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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2020

ARMENIA

This text may be subject to editorial revision.

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

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

The following chapter concerns Armenia, which ratified the Revised European Social Charter on 21 January 2004. The deadline for submitting the 14th report was 31 December 2019 and Armenia submitted it on 20 February 2020.

The Committee recalls that Armenia was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to all findings of non-conformity or deferral in its previous conclusions (Conclusions 2016).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2016) found the situation to be in conformity, there was no examination of the situation in 2020.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerned the following provisions of the thematic group I "Employment, training and equal opportunities":

- the right to work (Article 1);
- the right to vocational guidance (Article 9);
- the right to vocational training (Article 10);
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15);
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18);
- the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Article 20);
- the right to protection in cases of termination of employment (Article 24);
- the right of workers to the protection of their claims in the event of the insolvency of their employer (Article 25).

Armenia has accepted all provisions from the above-mentioned group except Articles 9, 10, 15§1 and 25.

The reference period was from 1 January 2015 to 31 December 2018.

The conclusions relating to Armenia concern 8 situations and are as follows:

– 6 conclusions of non-conformity: Articles 1§1, 1§2, 1§3, 15§3, 18§2 and 20.

In respect of the other 2 situations related to Articles 15§2 and 24, 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 Revised Charter.

The next report from Armenia will deal with the following provisions of the thematic group II "Health, social security and social protection":

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

The deadline for submitting that report was 31 December 2020.

Conclusions and reports are available at www.coe.int/socialcharter.

Article 1 - Right to work

Paragraph 1 - Policy of full employment

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

The Committee recalls that in 2016, it concluded that the situation in Armenia was not in conformity with Article 1§1 of the Charter on the ground that it had not been established that employment policy efforts had been adequate in combatting unemployment and promoting job creation (Conclusions 2016).

Employment situation

According to Eurostat, the GDP growth rate fluctuated during the reference period, falling from 3.2% in 2015 to 0.2% in 2016, before rising to 7.5% in 2017 and then dropping again to 5.2% in 2018.

The overall employment rate (persons aged 15 to 64 years) decreased from 52.7% in 2015 to 48.1% in 2018.

The employment rate for men dropped from 61.2% in 2015 to 57.7% in 2018, and the rate for women fell from 45.7% in 2015 to 40% in 2018.

The overall unemployment rate (persons aged 15 to 74 years) increased from 18.5% in 2015 to 20.5% in 2018.

The unemployment rate for men increased from 17.6% in 2015 to 20.1% in 2018, and the rate for women from 19.5% in 2015 to 21% in 2018. Youth unemployment (15 to 24-year-olds) increased from 32.5% in 2015 to 37.2% in 2018. According to the Government's report, long-term unemployment (12 months or more, as a percentage of overall unemployment) rose from 59.4% in 2015 to 76% in 2018.

According to the International Labour Organisation (ILOSTAT), the proportion of 15 to 24-year-olds "outside the system" (not in employment, education or training, i.e. NEET), fell from 35.6% in 2015 to 31.1% in 2018 (as a percentage of the 15 to 24-year-old age group).

The Committee notes that despite strong economic growth (7.5% in 2017 and 5.2% in 2018), employment rates dropped and unemployment rates – which were already high – increased. It particularly notes the low employment rate for women and the very high unemployment rates for young people and the long-term unemployed.

Employment policy

In its report, the Government states that 13 employment programmes (six of which were new) were implemented during the reference period, mainly targeting groups that are "not competitive in the labour market", such as young people and the long-term unemployed. The objectives of these programmes included job placement assistance; skills development; support for vocational retraining (reorientation towards livestock rearing); support for entrepreneurial activities; support for rural households through the promotion of seasonal employment; financial support for jobseekers (covering the costs of travel to interviews or job transfers); recruitment support paid to employers (e.g. lump-sum recruitment compensation for the training of "non-competitive labour market" persons); and provision of temporary public jobs. Of these programmes, two were specifically aimed at women: the first offered on-the-job vocational training for unskilled young mothers and the second childcare support for those with young children who were returning to work. The Committee requests that the next report provide information on the labour market measures specifically implemented to support young people, including those that are NEET, and the long-term unemployed.

The statistics provided by the Government indicate that the percentage of women in employment programmes increased from 51.7% in 2015 to 84% in 2018. In addition, the Rural Household Support Programme (2014-2016) had the highest number of beneficiaries: 3,679

in 2014, 6,285 in 2015 and 7,680 in 2016 (representing 50.6%, 57.5% and 58.8% of the beneficiaries of all programmes in 2014, 2015 and 2016).

The Committee also observes that these statistics show a significant decrease in: a) the funding allocated to the employment programmes (a decrease of more than 70% from 2015 to 2018); b) the number of people who benefited from these programmes: from 10,934 participants in 2015 to 2,672 participants in 2018; and c) the activation rate, which fell from 0.14% in 2015 to 0.04% in 2018. The Committee notes that the activation rate is extremely low – and falling – against a background of high unemployment. Moreover, the increase in the unemployment rates and the decrease in the employment rates indicate that the labour market policy efforts have not been adequate in combatting unemployment and promoting job creation.

Lastly, the Committee recalls that labour market measures should be targeted, effective and regularly monitored. It requests that the next report provide information on whether employment policies are monitored and how their effectiveness is assessed.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 1§1 of the Charter on the ground that employment policy efforts have not been adequate in combatting unemployment and promoting job creation.

