March 2018

European Social Charter

European Committee of Social Rights

Conclusions 2018

GEORGIA

This text may be subject to editorial revision.

The following chapter concerns Georgia which ratified the Charter on 22 August 2005. The deadline for submitting the 11th report was 31 October 2017 and Georgia submitted it on 3 November 2017.

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

Georgia has accepted all provisions from the above-mentioned group except Articles 2§3, 2§4, 2§6, 4§1, 4§5, 21, 22 and 28.

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

The conclusions relating to Georgia concern 15 situations and are as follows:

– 1 conclusion of conformity: Article 6§3,

– 13 conclusions of non-conformity : Articles 2§1, 2§2, 2§5, 2§7, 4§3, 4§4, 5, 6§1, 6§2, 6§4, 26§1, 26§2 and 29.

In respect of the situation related to Article 4§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 Georgia 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 Georgia.

The Committee previously concluded (Conclusions 2014) that the situation in Georgia was not in conformity with Article 2§1 of the Charter on the ground that there was no independent appropriate authority that supervises that daily and weekly working time limits are respected in practice.

The Committee already noted the amendments brought to the Labour Code through the Organic Law No. 729 of 12 June 2013 (Conclusions 2014). The current report indicates that the law amending the labour Code entered into force on 4 July 2013. It also indicates that workers' right to reasonable limits on daily and weekly working hours, including overtime, is guaranteed through new national legislation (Labour Code) and collective agreements. The Labour Code and the Law on Public Service define limits of working hours.

The Committee notes that under Article 14 (1) of the Labour Code, the duration of working time shall not exceed 40 hours per week. In enterprises having specific operating conditions, which require more than eight hours of uninterrupted production/work process, the weekly working time shall not exceed 48 hours. The list of industries with specific operating conditions shall be established by the Government. Working time shall not include breaks and rest time.

According to Article 14 (2) of the Labour Code, the duration of rest between working days (or shifts) must be at least 12 hours. It was already noted previously that under Article 14 (1^1) of the Labour Code, in case an employer's activities require 24 hours of uninterrupted production/work, the parties may conclude an agreement on shift work, provided that the 12 hours rest period between the shifts is maintained and containing the condition of granting the rest time to an employee adequate to the hours worked (Conclusions 2014). In this regard, the Committee asked for more details regarding the specific working conditions in which an employee may be expected to work 24-hour shifts (Conclusions 2014). The report does not provide the requested information, but only provides the legal provisions mentioned above.

The Committee recalls that daily working time should in all circumstances amount to less than 16 hours per day in order to be considered reasonable under the Charter (Conclusions XIV-2, General Introduction). Exceptions are only allowed in extraordinary circumstances (Conclusions 2014, Norway, the Slovak Republic). The Committee understands that in Georgia in accordance with Article 14 (2) of the Labour Code, a rest period of at least 12 hours per day needs to be observed in all cases, including in those enterprises where the operation require 24 hours of uninterrupted production/work. The Committee asks confirmation that the rest period of 12 hours is observed in practice and thus a single worker may not work more than 12 hours (in a shift). Pending receipt of such information, it reserves its position on this point.

The report further indicates that under Article 60 of Law on Public Service which came into force on 1 July 2017, an employee in public institutions shall work five days a week and the duration of work time shall not exceed 8 hours a day and 40 hours per week; the rest time and public holidays are determined by the Labour Code.

The report provides no information on the supervision of working time in practice. The Committee recalls that under Article 2§1 of the Charter an appropriate authority, such as the labour Inspectorate, must supervise the observance of daily and weekly limits in order to ensure that the limits are respected in practice. The Committee notes that no such supervision takes place and therefore, it maintains its conclusion of non-conformity on this point.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 2§1 of the Charter on the ground that there is no appropriate authority that supervises that daily and weekly working time limits are respected in practice.

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 Georgia.

The Committee previously noted that the relevant legal provisions were not sufficiently precise so as to ensure that work performed during public holidays is compensated adequately, and therefore concluded that the situation was not in conformity with the Charter (Conclusions 2016).

