March 2018

European Social Charter

European Committee of Social Rights

Conclusions 2018

ARMENIA

This text may be subject to editorial revision.

The following chapter concerns Armenia which ratified the Charter on 21 January 2004. The deadline for submitting the 12th report was 31 October 2017 and Armenia submitted it on 28 February 2018.

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

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

Armenia has accepted all provisions from the above-mentioned group except Articles 4§1, 21, 26 and 29.

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

The conclusions relating to Armenia concern 17 situations and are as follows:

– 6 conclusions of conformity: Articles 2§2, 2§3, 2§5, 2§6, 6§3 and 22,

– 10 conclusions of non-conformity: Articles 2§1, 2§4, 4§2, 4§3, 4§4, 4§5, 5, 6§2, 6§4 and 28.

In respect of the situation related to Article 6§2, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Armenia under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27),
- the right to housing (Article 31).

The deadline for submitting that report was 31 October 2018.

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

Article 2 - Right to just conditions of work

Paragraph 1 - Reasonable working time

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

The Committee has previously recalled (Conclusions 2014 and 2010) that daily working time should in no circumstances exceed 16 hours per day and found, therefore, that the situation was not in conformity with the Charter on the ground that the daily working time of some categories of workers can be extended to 24 hours. There has been no change to this situation therefore the Committee reiterates its previous finding of non-conformity. The Committee has noted however, that the new labour code is under development.

In response to the Committee's request for clarification, the report confirms that time spent on call at home, even if no actual work is performed, counts as 50% in terms of working time, whereas time spent on call at the workplace counts as 100%. The Committee therefore considers that the situation is in conformity with the Charter on this point.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 2§1 of the Charter on the ground that the daily working time of some categories of workers can be extended to 24 hours.

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

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

In its previous conclusion (Conclusions 2014), the Committee found that the situation was in conformity with the Charter.

The Committee refers to its previous conclusion for the description of the legislative framework, as set out in Articles 185 and 184 of the Labour Code. The report states, however, that the concepts of basic salary and overtime (Article 178) were modified by law HO-209-N of 1 December 2014. The report confirms that work performed on statutory public holidays is considered overtime and remunerated in accordance with Articles 185 and 184 (Conclusions 2014, Article 2§2).

The Committee notes from the information published on the website of the National Assembly of the Republic of Armenia that the Labour Code was also amended by the law of 12 December 2013 (which entered into force on 1 January 2014). In particular, Article 185 on remuneration for public holidays, commemoration days and rest days was supplemented by paragraph 3 which provides that the requirements laid down in paragraphs 1 and 2 do not apply to persons working in health care, social work, child education, electricity, gas, heating, communications and other fields of a special nature, provided the work is performed for at least one out of five consecutive non-working days (public holidays, commemoration days, weekend). At the same time, the amount of additional pay for work performed on a non-working day in these cases is determined by agreement between the parties or by collective agreement. The Committee asks that the next report specify whether the law provides for restrictive criteria defining the circumstances under which work on public holidays is permitted under Article 178§3 of the Labour Code. It also asks for what additional remuneration, if any, is payable to workers in the above-mentioned sectors who work on public holidays.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

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

In its previous conclusion (Conclusions 2014), the Committee found that the situation was in conformity with the Charter and asked to clarify the circumstances under which annual leave can be postponed and in particular whether employees must use a certain part of the annual leave within the reference year or whether they can entirely postpone their leave to the following year. It also asked to confirm that the situation regarding the possibility of the postponement of annual leave to the following year in case of illness or temporary disability of the employee has not changed.

In response, the report states that, under Article 164§1 of the Labour Code, annual leave must be granted during the reference year. Article 167§1, however, states that annual leave may be postponed only at the request and with the consent of the employee. Annual leave may also be postponed if: (1) the employee is temporarily unfit for work, (2) the employee is entitled to special leave, under Article 171 of the Labour Code (maternity leave, leave to look after a child under the age of three years, study leave, leave for the purpose of performing state or public duties, unpaid leave), (3) the employee takes part in operations to prevent natural disasters, technological accidents, epidemics, accidents, fires and other emergency cases.

The Committee notes from the report that under Article 167§2, where the said reasons arose before the commencement of the annual leave, the leave must be postponed to some other time; where they arose during the annual leave, the latter must be extended by the appropriate number of days. Pursuant to Article 167§3, as a rule, annual leave which has been postponed should be granted in the same year, but not later than within 18 months from the end of the working year in respect of which the annual leave was not granted, or was partially granted. The report explains that the unused portion of the annual leave may be carried over and added to the following year's annual leave, at the request and with the consent of the employee.

In its previous conclusion, the Committee noted that under Article 163 of the Labour Code, employers and employees may agree that the annual leave will be taken in several parts, one of which shall be at least 10 working days, in the case of a five-day working week, and at least 12 working days in the case of a six-day working week.

Conclusion

The Committee concludes that the situation in Armenia is in conformity with Article 2§3 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

According to the report, Article 243 of the Labour Code requires employers to ensure adequate health and safety conditions for each employee. In addition, Article 248§1 states that the work must be organised in accordance with the requirements of the regulatory legal instruments on ensuring the health and safety of employees.