Article 1 - Right to work

Paragraph 2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

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

1. Prohibition of discrimination in employment

Article 1§2 of the Charter prohibits all forms of discrimination in employment. The Committee asked the State Parties to provide updated information for this reporting cycle on the legislation prohibiting all forms of discrimination in employment, in particular on grounds of gender (had Article 20 not been accepted), race, ethnic origin, sexual orientation, religion, age, political opinion, disability (had Article 15§2 not been accepted), including information on legal remedies. It furthermore asked to indicate any specific measures taken to counteract discrimination in the employment of migrants and refugees.

The Committee will therefore focus specifically on these aspects. It will also assess the replies to all findings of non-conformity or deferrals in its previous conclusion.

Armenia has accepted Articles 15§2 and 20 of the Charter. Therefore, it was under no obligation to report on the prohibition of discrimination on grounds of disability and gender, which will be examined under the said provisions.

In its previous conclusion (Conclusions 2016), the Committee concluded that the situation in Armenia was not in conformity with Article 1§2 of the Charter on the grounds that:

- indirect discrimination was not defined nor prohibited by the legislation;
- discrimination was not prohibited in connection with recruitment in employment;
- there was no protection against discrimination in employment on grounds of sexual orientation;
- the upper limit on the amount of compensation awarded in discrimination cases might preclude damages from fully compensating the loss suffered and from being a sufficiently dissuasive;
- it had not been established that legislation provides for a shift in the burden of proof in discrimination cases.

As regards the legislation prohibiting discrimination in general terms, the report states that the draft Law "On making a supplement to the Labour Code of the Republic of Armenia" was adopted by the Parliament in 2019, providing for the definition of discrimination in employment relations and clearly stating that discrimination is prohibited by the labour legislation. Further, the report reiterates the legal provisions previously assessed by the Committee. The Committee takes note of the extensive information on the ongoing legislative work which should remedy the recorded shortcomings in the legal framework. However, it further notes that the amendments, together with the anti-discrimination strategy, remain a draft. Moreover, it transpires from the report that the draft regulations still do not provide for protection against discrimination in employment on grounds of sexual orientation. Neither has the situation changed as regards the lack of definition and prohibition of indirect discrimination, the shift of burden of proof, or the upper limit on the amount of compensation in discrimination cases. As regards discrimination in connection with recruitment in employment, the Committee asks whether it is included in the definition of discrimination and prohibited under the above-mentioned draft amendment to the Labour Code, and whether it entered into force. Meanwhile, the Committee reiterates its conclusion of non-conformity on these points.

As regards prohibition of discrimination on grounds of sexual orientation, the Committee notes that it is not prohibited by law. It therefore concludes that the situation is not in conformity with Article 1§2 of the Charter on the ground that there is no protection against discrimination in employment on grounds of sexual orientation.

The report does not reply to the Committee’s request for information on legislation and practical measures targeted specifically to combat discrimination on grounds of disability,

race, ethnic origin, age, political opinion or religion. Neither does it report on specific measures taken to counteract discrimination in the employment of migrants and refugees. While renewing its requests, the Committee underlines that, should the next report not provide the relevant and exhaustive information, nothing will allow to show that the situation is in conformity with the Charter on these aspects.

The Committee recalls that appropriate and effective remedies must be ensured in the event of an allegation of discrimination. The notion of effective remedies encompasses judicial or administrative procedures available in cases of an allegation of discrimination, an appropriate adjustment of the burden of proof which should not rest entirely on the complainant, as well as the creation of a special, independent body to promote equal treatment. The Committee explicitly requested that information on these aspects be provided. It has previously concluded that the situation was not in conformity with the requirements of the Charter as to the existence of effective remedies, given that the upper limit on the amount of compensation that may be awarded in discrimination cases might preclude damages from fully compensating the loss suffered and from being sufficiently dissuasive. Furthermore, it found that it had not been established that legislation provided for a shift in the burden of proof in discrimination cases (Conclusions 2016). The report states that legislative amendments addressing these shortcomings are being drafted. In particular, a draft Law on Legal Equality is underway, which allows for specific procedure for discrimination cases. The Committee notes in this respect that the UN Committee on the Elimination of Racial Discrimination in its concluding observations on the 2017 periodic report of Armenia remains concerned at the low number of cases of racial discrimination registered, investigated and brought before the courts. It recalls the importance of establishing accessible and effective complaint mechanisms, procedures and remedies for the victims of discrimination. Pending the outcome of the legislative work in this regard, the Committee upholds its negative conclusion on these aspects for the reference period.

The legal framework as regards equality bodies has been assessed by the Committee in its previous conclusion, when it noted that the Public Defender's Office may interfere in the employment relations only when violation of a right is the result of the action of a state body or an official. The report provides that the legislative amendments will increase the Ombudsman's mandate for discrimination-related cases, empowering him/her to apply to courts. The Committee notes that the UN Committee on the Elimination of Racial Discrimination in its abovementioned concluding observations 2017, raised concerns that the Public Defender has inadequate funding, which undermines its ability to carry out its mandate effectively. The Committee asks that the next report provide comprehensive information on the mandate and functioning of the Public Defender's Office, together with statistics on the number of discrimination cases dealt with by its Office, as well as on their outcome.

Furthermore, the report does not specify what sanctions may be imposed against employers in cases of discrimination in employment and the Committee requests the next report provide comprehensive information in this respect, namely, how violations of the legal provisions prohibiting discrimination in the workplace are scrutinised, whether adequate penalties exist and if so, whether they are effectively enforced by labour inspectors.

In its previous conclusion, the Committee reserved its position as regards the prohibition of discrimination on the ground of nationality. It asked whether all posts in the civil service were reserved to Armenian citizens. The report states in reply that for holding any civil service position, Armenian citizenship is mandatory. The Committee recalls that the only jobs from which foreigners may be banned are those that are inherently connected with the protection of public interest or national security and involve the exercise of public authority (Conclusions 2012, Albania). Such a blanket ban is therefore not compatible with the requirements of Article 1§2 of the Charter.