The Committee recalls that public holidays are paid as part of monthly remuneration and that following a 2013 amendment to the Labour Code work performed during public holidays shall be deemed to be overtime and accordingly be remunerated at an increased rate of hourly pay. The amount of the compensation shall be determined by agreement of the parties. Furthermore, the parties can also agree to compensate work on public holidays by additional time off.

The report repeats the information previously provided and fails to reply to the question raised in its previous conclusions (2014 and 2016) concerning the situation in practice, including examples of the level of the increased pay rate in different sectors and branches, both public and private.

Therefore, the Committee concludes that the situation is not in conformity with Article 2§2 of the Charter on the ground that it has not been established that Georgian law ensure that work performed during public holidays is adequately compensated.

The Committee notes, that Article 58 of the Law of Georgia on Public Service determines the salary increment, and the total amount of a salary increment of an officer is determined by the Law of Georgia on the Remuneration in Public Institutions. However, the report provides no information on the actual rates of increased pay.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 2§2 of the Charter on the ground that it has not been established that Georgian law ensures that work performed during public holidays is adequately compensated.

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 Georgia.

The Committee previously concluded that the situation was not in conformity with Article 2§5 of the Charter on the ground that the right to a weekly rest period is not adequately guaranteed in the whole labour market.

It recalls that under the Labour Code provision of rest time is an essential feature of a labour agreement, however the conditions of rest time may be defined according to the preferences of the parties. The report further states that Article 14 of the Labour Code stipulates a daily rest period of 12 hours.

In the public sector the Law on Public Service provides for a five-day working week for public servants with Saturday and Sunday considered as days off work.

The Committee considered that the question of the weekly rest period cannot be left to the discretion of the parties to the employment contract.

The Committee asked that the next report contain information on the situation in practice as regards provision for a weekly rest period in collective agreements and/or in individual contracts as the case may be.

The report provides no new information and no information on the situation in practice as regards provision for a weekly rest period in collective agreements and/or in individual contracts. The Committee therefore reiterates its previous conclusion of non-conformity on the ground that it has not been established that a weekly rest period is guaranteed.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 2§5 of the Charter on the ground that it has not been established that a weekly rest period is guaranteed.

Article 2 - Right to just conditions of work

Paragraph 7 - Night work

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

Article 2§7 guarantees compensatory measures for persons performing night work. Domestic law or practice must define what is considered to be “night work” within the context of this provision, namely what period is considered to be “night” and who is considered to be a “night worker” (Conclusions 2014, Bulgaria). The measures which take account of the special nature of the work must include regular medical examinations, including a check prior to employment on night work; the provision of possibilities for transfer to daytime work; continuous consultation with workers’ representatives on the introduction of night work, on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work (Conclusions 2003, Romania).

In addition to the information provided by Georgia in its previous reports, the current report refers to the Resolution of the Government of Georgia N201, adopted outside the reference period, which regulates working part-time, night hours, part time work for health reasons, during pregnancy or for raising a child of less than one year old for public servants. However, the report once again fails to indicate whether and to what extent night workers are subject to regular medical examination and the Committee can therefore only reiterate its conclusion that it has not been established that night workers are effectively subject to compulsory regular medical examination.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 2§7 of the Charter on the ground that it has not been established that night workers are effectively subject to compulsory regular medical examination.

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 Georgia.

The Committee previously found that the situation was not in conformity with the Charter, as the Labour Code permitted employers and workers to agree on overtime hours without limitations, and it did not guarantee the right to an increased remuneration for overtime work or time off in lieu (Conclusions 2010).

In its previous conclusion (Conclusions 2014), the Committee noted that Article 17 of the Labour Code which regulates overtime work was substantially amended in 2013. The Committee deferred its position and asked further question for clarification (Conclusions 2014).

As regards the first ground of non-conformity, the Committee noted that following the amendments, Article 17(3) of the Labour Code defines overtime as working time in excess of 40 hours per week (Conclusions 2014). The current report confirms this.

