in the participants' period of service.

In addition, employees exempted from the labour function of an enterprise and elected to a trade union organisation shall be entitled to the same benefits as other employees of the enterprise on an equal basis. They shall be returned to their previous position upon expiration of their elected powers. If this is not possible, they shall be provided with equal position at that enterprise or at another enterprise with the consent of the employee.

Conclusion

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

- protection against dismissal granted to workers' representatives is not extended for a reasonable period after the end of their mandate;
- protection to workers' representatives against prejudicial acts short of dismissal is not afforded outside the period of collective bargaining activity.

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

The Committee points out that no targeted questions were asked in relation to Article 29 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In the previous conclusions (Conclusions 2018), the Committee concluded that the situation in Azerbaijan was not in conformity with Article 29 of the Charter on the ground that it had not been established that there were measures that would prevent redundancies from being put into effect before the obligation to inform and to consult has been fulfilled.

In the present conclusion, the assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of non-conformity (Conclusions 2018).

Definitions and scope

In Conclusions 2014, the Committee took note that according to the Labour Code, collective redundancy is defined as termination of employment of more than 50% of all employees in an enterprise with 100-500 employees, 40% in an enterprise of 500-1000 employees and 30% in an enterprise with more than 1000 employees at the same time or at separate times within three months. In conclusions 2014, considering that this definition was restrictive, the Committee asked what was the coverage of employees concerned, i.e. the percentage of employees working in enterprises with more than 100 employees in proportion to all employees. The previous and the current reports did not provide any answer in this respect. The Committee therefore reiterates this question and considers that if the required information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter in this respect.

Prior information and consultation

The report indicates that according to the provisions of the Labour Code, in case of a decrease in the number of employees or staff reduction, the employee must be officially notified in advance by the employer, depending on the length of service determined in the employment contract. In case the length of service is up to one year, the employee must be notified at least two calendar weeks before the termination of the contract. If the length of service is from one to five years, the employee must be notified at least four calendar weeks before the termination. If the length of service is from five to ten years, the employee must be notified at least six calendar weeks before the termination. If the length of service is more than ten years, the employee must be notified at least nine calendar weeks before the termination.

The report also indicates that in case of dismissal of employees who are trade union members, the employer must seek the consent of the trade union concerned.

Sanctions and preventative measures

In Conclusions 2018, given the repeated failure of the authorities to provide the requested information, the Committee concluded that it had not been established that there were measures that would prevent redundancies from being put into effect before the obligation to inform and consult has been fulfilled.

In reply, the report merely indicates that that under Article 38 of the Labour Code, the parties may include in the collective agreement an obligation to take measures to prevent massive

layoffs, as well as measures to prevent dismissals. However, the Committee considers that this information is not sufficient for it to assess the situation. Given the ongoing failure to provide the requested information, the Committee concludes that measures and sanctions do not exist to ensure that redundancies do not take effect before employers' obligation to inform the workers' representatives had 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 measures and sanctions do not exist to ensure that redundancies do not take effect before employers' obligation to inform the workers' representatives has been fulfilled.