2. Forced labour and labour exploitation

The Committee recalls that forced or compulsory labour in all its forms must be prohibited. It refers to the definition of forced or compulsory labour in the ILO Convention concerning Forced or Compulsory Labour (No.29) of 29 June 1930 (Article 2§1) and to the interpretation given by the European Court of Human Rights of Article 4§2 of the European Convention on Human Rights (*Van der Mussele v. Belgium*, 23 November 1983, § 32, Series A no. 70; *Siliadin v. France*, no. 73316/01, §§ 115-116, ECHR 2005-VII; *S.M. v. Croatia* [GC]*,* no. 60561/14, §§ 281-285, 25 June 2020). The Committee also refers to the interpretation by the Court of the concept of « servitude », also prohibited under Article 4§2 of the Convention (*Siliadin,* § 123; *C.N. and V. v. France,* § 91, 11 October 2012).

Referring to the Court's judgment of *Siliadin v. France,* the Committee has in the past drawn the States' attention to the problem raised by forced labour and exploitation in the domestic environment and the working conditions of the domestic workers (Conclusions 2008, General Introduction, General Questions on Article 1§2; Conclusions 2012, General Introduction, General Questions on Article 1§2). It considers that States Parties should adopt legal provisions to combat forced labour in domestic environment and protect domestic workers as well as take measures to implement them.

The European Court of Human Rights has established that States have positive obligations under Article 4 of the European Convention to adopt criminal law provisions which penalise the practices referred to in Article 4 (slavery, servitude and forced or compulsory labour) and to apply them in practice (*Siliadin,* §§ 89 and 112). Moreover, positive obligations under Article 4 of the European Convention must be construed in the light of the Council of Europe Convention on Action against Trafficking in Human Beings (ratified by almost all the member States of the Council of Europe) (*Chowdury and Others v. Greece,* § 104, 30 March 2017). Labour exploitation in this context is one of the forms of exploitation covered by the definition of human trafficking, and this highlights the intrinsic relationship between forced or compulsory labour and human trafficking (see also paragraphs 85-86 and 89-90 of the Explanatory Report accompanying the Council of Europe Anti-Trafficking Convention, and *Chowdury and Others,* § 93). Labour exploitation is taken to cover, at a minimum, forced labour or services, slavery or servitude (GRETA – Group of Experts on Action against Trafficking in Human Beings, *Human Trafficking for the Purpose of Labour Exploitation*, Thematic Chapter of the 7th General Report on GRETA's Activities (covering the period from 1 January to 31 December 2017), p. 11).

The Committee draws on the case law of the European Court of Human Rights and the above-mentioned international legal instruments for its interpretation of Article 1§2 of the Charter, which imposes on States Parties the obligation to protect effectively the right of workersthe right of the worker to earn his living in an occupation freely entered upon. Therefore, it considers that States Parties to the Charter are required to fulfil their positive obligations to put in place a legal and regulatory framework enabling the prevention of forced labour and other forms of labour exploitation, the protection of victims and the investigation of arguable allegations of these practices, together with the characterisation as a criminal offence and effective prosecution of any act aimed at maintaining a person in a situation of severe labour exploitation. The Committee will therefore examine under Article 1§2 of the Charter whether States Parties have fulfilled their positive obligations to:

- Criminalise and effectively investigate, prosecute and punish instances of forced labour and other forms of severe labour exploitation;
- Prevent forced labour and other forms of labour exploitation;
- Protect the victims of forced labour and other forms of labour exploitation and provide them with accessible remedies, including compensation.

In the present cycle, the Committee will also assess the measures taken to combat forced labour and exploitation within two particular sectors: domestic work and the "gig economy" or "platform economy".

The Committee notes that the national authorities have addressed only partially the specific, targeted questions for this provision on the exploitation of vulnerability, forced labour and modern slavery (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities"). It also refers to its conclusion on Article 7§10 of the Charter in which it found that it had not been established that adequate measures were taken to protect children against other forms of exploitation such as trafficking for the purposes of labour exploitation (Conclusions 2019).

Criminalisation and effective prosecution

The Committee notes from the report that Article 3, part 1, point 2 of the Labour Code prohibits forced labour of any form or nature and violence against employees. Article 132 paragraph 1 of the Criminal Code criminalises trafficking in human beings: "recruitment, transportation, transfer, hiding or receipt of a person for the purpose of exploitation, as well as the exploitation of a person, or putting or keeping him/her in a condition of exploitation, by means of threat or use of force not dangerous for the life or health or other forms of coercion, of abduction, of abuse of trust, abuse of power or a position of vulnerability, or giving or receiving payments or benefits to obtain the consent of a person having control over another person". The offence is punishable by five to eight years' imprisonment, but heavier penalties may apply in case of aggravating circumstances such as the use or threat of use of violence jeopardising life or health or causing the death of the victim or other grave consequences. For the purposes of this article, exploitation includes *inter alia* forced labour or services, slavery and situations similar to slavery (see also Conclusions 2016, where the Committee considered that the situation was in conformity with the Charter on this point).

The Committee recalls that States Parties must not only adopt criminal law provisions to combat forced labour and other forms of severe labour exploitation but also take measures to enforce them. It considers, as the Court did (*Chowdury and Others*, § 116), that the authorities must act of their own motion once the matter has come to their attention; the obligation to investigate will not depend on a formal complaint by the victim or a close relative. This obligation is binding on the law-enforcement and judicial authorities.