As regards the second ground of non-conformity concerning remuneration for overtime, the Committee asked whether time off, which can be taken in lieu of remuneration for overtime (Article 17 (5)), is of an increased duration. It also asked for some examples of the increased hourly rates at which overtime is paid (Conclusions 2014). The report indicates that overtime work shall be compensated by increasing the amount of hourly pay rate. The amount of the above compensation shall be determined by agreement of the parties (Article 17(4) of the Labour Code). The parties may agree on granting additional time off to an employee in return for overtime compensation (Article 17(5) of the labour Code). The report does not address the Committee's question whether time off is of an increased duration. No examples of increased hourly rates at which overtime is paid are provided by the report. The Committee reiterates its questions.

The report indicates that under Article 61 of the Law of Georgia on Public Service overtime work performed by an officer shall be remunerated at the option of the officer, either by paying the officer a salary increment or granting him/her additional rest time proportionate to the overtime work. The total duration of work time of an officer including overtime working time shall not exceed 48 hours a week.

The Committee recalls that flexibility measures regarding working time are as such not in breach of the Charter. Under flexible working time arrangements, working hours are calculated on the basis of the average weekly hours worked over a period of several months. Within that period, weekly working hours may vary between specified maximum and minimum figures, without any of them counting as overtime and thus qualifying for a higher rate of pay. Arrangements of this kind do not, as such, constitute a violation of Article 4§2 (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§2), provided that the conditions laid down in Article 2§1 are respected, such as the following:

- (i) maximum weekly (more than 60) and daily (up to 16) working hours are respected;
- (ii) flexibility measures operate within a legal framework providing adequate guarantees, which clearly circumscribes the discretion left to employers and employees to vary, by means of collective agreement, working time;
- (iii) flexible working time arrangements provide for a reasonable reference period for the calculation of average working time.

The Committee reiterates its question on whether the law provides for flexible working time arrangements and if so, what are the rules that regulate them.

The Committee further recalls that the right of workers to an increased rate of remuneration for overtime work can have exceptions in certain specific cases, such as for senior officials as well as management executives of the private sector. The Committee reiterates its

question as to whether there are any exceptions to the increased remuneration for overtime work and if so, what categories of workers are concerned.

Conclusion

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

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 Georgia.

Legal basis of equal pay

In its previous conclusions on Article 4§3 (Conclusions 2014) and Article 20 (Conclusions 2016) the Committee found that the situation was not in conformity with the Charter on the ground that there was no explicit statutory guarantee of equal pay for work of equal value.

According to the report, the Labour Code prohibits any type of discrimination in labour and precontractual relations due to various traits, including gender. (Article 2 (3)). The Law of Georgia on Gender Equality of 26 March 2010 defines the fundamental guarantees for equal rights, freedoms and opportunities, provided for in the Constitution and determines legal mechanisms and conditions for their implementation in relevant aspects of public life (Article 1). In accordance with this Law, for the purpose of protecting gender equality, equal treatment in evaluation of the quality of work of men and women is ensured without discrimination (Article 4(i)).

The Committee takes note of the legislative development during the reference period as regards the public service. Namely it notes that the new Law of Georgia on Public Service was adopted in 2015, which provides in its Article 57 (1) that remuneration system shall be based on the principles of transparency and fairness, which means equal pay for equal work performed.

As regards legal basis of equal pay in the private sector, the Committee notes that under EU-Georgia Association Agreement Georgia took commitment to approximate its legislation to the EU acquis, including transposition of some EC Directives, such as Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, according to which the principle of equal pay for equal work or work of equal value constitutes an important aspect of the principle of equal treatment and an essential and indispensable part of the acquis communautaire. According to the report, the Government will continue working on the amendments to legislation with a view to transposing this directive in 2018. The Committee asks the next report to provide information concerning new legislative developments in this regard.

The Committee thus notes that there is now a legal basis of equal pay in the public service. As regards the private sector, amendments are being prepared to the Labour Code and other relevant pieces of legislation to introduce the statutory guarantee of equal pay also in the private sector. The Committee considers that the situation is not in conformity with the Charter on the ground that the statutory guarantee of equal pay only exists in public service.

Guarantees of enforcement and judicial safeguards

In its previous conclusion on Article 20 (Conclusions 2016) the Committee asked whether legislation provided for a shift in the burden of proof and whether there were any limits to compensation that may be awarded to victims of pay discrimination.

The Committee notes in this regard that according to Article 40^2 of the Labour Code the burden of proof in cases of alleged discrimination on all grounds stipulated in Article 2 of the Labour Code (including gender) shall rest on the employer.