Elimination or reduction of risks

The Committee refers to its conclusion under Article 3§1 of the Charter (Conclusions 2017) for a description of the dangerous activities and the preventive measures taken in their respect. It notes that it concluded that the situation in Armenia was not in conformity with Article 3§1 of the Charter, on the ground that there was no clearly defined policy on occupational health and safety.

In its previous conclusion (Conclusions 2014), the Committee reserved its position on this point and asked the next report to indicate the measures taken to eliminate or reduce risks associated with dangerous or unhealthy work and to provide, in particular, evidence of the effective implementation of the relevant measures, including as regards the labour inspectorate activities in this respect. The report contains no new information on this point.

The Committee notes that the situation in Armenia is not in conformity with the Charter on the ground that there is no prevention policy regarding the risks in inherently dangerous and unhealthy occupations.

Measures in response to residual risks

In its previous conclusion, the Committee reserved its position on this point and asked the next report to provide details on the activities and risks covered by the list of categories of workers engaged in arduous or dangerous occupations and eligible for measures such as extended annual leave or, if applicable, reduced working time.

In response, the report gives the list of sectors considered to involve arduous or harmful activities, as set out in Appendix 1 to the Armenian Government Decision No. 1698-N of 1 December 2010, in particular agriculture, environmental protection, transport and communication, energy, mining, chemical production, light industry, mechanical engineering, production of construction materials, policing, emergency situations service, civil aviation, urban development, health care and social security institutions, water supply, printing, archiving, study, measurement, reinforcement, repair and renovation of monuments, film industry and the nuclear power sector, in which a number of activities are identified.

The report also gives the list of sectors involving especially arduous or especially dangerous activities, as set out in Appendix 2 to Government Decision No. 1698-N of 1 December 2010, in particular mining, extraction of minerals, preparation, enrichment, cutting and roasting of ores, metallurgical industry (ferrous and non-ferrous metals) and metal processing.

The Committee further notes that the legislation provides for the following compensatory measures when workers are exposed to risks which cannot be or have not yet been eliminated or sufficiently reduced:

- Shorter working time (not more than 36 hours per week) may be set for workers in whose workplace it is impossible, for technical reasons, to reduce the maximum permissible levels of occupational hazards to the level safe for health. (Article 140 of the Labour Code).

- Workers in industries involving exposure to agents which are toxic, carcinogenic or dangerous to health are not permitted to perform overtime (Article 114§3 sub-paragraph 3).
- Categories of workers whose work is associated with a high level of intellectual or emotional strain or occupational hazard (as determined by Government Decision No. 1599-N of 11 August 2005) are entitled to extended annual leave of 25 (or 35) working days in the case of a five-day working week and 30 (or 42) working days in the case of a six-day working week (Article 160).
- Persons working in harmful or dangerous working conditions, or who have an irregular work schedule or who are engaged in work of a special nature (list determined by Government Decision No. 1384-N of 1 August 2005) are entitled to additional annual leave ranging from two to twelve days (Article 161). The Committee notes the categories of workers mentioned in this Decision.
- Employees working in temperatures of over 40° Celsius or under -10° Celsius or dangerous conditions causing physical, mental or emotional fatigue are entitled to additional daily rest periods (Article 153).
- Workers performing (especially) arduous or dangerous tasks (list determined by Government Decision No. 1698-N of 2 December 2010, Appendixes 1 and 2) are entitled to a bonus equivalent to not less than 30% or 50% of their salary (Article 183).

The Committee concludes that the situation is in conformity with Article 2§4 the Charter on this issue.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 2§4 of the Charter on the ground that there is no prevention policy regarding the risks in inherently dangerous and unhealthy occupations.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

In its previous conclusion (Conclusions 2016, in conformity with the decision adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on findings of non-conformity for repeated lack of information in Conclusions 2014), the Committee considered that the situation was in conformity with Article 2§5 of the Charter.

The Committee noted that waiving or postponing the weekly rest period was not provided for by the legislation and asked that the next report state whether waiving or postponing the weekly rest period was legally possible by individual or collective agreement, and if not, what was the situation in practice (for example on the basis of labour inspection data).

The report states that under the Labour Code, employees may neither waive their right to a weekly uninterrupted rest of at least 35 hours, nor replace it with financial compensation; weekly rest days may not be transferred or postponed.

Conclusion

The Committee concludes that the situation in Armenia is in conformity with Article 2§5 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

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

In its previous conclusion (Conclusions 2016, in conformity with the decision adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on findings of non-conformity for repeated lack of information in Conclusions 2014), the Committee considered that the situation was in conformity with Article 2§6 of the Charter and asked to confirm that the written contract shall indicate the length of the periods of notice in case of termination of the contract or the employment relationship.

In response, the report states that Article 84 of the Labour Code is amended to introduce the requirements laid down within the scope of Article 2§6 of the Charter, in particular the requirement that the employment contract or other written document must contain information on the length of paid leave, the notice to be given in the event of termination of the contract or the employment relationship, the employee's standard daily or weekly working hours and references to any collective agreements governing the employee's conditions of work. The Committee notes that it is not clear from the amended version of Article 84 of the Labour Code, as presented in the report, that the written contract must indicate the length of the periods of notice in case of termination of the contract or the employment relationship. The Committee asks the next report to clarify this issue.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Armenia is in conformity with Article 2§6 of the Charter.