The Committee therefore asks that the next report provide information on the application of the abovementioned criminal law provisions in practice, particularly with regard to exploitation in the form of forced labour or services, slavery and situations similar to slavery. The report should provide information (including statistics, examples of case law) on the prosecution and conviction of exploiters during the next reference period, in order to assess in particular how the legislation is interpreted and applied. It should also include any relevant information concerning the prosecution of cases of trafficking of Armenian nationals abroad for the purpose of labour exploitation. The Committee notes in this regard that GRETA was informed of challenges in investigating and prosecuting these cases (which take place mostly in the Russian Federation and concern mostly men), due to the fact that the evidence related to these offences is located mainly outside Armenia and it is difficult to initiate investigations owing to the lack of evidence and the inefficiency of international co-operation in this area (see Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Armenia, Second Evaluation Round, GRETA (2017)1, 20 March 2017, par. 166).

Prevention

The Committee considers that States Parties should take preventive measures such as data collection and research on the prevalence of forced labour and labour exploitation, awareness-raising campaigns, the training of professionals, law-enforcement agencies, employers and vulnerable population groups, and should strengthen the role and the capacities/mandate of labour inspection services to enforce relevant labour law on all workers and all sectors of the economy with a view to preventing forced labour and labour exploitation. States Parties should

also encourage due diligence by both the public and private sectors to identify and prevent forced labour and exploitation in their supply chains.

The Committee notes from the report that according to the Law "On organising and conducting inspections in the Republic of Armenia", the Inspection Body shall have the competence to conduct inspections in economic entities having been registered as prescribed by law, including those in the sectors of agriculture, construction and hotel business. The persons conducting the inspection with the participation of the representative of the economic entity shall have the right to unimpeded access to sub-divisions of the entity, to request documents and other data, to prescribe time limits for the elimination of the irregularities detected which do not entail criminal or administrative liability, and to submit recommendations to the management of the state body appointing an inspection so that relevant measures are taken with respect to the abuses or other violations detected which entail criminal or administrative liability. Under this legislative framework, the Healthcare and Labour Inspection Body exercises supervision over the application of the norms concerning the health and safety of employees, as well as of the guarantees prescribed by labour legislation for young people under the age of 18, with a view to eliminating forced labour of employees under that age.

The Committee notes that GRETA, in its abovementioned report, urged the Armenian authorities to intensify their efforts to prevent trafficking for the purpose of labour exploitation, in particular by providing clear competences of monitoring and inspection of workplaces to the health and labour inspection (which was reformed), including unannounced visits to all economic sectors and the responsibility to prevent and detect cases of trafficking for the purpose of labour exploitation (par. 60; see also in the same vein, Report by the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, following her official visit to Armenia, 10-13 October 2016, 2017, par. 27 and recommendations). The Committee requests that the next report clarify whether the reformed Healthcare and Labour Inspection Body has a specific mandate to detect labour law violations among adults with a view to preventing forced labour or exploitative conditions; if so, to provide information on the specific actions carried out by this body (i.e. whether these include regular unannounced inspections and cover informal workplaces), including the number of victims of labour exploitation identified during the next reference period as a result of inspections.

The Committee further notes from the current report that an Action Plan of the 2020-2022 National Strategy for the Protection of Human Rights has been submitted to the office of the Prime Minister in December 2019 (outside the reference period). This Plan provides for the introduction into the legislation of the criteria determining the methodology of inspections, based on the risks and the checklist included for such inspections, by the Healthcare and Labour Inspection Body. The Committee requests to be informed in the next report on the follow-up of these measures as well as on the implementation of the National Programme for the fight against trafficking in, and exploitation of, human beings for 2019-2021 (see Conclusions 2019 relating to Article 19 of the Charter) and the results achieved in terms of prevention of forced labour, including labour exploitation of Armenian nationals abroad.

No information has been provided on whether Armenian legislation includes measures designed to force companies to report on action taken to investigate forced labour and exploitation of workers among their supply chains and requires that every precaution be taken in public procurement processes to guarantee that funds are not used unintentionally to support various forms of modern slavery. The Committee accordingly reiterates its request on this point.

Protection of victims and access to remedies, including compensation

The Committee considers that protection measures in this context should include the identification of victims by qualified persons and assistance to victims in their physical, psychological and social recovery and rehabilitation.

The Committee takes due note of the information provided in the report concerning the Law "On identification of and assistance to persons subjected to trafficking in, and exploitation of, human beings", adopted on 17 December 2014. Article 19 of this law introduced a recovery and reflection period of 30 days (which may be extended for an additional period of 30 days) for victims. The purpose of this period is to give the presumed victim (foreign national), irrespective of the legality of his/her residence status, the right and opportunity to overcome the influence of the traffickers/exploiters, to recover from the consequences of the physical injuries inflicted, as well as to take an informed decision while staying in the territory of the Republic of Armenia. During this period, deportation is prohibited and the person concerned is exempt from liability for irregular stay in Armenia. The 2014 law also regulates the process of guidance of victims from the moment of their detection and through their identification, support, protection and their effective social reintegration, by developing procedures for strategic co-operation between state administration and local self-government bodies, as well as with NGOs, international organisations and the civil society.

The Committee asks for information in the next report on the number of identified victims of forced labour and labour exploitation by the Identification Commission (established by the abovementioned law) and the number of such victims benefiting from protection and assistance measures. It also asks for more detailed information on the type of assistance provided by the national and/or local authorities (protection against retaliation, safe housing, healthcare, material support, social and economic assistance, legal aid, translation and interpretation, voluntary return, provision of residence permits for migrants), and on the duration of such assistance.

The Committee also asks for confirmation that the existing legal framework provides the victims of forced labour and labour exploitation, including irregular migrants, with access to effective remedies (before criminal, civil or labour courts or other mechanisms) designed to provide compensation for all damage incurred, including lost wages and unpaid social security contributions. The Committee asks in particular for statistics on the number of victims awarded compensation and examples of the sums granted.