The Committee further recalls that under Article 4§3 of the Charter domestic law must provide for appropriate and effective remedies in the event of alleged wage discrimination. Workers who claim that they have suffered discrimination must be able to take their case to court. Anyone who suffers wage discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage

suffered by the victim and act as a deterrent. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive is proscribed. The Committee took note of the amounts of fines that are fixed by the legislation in case of violation of the principle of equality by the employer. The Committee asks whether legislation establishes ceiling to compensation for pecuniary and non-pecuniary damage that may be awarded to a victim of pay discrimination.

Methods of comparison

The report does not provide the information on the methods of comparison in equal pay cases. The Committee asks whether the law prohibits discriminatory pay in statutory regulations or collective agreements, as well as whether the pay comparison is possible outside one company, for example, where such company is a part of a holding and the remuneration is set centrally. The Committee also asks the next report to provide information concerning the criteria according to which equal value of different works is established.

Statistics

The Committee notes from the Observation of CEACR (2018), concerning Convention 100 that there were the significant differences in average monthly nominal wages of men and women indicating a gender wage gap of 37.7% (first quarter of 2013). In its communication the Georgian Trade Unions Confederation reiterated that a substantial gender gap in average monthly nominal wages exists in every sector of the labour market, including in female-dominated sectors such as education and health care. Such pay differences may be due to occupational gender segregation, as well as to the fact that men are primarily employed in the private sector whereas women are more evenly distributed across both private and public sectors.

The Committee recalls that the States Parties must provide information on the gender pay gap and are under obligation to take measures to improve the quality and coverage of wage statistics. They should collect reliable and standardised statistics on women's and men's wages. The Committee notes that the report does not provide this information. Therefore, it asks the next report to provide detailed information regarding the percentage difference between hourly earnings of men and women, in all occupations. The Committee also asks the next report to provide information on the measures implemented with a view to promoting gender equality and reducing the gender pay gap.

Policy and other measures

The Committee notes that the Gender Equality Council was set up to ensure systematic and coordinated work regarding gender issues. The Gender Equality Council is tasked with developing and submission for approval to the Parliament of Georgia an action plan on gender equality and ensuring coordination and monitoring of its implementation. Its task is also to perform analysis of the legislation of Georgia and develop proposals to eliminate existing gender inequality in legislation. The Gender Equality Council submits to the Parliament of Georgia a report on gender equality once a year.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 4§3 of the Charter on the ground that the statutory guarantee of equal pay only exists in public service.

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 Georgia.

In its previous conclusion (Conclusions 2014), the Committee held that the situation in Georgia was not in conformity with Article 4§4 of the Charter, on the grounds that the severance pay provided for during the reference period in the event of a termination of conrtact was not reasonable beyond three years of service; no provision was made during the reference period for notice during probationary periods or in the event of termination of employment owing to a breach of the employment contract, the death of the employer or the winding up of the company; the severance pay applicable in the civil service when an agency has been wound up or its staff has been cut was not reasonable beyond five years of service. It requested updated information be provided in light of the amendments to the Labour Code adopted on 12 June 2013.

The report indicates that in the event of dismissal on the grounds of downsizing due to economic circumstances, technological, or organisational changes; incompatibility of qualifications or work experience with the post or the work; long-term incapacity for work for health reasons or other objective circumstances (Article 37 (1) (a), (f), (i) and (n)), employees are entitled to a notice period of 30 calendar days and to severance pay of at least one months' wage (Article 38 (1) of the Labour Code) or to a notice period of 3 calendar days and to severance pay of at least two months' wages.

As regards termination of employment on ground of the death of the employer and initiation of liquidation proceedings when the employer is a legal person (Article 37(1) (j), (k), (l) and (m)), the aforementioned provisions of the Labour Code do not provide for notice period and/or severance pay in lieu thereof.

The Committee considers that the situation is not in conformity with Article 4§4 of the Charter, on the grounds that the notice period and severance pay provided for by the Labour Code is not reasonable for employees with more than 10 years of service and that no provision is made for notice period in the event of termination of the employment contract on ground of the death of the employer and initiation of liquidation proceedings when the employer is a legal person.