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 Armenia.

In its previous conclusion (Conclusions 2014), the Committee concluded that the situation was not in conformity with the Charter on the ground that the legislation does not guarantee an increased time off in lieu of remuneration for overtime.

There has been no change to this situation therefore the Committee reiterates its previous finding of non-conformity.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 4§2 of the Charter on the ground that the legislation does not guarantee an increased time off in lieu of remuneration for overtime.

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 Armenia.

Legal basis of equal pay

In its previous conclusion (Conclusions 2014) the Committee noted that according to Article 178 (2) of the Labour Code women and men shall get an equal pay for the same or equivalent work.

In addition, the report states that equality of parties to employment relations, irrespective of gender is one of the fundamental principles of the labour legislation (Section 3 of Part 1 of Article 3 of the Labour Code). According to Part 3 of Article 180 of the Labour Code where job qualification system is applied, the same criteria shall apply to both men and women and the system shall be elaborated in such a way as to exclude discrimination on the ground of gender.

Guarantees of enforcement and judicial safeguards

In its previous conclusion (Conclusions 2014) the Committee requested the next report to provide detailed information regarding the guarantees of enforcement of the equal pay principle, burden of proof, and sanctions as well as domestic case law on equal pay litigations.

In its conclusion on Article 20 (Conclusion 2016) the Committee found that the situation was not in conformity with the Charter on the ground that the upper limit on the amount of compensation that may be awarded in gender discrimination cases may preclude damages from making good the loss suffered and from being sufficiently dissuasive. In its conclusion on Article 1§2 (Conclusions 2016) the Committee found that the situation was not in conformity with the Charter as it had not been established that legislation provides for a shift in the burden of proof in discrimination cases. The Committee noted that the representative of Armenia announced at the Governmental Committee meeting that new legislation for prohibiting discrimination in line with international standards was envisaged.

In this connection, the Committee now notes from the report that as regards the compensation that may be awarded in discrimination cases, in case the court does not reinstate an employee to his or her former employment for economic, technological or organisational reasons or in the case of impossibility of reinstatement of future employment relations between the employer and the employee, the employer shall, pursuant to part 2 of Article 265 of the Labour Code of the Republic of Armenia, be obliged to pay compensation for the entire period of forced idleness in the amount of the average salary, until the entry into force of the court judgement, and pay compensation for not reinstating the employee to his or her employment, in the amount of not less than the average salary, but not more than twelve times the average salary. The Committee notes that there have been no changes to the situation which it has previously (Conclusions 2016, Articles 20 and 1§2) found not to be in conformity with the Charter. Therefore, the Committee reiterates its previous finding of non-conformity on the ground that the upper limit on the amount of compensation that may be awarded in pay discrimination cases may preclude damages from making good the loss suffered and from being sufficiently dissuasive.

As for the burden of proof, according to the report, Parts 1 and 2 of Article 48 of the Civil Procedure Code prescribe that each participant of the case must prove the facts he or she refers to, and, based on the claims and objections of the participants of the case, the court shall decide which facts are essential for the settlement of the case that must be proven. The Committee notes that the draft law "on ensuring legal equality" prescribing the rules on sharing of the burden of proof is under development by the Ministry of Justice.

The Committee recalls in this connection that under the Charter in discrimination cases the burden of proof must be shifted in favour of the plaintiff. The shift in the burden of proof consists in ensuring that where a person believes he or she has suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of equal treatment. The purpose of this rule is to enable courts to deal with discrimination in the light of the effects produced by a rule, act, or practice and hence that the shift in the burden of proof is a key factor in the effective application of rules on protection against discrimination (Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the Additional Protocol). The Committee asks the next report to provide information of legislative developments in this regard. In the meantime the Committee reserves its position on this issue.

Methods of comparison

In reply to the Committee's question regarding whether in equal pay litigation cases it is possible to make comparisons of pay and jobs outside the company directly concerned, the report states that the comparisons of remuneration across companies may be conducted at the level of a collective agreement, when, for example, conditions of remuneration for work and mechanisms of regulation of remuneration for work, provided for by point 1 of part 3 of Article 49 of the Labour Code must be defined by collective agreements concluded at branch or territorial levels of social partnership. Moreover, the comparisons between organisations at the level of branches may include companies carrying out activities within one or more relevant branches of the economy (industry, service, profession), and at the territorial level — companies carrying out activities within a certain territory. The Committee asks whether there have been any equal pay litigation cases.

The Committee further asks for information concerning the measures taken to raise awareness of the relevant legislation, to enhance the capacity of the competent authorities, including judges, labour inspectors and other public officials, to identify and address cases of unequal pay, and also to examine whether the applicable substantive and procedural provisions, in practice, allow claims to be brought successfully. It asks that the next report provide information on the number, nature and outcome of complaints of equal remuneration addressed by the judicial and administrative bodies.