Domestic work

The Committee reiterates that domestic work may give rise to forced labour and exploitation. Such work often involves abusive, degrading and inhuman living and working conditions for the domestic workers concerned (see Conclusions 2012, General Introduction, General Questions on Article 1§2, and the Court's judgment in *Siliadin v. France*). States Parties should adopt legal provisions to combat forced labour in the domestic environment and protect domestic workers as well as take measures to implement them (Conclusions 2008, General Introduction, General Question on Article 1§2).

The Committee refers to its previous conclusion (Conclusions 2016), in which it noted that domestic work is governed by the Labour Code, Article 3§1 of which prohibits forced labour and violence against employees. It also asked whether the homes of private individuals who employ domestic workers can be inspected and whether foreign domestic workers are entitled to change employers in the event of abuse or if they lose their right to a residence permit if they leave their employer (Conclusions 2016, see also Conclusions 2012, General Introduction, General Questions on Article 1§2).

The Committee notes from the current report that the Healthcare and Labour Inspection Body has the competence to carry out inspections to supervise the application of health and safety regulations in respect of home workers who are in an employment relationship with economic entities being registered by the State. The Committee asks the next report to clarify whether this mandate covers domestic workers employed in private households and if not, to provide information on how these workers are protected from labour exploitation and abuse. In addition, the Committee takes note of the information contained in the report relating to the possibility for a foreign national to rescind an employment contract under the Labour Code.

“Gig economy” or “platform economy” workers

The Committee notes that the report does not reply to its request for information on the measures taken to protect workers from exploitation in the “gig economy” or “platform economy”.

The Committee therefore repeats its request and asks for information in the next report on whether workers in the “platform economy” or “gig economy” are generally regarded as employees or self-employed workers. It also asks whether the powers of the competent labour inspection services include the prevention of exploitation and unfair working conditions in this particular sector (and if so, how many inspections have been carried out) and whether workers in this sector have access to remedies, particularly when challenging their status and/or unfair practices.

In the meantime, pending receipt of the information requested in respect of all the points mentioned above (criminalisation, prevention, protection, domestic work, gig economy), the Committee reserves its position on the issue of forced labour and labour exploitation.

3. Work of prisoners and other aspects of the right to earn one’s living in an occupation freely entered upon

The Committee takes note of the information provided in the report on the work of prisoners and other aspects of the right to earn one’s living in an occupation freely entered upon (minimum periods of service in the armed forces, privacy at work).

In its previous conclusion (Conclusions 2016), the Committee found that the length of the alternative civil service (36 months) in comparison with the duration of alternative military service (30 months) remained too long and concluded that the situation was not in conformity with Article 1§2 of the Charter (see also Conclusions 2012, where the duration of alternative civil service was 42 months; Conclusions 2012, Statement of Interpretation of Article 1§2 on the length of service to replace military service). The Committee notes from the Governmental Committee report concerning Conclusions 2016 (GC (2017)25) that a new draft law “On Alternative Service” would be introduced for approval by the end of 2017, and that the representative of Armenia stated that relevant information on the new regulations for alternative service would be included in the next report. However, the Committee does not find any information addressing this issue in the current report. It therefore understands that there has been no change in the situation and reiterates its previous finding of non-conformity on this point.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 1§2 of the Charter on the grounds that:

- indirect discrimination is not defined and prohibited by the legislation;
- discrimination is not prohibited in connection with recruitment in employment;
- there is no protection against discrimination in employment on grounds of sexual orientation;
- the upper limit on the amount of compensation awarded in discrimination cases might preclude damages from fully compensating the loss suffered and from being a sufficient deterrent;
- it has not been established that legislation provides for a shift in the burden of proof in discrimination cases;
- all posts in the civil service are reserved to Armenian citizens;
- the duration of alternative civil service amounts to an excessive restriction of the right to earn one’s living in an occupation freely entered upon.

Article 1 - Right to work

Paragraph 3 - Free placement services

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

In its previous conclusion (Conclusions 2016) the Committee asked what was the legal basis for the operation of private employment agencies. It notes from the report in this regard that pursuant to part 2 of Article 10 of the Law on Employment, the state employment policy shall be developed by the Government through the authorised body and shall be implemented in compliance with the annual programme, in co-operation with the state administration, local self-government bodies, social partners, employers, non-state job placement organisations, as well as other interested organisations. Moreover, the authorised body concludes a memorandum of co-operation with the non-state organisation willing to co-operate. In addition, the main principles of the state employment policy stipulate competitive, mutually beneficial and sustainable co-operation between state organisations providing employment services and private employment agencies.

The State Employment Agency (SEA) cooperates with non-state job placement organisations within the framework of the measure "Provision of support for making use of services provided by a non-state job placement organisations". This measure envisages that non-competitive persons, who are not placed in a job by the territorial centre within at least three months, shall – as an additional employment opportunity – be provided with support through relevant certificate for making use of the services of non-state job placement organisations. The groups recognised as "non-competitive in the labour market" are defined by law. They include young people, the long-term unemployed and refugees.

In its previous conclusion (Conclusions 2016) the Committee considered that the situation in Armenia was not in conformity with Article 1§3 of the Charter on the ground that it had not been established that free placement services operated in an efficient manner. The Committee asked for information on quantitative indicators to assess the effectiveness of the employment service. In particular, the Committee asked for the total number of vacancies notified to the SEA; number of persons placed via SEA and the placement rate; and placements by SEA as a percentage of total employment in the labour market.

As regards these quantitative indicators, the Committee notes from the report that there were 72,606 registered jobseekers in 2014 and 81,683 in 2018. The Committee also takes note of the evolution of the numbers of jobseekers provided with vocational guidance from 25,148 in 2014 to 20,200 in 2018.