The report refers to other grounds of dismissal of civil servants, provided for by Article 108 of the Law on Public Service. It indicates that, pursuant to Article 114 of the same Law, if the civil servant is dismissed due to downsizing because of reorganisation, liquidation and/or merger of the public institution with another public institution (Article 108 (b)) or due to the state of health and/or long-term incapacity for work (Article 108 (c)), the latter is entitled to one months' notice. In case this notice period is not respected , the civil servant is entitled to compensation amounting to one months' wage, which is paid in addition to the compensation established by other provisions of the Law. The Committee asks the next report to provide information on the severance pay, if any, applicable in cases where the notice period is not respected..

Conclusion

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

- the notice period and severance pay provided for by the Labour Code is not reasonable for employees with more than 10 years of service;
- no notice period is provided where the termination of the employment contract is due to the death of the employer and initiation of liquidation proceedings when the employer is a legal person.

Article 5 - Right to organise

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

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

As regards the number of persons required to found a trade union, the Committee previously concluded that the situation in Georgia was in conformity with Article 5 of the Charter, (Conclusions 2016).

However the Committee requested information on the formalities for forming a trade union (Conclusions 2014). The report states that employees and employers may establish associations and join associations without any prior "permission". The Committee again asks what are the formalities for forming a trade union, what is the procedure for registration and are there any fees payable.

Freedom to join or not to join a trade union

The Committee previously noted that Article 40 of the Labour Code provides that it shall be prohibited to discriminate against employees for being members of an employees association or for participating in the activities of a similar association, including when hiring employees.

The Committee asked to be kept informed of any cases before the courts concerning discrimination on grounds of trade union membership. Meanwhile it reserved its position on this issue (Conclusions 2016). However the report provides no information on this issue. Therefore the Committee concludes that it has not been demonstrated that employees are adequately protected against discrimination on grounds of trade union membership in practice.

Trade union activities

The Committee previously asked for information on the right to trade unions to access to the workplace and to hold meetings, as well as any information on cases involving interference in trade union activities. Meanwhile it reserved its position on this issue (Conclusions 2016).

No information is provided in the current report on this issue, therefore the Committee concludes that it has not been demonstrated that trade unions re entitled to perform and indeed perform their activities without interferences from authorities and/or employers.

Representativeness

The Committee previously asked whether any form of representativeness existed in Georgia and, considered that the information provided in the report was not sufficient to establish that the conditions possibly established with respect to representativeness of trade unions are not such as to infringe the right to organise (Conclusions 2016).

Again no information is provided on this issue and the Committee therefore reiterates its previous conclusion. The Committee once again asks whether in order to conclude collective agreements trade unions must fulfill certain criteria.

Personal scope

The Committee previously asked the next report to confirm that trade unions are deemed to be non-commercial legal persons and not political associations, and to indicate clearly

whether, members of the police may establish and join trade unions, even with restrictions. It also wished to be informed of the restrictions on the right to organize applicable to those employed in internal affairs, customs and taxation, in judicial bodies and the office of the public prosecutor.

Meanwhile it again concluded that has not been established to what extent the right to organise applies to staff of law enforcement bodies and the prosecutor's offices (Conclusions 2016).

The report simply repeats information provided previously and fails to answer the Committee's questions. Therefore the Committee concludes that it has not been demonstrated that members of the police, armed forces and those employed in internal affairs, customs and taxation, in judicial bodies and the office of the public prosecutor enjoy the right to organise.

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 Georgia is not in conformity with Article 5 of the Charter on the ground that it has not been established that:

- employees are adequately protected against discrimination on grounds of trade union membership in practice,
- trade unions are entitled to perform and indeed perform their activities without interferences from authorities and/or employers;
- the conditions possibly established with respect to representativeness of trade unions are not detrimental to the right to organise;
- members of the police and those employed in internal affairs, customs and taxation, in judicial bodies and the office of the public prosecutor enjoy the right to organise.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

The Committee previously concluded that the situation in Georgia was not in conformity with Article 6§1 of the Charter on the grounds that joint consultation does not take place on several levels, joint consultation does not cover all matters of mutual interest of workers and employers and joint consultation does not take place in the public sector including the civil service (Conclusions 2014). It further requested information on the functioning of the Tripartite Social Partnership Commission (TSPC).