Statistics

In its conclusion on Article 20 (Conclusions 2016) the Committee noted that women continue to face higher unemployment than men and remain concentrated in lower paying sectors and lower positions. The Committee noted that despite the efforts and measures taken by the authorities to ensure gender equality in employment, the pay gap remained manifestly high, at around 35%, and therefore, it concluded that the situation was not in conformity with the Charter. The Committee now notes from the report that as regards measures taken to reduce the difference in remuneration over the past 10 years, the difference between the average monthly nominal salaries (earnings) of women and men has been reduced by 10.8 percentage points. According to the National Statistical Service, in 2015, the average earning of women comprised 66.5% of the earnings of men, or the gender pay gap in remuneration, which is the difference between the average monthly nominal salaries of men and women in relation to the average monthly nominal salary of men expressed in percentage form, comprised 33,5%. The Committee notes that the National Statistics Service maintains statistics disaggregated by gender, as a measure to reinforce the principle of equality and equal opportunities of women and men. However, the Committee notes that the gender pay gap remains persistently high, which demonstrates that the enforcement of the right to equal pay is not effective. Therefore, the situation is not in conformity with the Charter.

Policy and other measures

Taking into account persisting pay gap the Committee asks the next report to provide comprehensive information on all measures taken to eliminate *de facto* inequalities between men and women, including positive actions/measures taken and actual national plans and strategies. It asks in particular information on their implementation and impact on combating occupational sex segregation in employment and to reduce the gender pay gap. Meanwhile, it reserves its position on this point.

Conclusion

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

- the upper limit on the amount of compensation that may be awarded in gender discrimination cases may preclude damages from making good the loss suffered and from being sufficiently dissuasive;
- the enforcement of the right to equal pay is not effective, as demonstrated by the persistently high gender pay gap.

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

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

In its previous conclusion (Conclusions 2014), the Committee held that the situation was not in conformity with Article 4§4 of the Charter on the grounds that, in most cases, no notice period and/or severance pay in lieu thereof was applicable to dismissal or termination of an employment contract and that with regard to the particular situations in which provision has been made for notice and/or severance pay in lieu thereof, the period and/or amount was not reasonable as regards certain circumstances.

The report indicates that, during the reference period, changes have been made to the regulations concerning notice periods and severance pay. More specifically, the report states that, pursuant to Article 123 of the Labour Code, the employment contract may be terminated without notice in the following cases:

- the employee regularly fails to fulfill the obligations reserved for him or her by the employment contract or the internal regulatory rules, with no good reason (Article 113, part 1, point 5 of the Labour Code);
- the employer has lost confidence in the employee (Article 113, part 1, point 6 of the Labour Code);
- the employee is found to be under the influence of alcoholic beverages, narcotics or psychotropic substances at the workplace (Article 113, part 1, point 8 of the Labour Code);
- the employee fails to come to work throughout the entire working day (shift) with no good reason (Article 113, part 1, point 9 of the Labour Code) and
- the employee rejects or evades mandatory medical examination (Article 113, part 1, point 10 of the Labour Code).

The report indicates that the aforementioned grounds for dismissal have a disciplinary nature and, as a result, the Labour Code does not establish notice periods applicable to dismissals on such grounds. Furthermore, the report indicates that where an employee is called up for military service, this constitutes a ground for dismissal. The Committee asks whether a notice period and/or severance pay in lieu thereof is applicable in this case. Meanwhile the Committee considers that certain of the grounds of disciplinary misconduct which may result in immediate dismissal are minor such as failure to come to work for one day with no good reason and cannot justify immediate dismissal. It considers that the situation is not in conformity with Article 4§4 of the Charter, on the ground that no notice period is provided for in cases of dismissal due to minor disciplinary offences.

The report indicates that in cases of dismissals on grounds provided for by Article 113, part 1, points 3, 7 and 11 of the Labour Code, the applicable notice periods are:

- 14 days for employees with up to 1 year of service, paying a dismissal benefit in the amount of ten times the average daily salary;
- 35 days for employees with 1 to 5 years of service, paying a dismissal benefit in the amount of twenty times the average daily salary;
- 42 days for employees with 5 to 10 years of service, paying a dismissal benefit in the amount of thirty times the average daily salary;
- 49 days for employees with 10 to 15 years of service, paying a dismissal benefit in the amount of thirty-five times the average daily salary;
- 60 days for employees with more than 15 years of service, paying a dismissal benefit in the amount of forty-four times the average daily salary.

The Committee asks for confirmation that the severance pay provided for by the Labour Code is paid in addition to notice periods. Meanwhile, it reserves its position on this point.

The report does not provide information on grounds for dismissals and notice periods and/or severance pay in lieu thereof provided for in cases of early termination of fixed-term

contracts and for dismissals during the probationary period. The Committee asks the next report to provide specific information in this regard.

In its previous conclusion (Conclusions 2014), the Committee requested information on the notice periods applicable to the public sector, particularly for civil servants covered by the Civil Service Act of 26 May 2011 (No. 172), as amended by Law No. 122-N of 19 March 2012.