As regards the number of notified vacancies to the SEA, the Committee notes that the average monthly number stood at 2,009 in 2014 and at 2,000 in 2018. The report states that the average monthly number of placements stood at 958 and 997 respectively in 2014 and 2018. The Committee also observes that the report provides information about the number of submitted non-recurring vacant positions, which stood at 8,871 in 2014 and at 9,776 in 2018. The Committee recalls that the placement rate (i.e. placements made by the employment services as a share of notified vacancies) is one of the main quantitative indicators of compliance with this provision of the Charter. Therefore, the Committee requests that the next report indicate what is the total number of vacancies notified in one year or on average per month (both non-recurring and recurring, if necessary) and the total number of these vacancies that have been filled by the public employment service. In the meantime, the Committee reserves its position on this point.

The Committee further notes from the report that as regards the performance of state employment programmes, there has been a significant decrease in the number of persons involved in certain programmes, such as "Organisation of professional instruction" or "Provision of support for job placement of unemployed persons in another place", whereas as regards other programmes, such as "Provision of lump-sum compensation to employers in

case of job placement of persons who are non-competitive in the labour market", the support has gone up from 349 employers in 2014 to 831 in 2018.

Finally, the Committee notes from the report that the total funding for the state employment programmes has gone down from 1,531,680 drams in 2014 to 413,573 drams in 2018. The Committee asks what is the reason for such a significant decrease.

In conclusion, the Committee also refers to its conclusion under Article 1§1 where it considers that the because of the extremely low activation rate, increasing unemployment rate and decreasing employment rate, the labour market policy efforts have not been adequate in combatting unemployment and promoting job creation. In this context, also pending receipt of more information about placements made by the SEA and the reasons for decreasing funding of employment programmes, the Committee considers that it has not been established that free employment services operate in an efficient manner.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 1§3 of the Charter on the ground that it has not been established that free employment services operate in an efficient manner.

Article 1 - Right to work

Paragraph 4 - Vocational guidance, training and rehabilitation

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community

Paragraph 2 - Employment of persons with disabilities

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

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities") as well as previous conclusions of non-conformity or deferrals.

Legal framework

In its previous conclusion (Conclusions 2012), the Committee found that the situation was not in conformity with Article 15§2 of the Charter on the ground that it had not been established that persons with disabilities were guaranteed effective protection against discrimination in employment.

The report states that the Law on Employment which came into effect in 2014 provides that persons with disabilities without work are regarded as unemployed and have the same rights as all other unemployed persons, along with certain specific rights.

Article 21 of the above-mentioned law prescribes that a person with disabilities have the right to an adjustment of the workplace as prescribed by the Government. The Committee requests further information on the right to adjustment, on measures taken to ensure that the principle of reasonable accommodation is implemented effectively, including evidence to demonstrate that people with disabilities enjoy reasonable accommodation in the workplace and information on mechanism established to monitor the effective implementation of the reasonable accommodation provisions.

Article 23 of the above-mentioned law provides for special measures for those deemed "non-competitive ", the presence of a disability is one of the criteria for a person to be identified as being non-competitive in the labour market. These include priority for inclusion in state employment programmes, the right to placement under the system of compulsory job quotas, a financial support programme for unemployed persons with disabilities wishing to engage in self-employed activities, a programme for persons with disabilities to be placed with employers, the promotion of seasonal employment and a lump sum payment on employment in order to enable the acquisition of the necessary skills .

As regards protection against discrimination in September 2019 the National Assembly adopted Law HO-173-N On supplements to the Labour Code of the Republic of Armenia which entered into force on 19 October 2019), as a result, the Labour Code now prohibits discrimination in employment, inter alia, on grounds of disability.

The report also refers to a 2019 draft Law "On rights of persons with disabilities" which prohibits discrimination on the ground of disability and ensure equal opportunities in all spheres of life. The current draft contains provisions on accessibility and universal design, prohibition of discrimination, exercise of the right to independent life and community inclusion, as well as reasonable accommodation.

The Committee ask for further information on the adoption and implementation of the draft law.

As regards the definition of disability the Committee notes from the report of the Commissioner for Human Rights of the Council of Europe following her visit to Armenia in 2018 (CommDH(2019)1) that research studies pointed out that the notion of disability is interpreted restrictively in Armenia, in that it does not encompass e.g. light and moderate forms of

disability. The Committee asks for updated information on the definition of disability and any develpoments in the situation.

Access of persons with disabilities to employment

The Committee previously requested (Conclusions 2016) up-to-date figures on the total number of persons with disabilities, the number of people with disabilities of working age, the number in employment (in the open market or in sheltered employment), the number benefiting from employment promotion measures, the number seeking employment and the number who are unemployed.

According to the report, as of the end of 2018, the number of persons with disabilities in Armenia amounted to 188 460 persons of whom 105, 157 were between 18-63 years of age.

As of the end of 2018, persons with disabilities constituted about 3,8 per cent of unemployed persons, thus comprising 2478 persons. During the year 234 persons with disabilities became employed.

The report states that in 2018, as compared to the previous year, the number of the persons involved in the annual state employment programmes increased by 924, amounting to 2672 persons, of which 126 are persons with disabilities (which, as compared to the previous year, has increased by 125%). The number of persons placed in a job or who became self-employed amounted to 1962 persons, of which 83 persons were persons with disabilities, an increase of 35 persons as compared to the previous year.

The Committee notes in this respect that the UN Committee on the Rights of Persons with Disabilities in its Concluding Observations on Armenia's initial report (CRPD/C/ARM/CO/1, 8 May 2017) expressed concern about the significant unemployment rates among persons with disabilities. The Committee asks for the Government's comments on this.