According to the report amendments have been made and a new chapter was added to the Labour Code – Tripartite Social Partnership Commission. Following the amendments the main functions of the commission are:

a) facilitating the development of social partnership and social dialogue at all levels in the country between employees, employers and the Government;

b) drafting proposals and recommendations on different issues in labour and other related areas.

However no further information is provided. Therefore the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 6§1 of the Charter on the grounds that:

- joint consultation does not take place at several levels;
- joint consultation does not cover all matters of mutual interest of workers and employers;
- joint consultation does not take place in the public sector including the civil service.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

The Committee previously concluded that the situation was not in conformity with Article 6§2 of the Charter on the grounds that voluntary negotiations between employers or employers' organisations and workers' organisations were not promoted in practice; it had not been established that an employer may not unilaterally disregard a collective agreement and it had not been established that the legal framework allows for the participation of employees in the public sector in the determination of their working conditions (Conclusions 2014, 2016).

No relevant information has been provided in the report on these issues. Therefore the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 6§2 of the Charter on the ground that:

- the promotion of collective bargaining is not sufficient;
- it has not been established that an employer may not unilaterally disregard a collective agreement;
- it has not been established that the legal framework allows for the participation of employees in the public sector in the determination of their working conditions.

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

The Committee previously concluded that the situation in Georgia was not in conformity with Article 6§3 of the Charter on the ground that there is no effective conciliation, mediation or arbitration service (Conclusions 2010, 2014).

According to the report following amendments, the Labour Code now provides for a conciliation procedure. According to the new provisions of the Labour Code a collective dispute (dispute between an employer and a group of employees or an employer and an employees association) must be resolved under conciliation procedures between the parties. This implies direct negotiations between an employer and a group of employees (at least 20 employees) or an employees association, or mediation if one of the parties has sent a written notification to the Minister for Labour, Health, and Social Affairs. Parties shall be obliged to participate in conciliation procedures and attend meetings held by a dispute mediator for that purpose. The parties may agree at any stage of dispute to refer the dispute to arbitration.

The Committee concludes that the situation is now in conformity with Article 6§3 of the Charter.

Conclusion

The Committee concludes that the situation in Georgia 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 Georgia.

The Committee previously concluded that the situation in Georgia was not in conformity with Article 6§4 of the Charter, on the ground that it had not been established that the right to collective action of workers and employers, including the right to strike, was adequately recognized (Conclusions 2014, 2016).

It sought information on a number of issues; namely

- who has the right to call a strike and whether this right is reserved to trade unions;
- which categories of workers are denied the right to strike, in order to assess that the restrictions are in accordance with Article G of the Charter;
- what sectors the relevant legislation is intended to cover when banning the right to strike of employees whose work is related to human life and health or which, due to its technological mode, cannot be suspended;
- whether strikes of the above-mentioned workers are totally banned or whether provision is made for a minimum service;
- the practical circumstances in which courts actually postpone or suspend a strike;
- procedural requirements, for example subjecting the exercise of the right to strike to prior approval by a certain percentage of workers.

Collective action: definition and permitted objectives

No information is provided in this repect.

Therefore the Committee reiterates its previous conclusion.

Entitlement to call a collective action

No information is provided in this respect.

Therefore the Committee reiterates its previous conclusion.

Specific restrictions to the right to strike and procedural requirements

According to the report Article 49. 3 of the Organic Law of Georgia provides that there is a cooling off period of 21 days.

Article 51 of the amended Labour Code provides that the right to strike cannot be exercised by employees whose work/activity involves the safety of human life or health or if the activity cannot be suspended due to the nature of the work process. The Committee finds it unclear what sectors are concerned but in any event it 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 refers to its general question on the right of members of the police force to strike.

Consequences of a strike

No information is provided in this respect

Conclusion

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

- it has not been established that in general the right to collective action of workers and employers, including the right to strike, is adequately recognized;
- Restrictions on the right to strike in certain sectors are too extensive and go beyond the limits permitted by Article G.

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 Georgia.