The report indicates that civil servants dismissed due to reduction on staff, liquidation of the relevant body, expiration of the period established by law for holding the position of a head of staff and failure to appoint to certain positions provided for by legislation (Article 33, point 1, sub-points f, s, m and u of the Law “On civil service”), may be included in the reserve list of the civil service personnel for a period of up to six months. During this period of being in the reserve list, civil servants receive a monthly remuneration, which equals the official pay rate for the position last held by them.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 4§4 of the Charter on the ground that no notice period is provided for in certain cases of dismissal due to minor disciplinary offences.

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 Armenia.

In its previous conclusion (Conclusions 2014), the Committee held that the situation was not in conformity with Article 4§5 of the Charter on the grounds that withdrawing wages entirely for reasons related to the quality and quantity of the production deprived workers and their dependants of any means of subsistence and that after all authorized deductions, the wages of workers with the lowest pay did not allow them to provide for themselves and their dependants.

The Committee notes from the report that, during the reference period, amendments were introduced to the Labour Code. Under the amended Article 214, after deductions and charges, the employee may not receive less than the minimum wage, except when deductions concern advance payment of the wage, amounts overpaid due to mechanical mistake of calculation and advance payments in relation to a work trip or a shift to another workplace that were not used and not repaid. The Committee considers that the situation is still not in conformity with the Charter on the ground that under these exceptions employees with the lowest pay and their dependants may be deprived of their means of subsistence.

In its previous conclusion (Conclusions 2014), the Committee asked for information on deductions authorised by law and on the way in which a damage caused to employers by the actions of their employees is established. In reply, the report states that according to Article 190§3 of the Labour Code, in case the product is flawed and the employee is responsible, the latter is not remunerated for his/her work. Article 191§2 establishes proportional deductions from wages, with the maintenance of two thirds of the employee's monthly average wage, when the labour standards are not met and the employee is responsible. The employee should compensate the employer when material damage is caused due to destruction of or loss or increment of materials. The employee should also compensate the employer for the costs paid because of the destruction of the employer's property or its negligent preservation, in case he/she deliberately did not take preventive measures as regards the production of low quality products and in case he/she obtained illegally an employer's material or monetary asset. The employer is also entitled to compensation from the employee in case he/she compensated a third person to which the employee caused damage. According to Articles 237 and 238 of the Labour Code, in these cases the deductions cannot exceed the amount of the employee's three months' average wages. The limit of the statutory minimum wage established by Article 214 of the Labour Code applies to all cases concerning compensation by the employee to the employer for damage. Derogations are allowed from this rule in cases laid down in Article 239 of the Labour Code. More specifically, the employee is obliged to compensate fully the employer in case the damage caused by him/her was intentional or it was a result of a criminal activity or it was cased because of loss of tools, devices, means of safety, materials or products provided to the employee. The same applies when full property liability is established by law and when the employee was in a state of intoxication due to alcohol, drugs or psychotropic substances when the damage was caused. The employee should also compensate fully the employer, upon agreement for full material liability.

The Committee considers that the situation is not in conformity with the Charter, on the ground that deductions from wages pursuant to to Article 190§3 of Labour Code may deprive employees with the lowest pay and their dependants of their means of subsistence and withdrawal of wages.

In its previous conclusion (Conclusions 2014), the Committee requested information on measures to prevent workers from waiving their right to limited deductions from wages. The report does not provide information in this regard. The Committee, therefore, reiterates its previous question.

Conclusion

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

- deductions from wages may deprive employees with the lowest pay and their dependants of their means of subsistence;
- withdrawal of wages in case of flawed products, for which the employee is responsible, deprives employees and their dependants of their means of subsistence.

Article 5 - Right to organise

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

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

Forming trade unions and employers' organisations

In its previous conclusion, the Committee asked for the amount of the registration fee to be paid by trade unions as well as employers' organisations.

According to the report fees for the registration of a trade union or employer's organisation are currently AMD 10,000 (18€).

As regards minimum membership requirements: the Committee noted previously that pursuant to the law on Employers the number of employers required to form employers' organisations is as follows:

- at the national level: over half of the employers' organisations operating at the sectoral and territorial levels;
- at sectoral level: over half of the employers' organisations operating at the territorial levels;
- at territorial level: the majority of employers in a particular administrative territory or employers' organisations from different sectors in a particular administrative territory.

The Committee also noted that section 2 of the Law on Trade Unions sets out similar prerequisites for federations of trade unions at the territorial, sectoral and national levels for the purpose of representing workers' labour, professional, social and economic rights and interests, and protection in labour relations with employers' organisations and state bodies, by requiring the participation of more than half of the trade unions which include the majority of workers at the respective level.

The Committee concluded that the situation is not in conformity with the Charter, on the ground that **t**he minimum membership requirements set for forming trade unions and employers' organisations are too high (Conclusions 2014).

The report states that there has been no change to this situation. Therefore the Committee reiterates its pervious conclusion

Freedom to join or not to join a trade union

In its previous conclusion (Conclusions 2014 2016) the Committee concluded that the situation was not in conformity with the Charter on the ground that it has not been established whether there is adequate protection against discrimination for employees who are trade union members or engage in trade union activities.