The Committee needs to systematically be provided with updated figures concerning the total number of people with disabilities employed (on the open market and in sheltered employment), those benefiting from employment promotion measures and those seeking employment as well as those that are unemployed. It requests that this information be provided in the next report. In the meantime, it reserves it position as to whether effective access to employment is guaranteed.

Measures to promote and support the employment of persons with disabilities

The report states that specific programmes are available to promote the employment of persons with disabilities; partial compensation of the salary to the employer and provision of monetary aid to the person with disabilities in order to allow them to have a support person.

The Committee asks the next report to provide updated information on measures to promote and support the employment of persons with disabilities, including information on the implementation of the Employment Strategy 2019 and updated information on the quota system.

Remedies

The Committee previously asked (Conclusions 2016) for information on the judicial and non-judicial remedies provided for in the event of discrimination on the ground of disability and on relevant case law. According to the report the Ministry of Justice has drafted a Law "On ensuring legal equality", the adoption of which will guarantee equality of all before the law and seek to prevent discrimination. The draft Law also envisages the establishment of a specialised body adjunct to the Human Rights Defender's Office, as well as an additional subdivision within the Staff of the Defender, which will support victims of discrimination and investigate cases of alleged discrimination. No further information is provided on remedies.

The Committee ask for further information on the adoption and implementation of the draft law. The Committee also asks the next report to provide updated information on remedies as well examples of relevant case law. It recalls that legislation must confer an effective remedy

on those who have been discriminated against on grounds of disability and denied reasonable accommodation.

Conclusion

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

Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community

Paragraph 3 - Integration and participation of persons with disabilities in the life of the community

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

The Committee previously concluded that the situation in Armenia was not in conformity with Article 15§3 of the Charter on grounds that during the reference period, there was no anti-discrimination legislation to protect persons with disabilities and explicitly covering the fields of housing, transport, communications and cultural and leisure activities and it had not been established that persons with disabilities have effective access to housing and transport (Conclusions 2016).

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Employment, training and equal opportunities”) as well as previous conclusions of non-conformity or deferrals.

Relevant legal framework and remedies

The Committee considers that Article 15 reflects and advances the change in disability policy that has occurred over the last two decades away from welfare and segregation and towards inclusion, participation and agency. In light of this, the Committee emphasises the importance of the non-discrimination norm in the disability context and finds that this forms an integral part of Article 15§3 of the Revised Charter. The Committee in this respect also refers to Article E on non-discrimination.

The Committee previously concluded that the situation was not in conformity with the Charter on the grounds that, during the reference period, there was anti-discrimination legislation explicitly covering the fields of housing, transport, communications and cultural and leisure activities (Conclusions 2016).

According to the report in 2019, a draft Law "On rights of persons with disabilities" when adopted, will prohibit discrimination on the ground of disability and ensure equal opportunities in all spheres of life. The current draft includes provisions on accessibility and universal design, the right to independent living and community inclusion as well as on reasonable accommodations.

However the Committee notes that this means that during the reference period there was again no legislation prohibiting discrimination on grounds of disability in the fields covered by Article 15§3 of the Charter. Therefore the Committee reiterates its previous conclusion.

Consultation

The Committee recalls that Article 15§3 of the Charter requires inter alia that persons with disabilities should have a voice in the design, implementation and review of coordinated disability policies aimed at achieving the goals of social integration and full participation of persons with disabilities. It asks the next report to provide information on consultation with people with disabilities, as well as other measures to ensure their participation in the design, implementation and review of disability policies.

It notes that the UN Committee on the Rights of Persons with Disabilities in its Concluding Observations (CRPD/C/ARM/CO/1 2017) expressed concern about the insufficient and selective consultation of representative organizations of persons with disabilities, including the lack of appropriate support and reasonable accommodation, when drafting disability-related legislation, policies, strategies and action plans.

The Committee asks for the Governments comments on this.

Measures to ensure the right of persons with disabilities to live independently in the community

Financial and personal assistance

The report states that as part of the de-institutionalisation process more emphasis has been put on providing assistance in day care services as opposed to residential institutional settings as well as at home (approximately 1000 children and 600 adults benefitted from daytime services in social rehabilitation centres and 11000 adults at home). Further the Government intends to expand these services throughout the territory.

The report refers to the existence of home care and personal assistance services without providing further details

The Committee notes that the above-mentioned draft law on the rights of persons with disabilities will regulate the personal assistance scheme. The Committee asks the next report to provide information on the personal assistance scheme; the legal framework, the implementation of the scheme, the number of beneficiaries, and the budget allocated. It also asks whether funding for personal assistance is granted based on an individual needs' assessment and whether persons with disabilities have the right to choose services and service providers according to their individual requirements and personal preferences. Further the Committee asks what measures have been taken to ensure that there are sufficient numbers of qualified staff available to provide personal assistance**.**

The Committee asks for updated information on the different allowances and benefits available to persons with disabilities in order to enable them to live independently in the community.

The prevalence of poverty amongst people with disabilities in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of state efforts to ensure the right of people with disabilities to enjoy independence, social integration and participation in the life of the community.

The obligation of states to take measures to promote persons with disabilities' full social integration and participation in the life of the community is strongly linked to measures directed towards the amelioration and eradication of poverty amongst people with disabilities. Therefore, the Committee will take poverty levels experienced by persons with disabilities into account when considering the state's obligations under Article 15(3) of the Charter. The Committee asks the next report to provide information on the rates of poverty amongst persons with disabilities as well as information on the measures adopted to reduce such poverty, including non-monetary measures.