Prevention

The Committee notes that the situation it previously found not to be in conformity with Article 26§1 of the Charter (Conclusions 2014) has not changed, as the report does not reply to the Committee's request for information on any preventive measures effectively taken to raise awareness about the problem of sexual harassment in the workplace.

It recalls that Article 26§1 requires States Parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat sexual harassment. In particular, in consultation with social partners, they should inform workers about the nature of the behaviour in question and the available remedies .

Accordingly, the Committee reiterates its request for information and considers that it has not been established that the situation is in conformity with Article 26§1 of the Charter on this issue.

Liability of employers and remedies

In addition to the Criminal Code provisions noted in the previous conclusion (Conclusions 2014), the report confirms that, pursuant to Article 6§1.b of the Law on Gender Equality, as amended in May 2014, any unwanted verbal, non-verbal or physical behaviour of sexual nature with the purpose or effect of violating the dignity of a person or creating for him/her an intimidating, hostile, or offensive environment is prohibited. According to this law, the Parliament shall define the state-policy in gender-related area and set up a Gender Equality Council (Article 12 of the Law on Gender Equality), which will report once a year to the Parliament. Under Article 14 of the Law, the Public Defender of Georgia, within the scope of his/her authority shall monitor the protection of gender equality and provide appropriate response in cases of violation.The Committee takes note of the detailed information provided in the report concerning the mandate of the Public Defender in respect of discrimination issues. It asks the next report to provide more detailed information on how the legislative framework is actually implemented, in particular as regards the violations found in relation to sexual harassment and the measures taken in response to such violations.

The Committee recalls that workers must be afforded effective protection against harassment, including the right not to be retaliated against for upholding this right. Furthermore, it must be possible for employers to be held liable when harassment occurs in relation to work, or on premises under their responsibility, even when it involves, as a perpetrator or a victim, a third person not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc. The Committee asks the next report to clarify the scope of the employer's liability in case of sexual harassment at work, including when third persons are involved as victims or perpetrators; it furthermore asks what protection from retaliation is granted to victims of harassment.

Meanwhile, the Committee considers that the situation remains not in conformity with Article 26§1 on the ground that it has not been established that the existing framework in respect of employers' liability provides sufficient and effective measures against sexual harassment in relation to work.

Burden of proof

The report does not reply to the Committee's request for clarification as to whether a person who considers himself/herself to be a victim of the types of behaviour referred to in Article

6.b of the Gender Equality Law can turn to a civil or administrative court or another authority (such as the Ombudsman), and what rules would then apply in terms of burden of proof.

The Committee recalls that, under civil law, effective protection of employees requires a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges.

The Committee reiterates therefore its questions and considers that it has not been established that the situation is in conformity with Article 26§1 on this point.

Damages

In its previous conclusion (Conclusions 2014), the Committee asked whether employees who were unfairly dismissed or pushed to resign for reasons related to sexual harassment were entitled to reinstatement; it furthermore requested updated information on relevant examples of compensation cases in relation to sexual harassment.

As the report does not provide any information on these issues, the Committee considers that it has not been established that the situation is in conformity with Article 26§1 on this point.

Conclusion

The Committee concludes that the situation in Georgia 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 the workplace;
- it has not been established that the existing framework in respect of employers' liability provides sufficient and effective measures against sexual harassment in relation to work;
- it has not been established that a shift in the burden of proof applies in sexual harassment cases before civil courts;
- it has not been established that there is appropriate and effective redress (compensation and reinstatement) in cases of sexual harassment.

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 Georgia.

Prevention

The Committee notes that the situation it previously found not to be in conformity with Article 26§2 of the Charter (Conclusions 2014 and 2016) has not changed, as the report does not contain any of the requested information concerning preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) which would have been taken in order to combat moral (psychological) harassment in the workplace, in consultation with social partners.

Accordingly, in view of the lack of information, the Committee maintains its finding of non-conformity with Article 26§2 of the Charter on this issue.

Liability of employers and remedies

The Committee had previously asked for examples of case law showing that the provisions of the Criminal Code referred to had actually been used in the context of moral (psychological) harassment in the workplace (Conclusions 2014), but the report does not provide any information in this respect, nor does it contain any detail concerning the implementation of the provisions of the Labour Code relating to discrimination in the employment relations, in particular as regards the liability of employers and the means of redress in case of moral (psychological) harassment.