The report states that the Labour Code provides that employees who believe their employment rights have been violated make, inter alia, seek compensation before the courts.

The Committee previously requested information on the right not to join a trade union. According to the report of Article 45 of the Constitution of the Republic of Armenia as amended prescribes that everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of labour interests and that no one may be compelled to join any private organization. Pursuant to Article 3 of the Law of the Republic of Armenia "On trade unions", one of the core principles of the activities of a

trade union is the voluntary participation (membership) in trade unions. Therefore no one can be compelled to join a trade union.

Trade union activities

In its previous conclusion (Conclusions 2014 2016) the Committee concluded that the situation was not in conformity with the Charter on the ground that it has not been established that trade union representatives have access to workplaces to carry out their responsibilities.

The report states that legislation requires employers to provide the necessary conditions for the organisation and performance of the trade union's activities as defined in the collective agreement.

Representativeness

The Committee refers to its conclusion under Article 6§2 of the Charter in this respect.

Personal scope

The Committee concluded previously that the situation was not in conformity with the Charter, on the ground that the following categories of workers cannot form or join trade unions of their own choosing: employees of the Prosecutor's Office, civilians employed by the police and security service, self-employed workers, those working in liberal professions and the informal sector workers.The report states again states that officers of the armed forces, national security bodies and prosecutor's office, as well as judges and members of the Constitutional Court may not form or join a trade union. No information is provided on those working in liberal professionsof informal workers. Therefore the Committee reiterates its previous conclusion.

In respect of the police, the Committee considered in its previous conclusion (Conclusions 2010, 2014) that the situation of police officers in Armenia was not in conformity with Article 5, on the ground that they were prohibited from joining trade unions. Given that the situation has not changed in this respect, the Committee reiterates its conclusion of non-conformity.

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

Conclusion

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

- the minimum membership requirements set for forming trade unions and employers' organisations are too high;
- the following categories of workers cannot form or join trade unions of their own choosing: employees of the Prosecutor's Office, civilians employed by the security service, all members of the police force (including civilians), self-employed workers, those working in liberal professions and informal sector workers.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

According to the report a new Republican Collective Agreement was concluded by the government, Confederation of Trade Unions and Employers Association which regulates inter alia, joint consultation between the parties. The tripartite Commission was renewed also.

The Committee repeats its request for information on joint consultation in the public sector and civil service.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

As regards representativity and the right to conclude collective agreements the Committee requested further information on the situation and asked whether minority unions are entitled to bargain on behalf of their own members.

The Committee understands from the report, that both the trade union and the representatives elected by the staff meeting can represent the rights and interests of workers. It notes that in the absence of a trade union, or if the existing trade union does not unite more than half of the company's workers, the staff meeting elects representatives. If those representatives are not elected, the functions of defending the representation and interests of workers may be transferred by the staff meeting to the appropriate branch or regional trade union. In that case, the staff meeting elects a representative who takes part in collective bargaining within the delegation of the branch or regional trade union.

However the Committee finds that the situation is still unclear. Therefore the Committee again asks for clarification of the system; where a trade union represents more than 50% of the employees in an undertaking is this the only trade union which can conclude a collective agreement? Where a trade union does not represent more than 50% of the employees, may it still negotiate an agreement for its own members?

According to the report 665 collective agreements have been concluded as of 1 January 2017, of which 4 at branch level, 60 at territorial level, 601 at the level of the undertaking. The Committee again asks what is the percentage of employees covered by a collective agreement.

The Committee concludes that the situation is not in conformity with the Charter on the ground that it has not been established that the promotion of collective bargaining is sufficient.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 6§2 of the Charter on the ground that it has not been established that the promotion of collective bargaining is 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 Armenia.

The Committee previously found the situation to be in conformity with Article 6.3 of the Charter, but requested information on whether there are circumstances in which recourse to arbitration is compulsory (Conclusions 2014 and 2016).

According to the report pursuant to part 3 of Article 264 of the Labour Code, Labour disputes, in compliance with the requirements of the Civil Procedure Code of the Republic of Armenia and the Law of the Republic of Armenia “On commercial arbitration”, may be submitted for settlement to an arbitration tribunal, where the employee and employer have concluded an agreement, or where the collective agreement provides for a possibility to submit the dispute to the arbitration tribunal. The Committee understands from this that recourse to arbitration is only permitted when the parties have agreed to do so. It seeks confirmation that this understanding is correct.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

Collective action: definition and permitted objectives

The Committee previously found the situation to be in confromity in this respect.

Entitlement to call a collective action

The Committee noted previously that pursuant to Article 74(1) of the Labour Code in order to declare a strike, a vote by two-thirds of an organisation's (enterprise's) employees is required by secret ballot. If a strike is declared by a subdivision of an organisation, a vote by two-thirds of the employees of that subdivision is required. However, if such a strike hampers the activities of other subdivisions, the strike should be approved by two-thirds of the employees of the subdivision, which may not be less than half of the total number of employees of the organisation. Further to the amendment of this Article on 24 June 2010, "in case of absence of a trade union in the organization, the responsibility for declaring a strike by the decision of the staff meeting (conference) is transferred to the relevant branch or regional trade union". The Committee considered that the situation was not in conformity with the Charter, on the ground that the required majority to call a strike is too high (Conclusions 2014).

According to the report the government intends to amend the situation but is awaiting information from the ILO. Therefore the Committee finds that as the situation has not changed during the reference period the situation is still not in conformity with the Charter in this respect.

Specific restrictions to the right to strike and procedural requirements

The Committee previously found the situation not to be in conformity with the Charter on the grounds that strikes in the energy supply services are prohibited (Conclusions 2016). The Committee notes that there has been no change to this situation therefore it reiterates its previous conclusion of non conformity.

It further noted that strikes are permitted in other essential services subject to the provision of a minimum service.

According to the report Article 77 of the Labour Code prescribes that during a strike in activities covering railway transport and urban public transport, civil aviation, communication, healthcare, food production, water supply, sewerage and waste disposal, organisations with a continuous production cycle, as well as in organisations the termination of work wherein may result in grave or hazardous consequences for life and health of the society or individual persons) a minimum service provision is required. Minimum service requirements shall be set by the relevant state or local self-government bodies.

The Committee considers that the sectors in which the right to strike may be restricted are overly extensive and it has not been demonstrated that the restrictions satisfy the conditions laid down in Article G of the Charter. The Committee asks whether employee representatives are involved in the discussions on the minimum service to be provided on an equal footing with employers.

The Committee notes in addition that strikes are prohibited, inter alia, by members of the police and security services. Concerning police officers, an absolute prohibition on the right to strike can be considered in conformity with Article 6§4 only if there are compelling reasons justifying it. On the other hand the imposition of restrictions as to the mode and form of such strike action can be in conformity to the Charter.

The Committee considers therefore that the situation is not in conformity in this respect.

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

Consequences of a strike

The Committee noted previously that an employer is not permitted to subject employees to disciplinary measures for participating in a strike and may not hire new employees to replace striking workers. The Committee inferred from this that it is not permitted to dismiss striking workers, either during or after a strike. However it asked the next report to provide confirmation of this (Conclusions 2016). The report confirms that striking employees may not be dismissed.

Conclusion

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

- the percentage of workers required to call a strike is too high;
- strikes are prohibited in the energy supply services;
- All members of the police are prohibited from striking;
- Restrictions on the right to strike in certain sectors are too extensive and go beyond the limits permitted by Article G.

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 Armenia.

Working conditions, work organisation and working environment

In its previous conclusion (Conclusions 2016, in conformity with the decision adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on findings of non-conformity for repeated lack of information in Conclusions 2014), the Committee reserved its position on this point and asked whether undertakings employing less than a certain number of workers are excluded from the scope of this provision.

The Committee notes from the report that according to Article 19 of the Labour Code, all employees within an undertaking have the right to form a decision making body that is able to take decisions through staff meetings. Among its powers, according to Article 23 of the Labour Code, the staff meeting may elect worker's representatives, as long as there are no trade unions present within the undertaking or none of the present trade unions unites more than half of the number of employees of the undertaking.

The Committee also asked whether there is an obligation on employers to consult employee representatives (or where there are no representatives employees directly) on related issues where a collective agreement does not cover issues relating to working conditions, work organisation and working environment. The report does not provide any information on this point. The Committee accordingly reiterates its request.

The Committee recalls that it noted in its previous conclusion (Conclusions 2010), that workers' participation concerns all of the areas covered by Article 22, such as the determination and improvement of the working conditions, work organisation and working environment, the protection of health and safety within the undertaking, the organisation of social and socio-cultural services within the undertaking and the supervision of the observance of regulations on these matters.

Protection of health and safety

In its previous conclusion (Conclusions 2016, in conformity with the decision adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on findings of non-conformity for repeated lack of information in Conclusions 2014), the Committee concluded that the situation was in conformity with the Charter on this point and asked when – if at all – it is obligatory to establish a safety and health commission. In reply, the report indicates that the employer may establish a Commission on Safety and Health of Employees whose functions are defined by Decision of the Government No. 1007-N of 29 June 2006. The Committee understands that the establishment of such a commission is not obligatory for the employer.

In addition to information provided previously, the report indicates that according to Article 253 of the Labour Code, the employer has to inform the employees about the issues relating to the analysis and planning of the safety assurance and healthcare of employees as well as to consult with them.

Organisation of social and socio-cultural services and facilities

The Committee noted previously (Conclusions 2014) that pursuant to Article 22 of the Labour Code, workers' participation concerns *inter alia* the organisation of social and socio-cultural services within the undertaking. In reply to the Committee's question on these services and its organisation, the report indicates that, according to Article 25 of the Law on Trade Unions, worker's representatives have the right to propose improvements of working and leisure conditions to the employer (for example furnishing of break rooms and facilities

for breastfeeding children, etc.). The Committee recalls that according to the Appendix, Article 22 the terms "social and socio-cultural services and facilities" are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children's holiday camps, etc.

Enforcement

In its previous conclusion (Conclusions 2016, in conformity with the decision adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on findings of non-conformity for repeated lack of information in Conclusions 2014), the Committee asked whether there are sanctions that may be imposed on employers who do not respect the rules relating to consultation on working conditions, working environment and work organization.