The report refers to the Law on Gender Equality, which prohibits any unwanted verbal, non-verbal or physical behaviour of sexual nature with the purpose or effect of violating the dignity of a person or creating for him/her an intimidating, hostile, or offensive environment. It also refers to the Law on Elimination of all forms of discrimination and to the role of the Public Defender under both instruments. The Committee asks the next report to provide more detailed information on how the legislative framework is actually implemented, in particular as regards the violations found in respect of the abovementioned laws, concerning moral (psychological) harassment at work, and the measures taken in response to such violations.

The Committee recalls that workers must be afforded effective protection against harassment, including the right not to be retaliated against for upholding this right. Furthermore, it must be possible for employers to be held liable when harassment occurs in relation to work, or on premises under their responsibility, even when it involves, as a perpetrator or a victim, a third person not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc. The Committee asks the next report to clarify the scope of the employer's liability in case of moral (psychological) harassment at work, including when third persons are involved as victims or perpetrators; it furthermore asks what protection from retaliation is granted to victims of harassment.

Meanwhile, in view of the lack of information, the Committee considers that the situation remains not in conformity with Article 26§1 on the ground that it has not been established that the existing framework in respect of employers' liability provides sufficient and effective measures against moral (psychological) harassment in relation to work.

Burden of proof

The report contains no information in reply to the Committee's question on the issue of the burden of proof in moral (psychological) harassment cases during the reference period. The Committee reiterates therefore its question and considers in the meantime that, in view of the lack of information, it has not been established that the situation is in conformity with Article 26§2 on this point.

Damages

The report does not provide a reply to the Committee's question on how the right of persons to effective reparation for pecuniary and non pecuniary damage is guaranteed. The Committee reiterates its request and asks in particular for examples of relevant case-law awarding damages in cases of moral (psychological) harassment in relation with the workplace. In the meantime, in view of the lack of information, it finds that it has not been established that the situation is in conformity with Article 26§2 on this point.

Conclusion

The Committee concludes that the situation in Georgia 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) harassment in relation to the workplace;

•it has not been established that the existing framework in respect of employers' liability provides sufficient and effective measures against moral (psychological) harassment in relation to work;

•it has not been established that a shift in the burden of proof applies in moral (psychological) harassment cases before civil courts;

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

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 Georgia.

Definition and scope

The Committee notes that Article 38 of the Labour Code as amended on massive layoffs (Organic Law No 729 of 12 June 2013) (outside the reference period) gives a more precise definition of collective redundancy as the termination of a labour agreement within 15 calendar days for at least 100 employees, on the grounds stipulated in Article 37 (1) (a), such as economic circumstances, or technological or organisational changes, that make it necessary to reduce the workforce.

Prior information and consultation

In its previous conclusion (Conclusions 2014), the Committee concluded that the situation was not in conformity with Article 29 of the Charter on the ground that the legislation did not effectively guarantee the right of workers to be consulted in collective redundancy procedures. There has been no change to this situation, therefore the Committee reiterates its previous finding of non-conformity on this issue.

The report indicates that Article 38 of the amended Labour Code provides that the employer is obliged to send a written notification about the redundancies to the Ministry of Labour, Health and Social Affairs as well as to the workers whose labour agreements are terminated, at least 45 calendar days before the massive layoffs.

In its previous conclusion, the Committee asked if the legislation also guaranteed the right of workers' representatives to be informed. The report does not provide any information on this point. The Committee accordingly reiterates its request.

Preventive measures and sanctions

In its previous conclusion, the Committee asked what sanctions exist if the employer fails to notify about the planned redundancies in the meaning of Article 38 of the Labour Code. It also asked what sanctions exist if the employer fails to notify the workers' representatives about the planned redundancies and what preventive measures exist to ensure that redundancies do not take effect before the obligation of the employer to inform and consult the workers' representatives has been fulfilled.

The report does not provide any information on this point. The Committee accordingly reiterates its questions.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 29 of the Charter, on the ground that the right of workers to be consulted in collective redundancy procedures is not effectively secured.