The report indicates that, according to Article 38 of the Labour Code, after applying to court in order to ensure protection of employments rights, an employee may receive compensation for the damage sustained. The fine may be levied of execution. The Court may also reinstate the situation which existed before the violation of the right or prevent or eliminate actions that violate or pose a danger of violation of the employee's rights.

The Committee further notes from the report that according to Article 22 of the Labour Code, employee representatives may appeal in front of a court the decisions of an employer who violates the representatives' rights in participating in the definition of working conditions, work organization and working environment.

According to Article 41 of the Code on administrative offences, administrative sanctions may be imposed in the form of a fine on the person having committed a violation in the amount of fifty-fold of the minimum salary defined, for each case of violation. The Committee asks whether it is possible to impose sanctions on legal entities as well as on natural entities under Article 41 of the Code on administrative offences.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Armenia is in conformity with Article 22 of the Charter.

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 Armenia.

Types of workers' representatives

The Committee has already observed (Conclusions 2007) that representation of workers in employment relations is mainly ensured by trade unions. In enterprises where no trade union is active, the staff assembly shall elect representatives to represent the employees' interests in collective negotiations with the employer. The Committee asks that the next report provide information on how the employees are represented outside the scope of collective bargaining in enterprises without an active trade union.

Protection granted to workers' representatives

Protection from dismissal

In its previous conclusions (Conclusions 2014), the Committee asked for information concerning dismissal of workers' representatives without the consent of the Labour Inspectorate when "the employee no longer enjoys the employer's confidence". In particular, the Committee wished to know whether any limiting interpretation of this ground for dismissal applies. In reply, the report explains that a dismissal of a workers' representative requires the approval of the employees' representative body. Furthermore, according to the general provisions of the Labour Code, rescission of an employment contract due to loss of confidence is a disciplinary penalty and involves a written explanation.

The Committee has already noted that the notion of "employer's confidence" with respect to worker's representatives may be open to abuse (Conclusions 2010 and 2014). More exhaustive information is still necessary for the Committee to satisfy itself that workers' representatives are duly protected from undue dismissal, as required under Article 28 of the Charter. It therefore expects the next report to elaborate on following aspects: (i) are there strict limitations for the application of the "loss of confidence" ground for dismissal; (ii) how the protection of a worker's representative is ensured in case of absence of an employees' representative body in the undertaking and without the supervision of the Labour Inspectorate?

Should the next report not provide detailed reply to these questions, there will be nothing to show that the situation is in conformity with the Charter on this point.

The Committee has previously observed (Conclusions 2010 and 2014) that the protection of worker's representatives against dismissal was limited for the period of performance of their functions, until their mandate expired, and concluded that as such it was not in conformity with Article 28 of the Charter.

The report does not provide any information as to the change of this situation; accordingly, the Committee reiterates its conclusion.

Protection from prejudicial acts other than dismissal

The Committee has examined the legislative framework prohibiting discrimination in the workplace, including on the ground of affiliation to trade unions, and penalizing impediment of worker representatives' actions (Conclusions 2007, 2010, 2014 and 2016). Still, it has repeatedly asked for more details and, in the light of the lack of necessary information, concluded (Conclusions 2010, 2014, 2016) that the situation was not in conformity with the Charter, on the ground that it has not been demonstrated that workers' representatives were granted adequate protection against detrimental treatment short of dismissal.

The report 2018 still does not provide a comprehensive picture of the situation. In particular, it does not explain how workers' representatives are protected in practice from prejudicial acts, which may entail, for instance, denial of certain benefits, training opportunities, promotions or transfers, discrimination when issuing lay-offs or assigning retirement options, being subjected to shifts cut-down or any other taunts or abuse.

In the light of the above, the Committee considers that it has not been established that workers' respresentatives are effectively protected against prejudicial acts short of dismissal.

Judicial remedies

Dismissal from work may be contested before the courts. The Committee would like to know whether judicial remedies are available to workers' representatives claiming other detrimental treatment on the part of the employer and, in the event of a court procedure, who bears the burden of proof and whether unlawfully treated workers' representatives are entitled to compensation.

Meanwhile, the Committee reserves its position on this point.

Facilities granted to workers' representatives

The Committee has assessed the legislative framework entailing the obligation to provide the trade union's members with necessary conditions for performance of their tasks and exempting them from employment duties for up to six days to attend events organized by employees' representatives bodies (Conclusions 2014 and 2016). It concluded that the information at its disposal was not sufficient to establish the conformity with the requirements of the Charter. The Committee, in particular, repeatedly requested information on access to premises, use of materials, distribution of information, support in terms of benefits, training costs, etc (Conclusions 2010, Statement of interpretation, Conclusions 2016).

As the report does not contain requested information, the Committee reiterates its conclusion.

Conclusion

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

- the protection granted to workers' representatives is not extended for a reasonable period after the expiration of their mandate;
- It has not been established that:
  - workers' representatives are effectively protected against prejudicial acts other than dismissal;
  - facilities granted to workers' representatives are adequate.