Information should also be provided on measures focused on combatting discrimination against, and promoting equal opportunities for, people with disabilities from particularly vulnerable groups such as ethnic minorities, Roma, asylum-seekers and migrants.

States should also make clear the extent to which the participation of people with disabilities is ensured in work directed towards combatting poverty amongst persons with disabilities.

Technical aids

The Committee asks the next report to provide information on the availability of technical aids. The Committee recalls that technical aids must be available either for free or subject to an appropriate contribution towards their cost and taking into account the beneficiary's means. Such aids may for example take the form of prostheses, walkers, wheelchairs, guide dogs and other assistive devices.

The Committee notes in this respect from that the UN Committee on the Rights of Persons with Disabilities in its Concluding Observations (CRPD/C/ARM/CO/1 2017) expressed concern about the lack of availability of and support for mobility aids, devices and other assistive technologies.

It asks for the Government's comments on this.

Housing

The Committee previously concluded that it had not been established that there was effective access to housing for persons with disabilities (Conclusions 2016). It asked for information on how the rules on the accessibility of buildings for persons with reduced mobility were applied in practice and what remedies were available in the event of non-respect of the rules. It also asked whether financial assistance was provided to adapt existing housing.

The Committee notes the adoption of a set of rules for ensuring the accessibility of buildings and premises to population groups with limited mobility and persons with disabilities has been developed (see below).

No information on assistance for the adaptation of existing housing is provided. The Committee again asks for information on this point.

According to the report a Strategy for De-institutionalisation of Care Facilities for Persons with Disabilities and for the Introduction of Alternative Services is under development. Further it states that small community homes are being introduced**.**

The Committee notes that the UN Committee on the Rights of Persons with Disabilities in its Concluding Observations (CRPD/C/ARM/CO/1 2017) expressed concern about the large number of children and adults with disabilities still living in residential institutions and the very limited support to enable them to live independently within the community.

The Committee asks for the Governments comment's on this.

The Committee asks the next report to provide information on the progress made to phase out large institutions (including information on measurable targets clear timetables and strategies to monitor progress) and whether there is a moratorium on any new placements in large residential institutions. It asks what proportion of private and public housing is accessible. It asks for information about the existence of accessible sheltered housing and whether financial assistance is provided to adapt existing housing.

The Committee asks how many persons with disabilities live independently with support and how many live in institutions and small group homes

In light of the information available to the Committee it concludes again that has not been established that there is an effective access to housing for persons with disabilities

Mobility and transport

In its previous conclusion (Conclusions 2016), the Committee concluded that it had not been established that effective accessibility for people with disabilities to different means of transport was ensured.

According to the report persons with disabilities (of the first and second degree) may use electric transport free of charge.

An action plan for a new transport network is under development which will take into account the needs of persons with disabilities. The Committee asks the next report to provide information on the implementation of the plan as it relates to ensuring the accessibility of the public transport system for persons with disabilities.

In light of the information available to the Committee it concludes again that has not been established that there is effective access to transport for persons with disabilities.

The Committee notes that in order to ensure the accessibility of buildings and premises to population groups with limited mobility and persons with disabilities, HHKH 23-101-2017 " a set of design rules for ensuring the accessibility of buildings and premises to population groups with limited mobility and persons with disabilities" was developed.

The Committee asks the next report to provide information on the proportion of buildings that are accessible to persons with disabilities as well as information on sanctions that are imposed

in the event of a failure to respect the rules regarding the accessibility of buildings (including the nature of sanctions and the number imposed). It also asks for information on monitoring mechanisms to ensure the effective implementation of the rules .

The report states that, "Format of assessment of conditions accessible to persons with disabilities in existing buildings and premises of public and industrial significance" was approved in 2018. This provides for the assessment of the accessibility of existing public buildings and premises of industrial significance.

The Committee asks for further information on this; in particular the Committee asks whether there is a plan to make existing public buildings accessible.

The Committee notes that the UN Committee on the Rights of Persons with Disabilities in its Concluding Observations (CRPD/C/ARM/CO/1 2017) expressed concern about the lack of implementation of the existing accessibility norms and standards set out in the national legislation to eliminate obstacles and barriers relating to facilities, urbanism, construction and public services such as transport, information and communication services. It was also concerned that the Code on Administrative Offences does not provide for sanctions for breaches of accessibility norms and standards, and that there are no monitoring mechanisms in place at the State level to ensure the effective implementation of such norms and standards.

The Committee asks for the Government’s comments on this.

Communication

The Committee previously asked what the legal status of sign language was (Conclusions 2016).

According to the report the Law of the Republic of Armenia "On language" prescribes that the teaching and upbringing of persons with hearing and speech impairments in the Republic of Armenia shall be carried out in Armenian sign language.

Further it states that in order to ensure the recognition and proliferation of Armenian sign language the 2020 Annual Programme for Social Inclusion of Persons with Disabilities has included a measure "Bringing the Laws of the Republic of Armenia "On language" and "On freedom of information" in line with the Convention on the Rights of Persons with Disabilities".

The Committee notes that the UN Committee on the Rights of Persons with Disabilities in its Concluding Observations (CRPD/C/ARM/CO/1 2017) expressed concern that accessibility of information and communication is very limited for persons with disabilities; the training of sign language interpreters is insufficient, resulting in an inadequate number of interpreters in public and private services, accessible technologies and formats of information and communication, including Internet websites and easy-read formats, are critically limited, and sign language is not recognized as an official language of the State party.

The Committee asks for the Governments comment’s on this.

The Committee asks the next report to provide information on the measures taken to ensure sufficient accessibility to all public and private information and communication services, including television and the Internet, for all persons with disabilities.

Culture and leisure

The Committee asks the next report to provide updated information on measures taken to ensure access of persons with disabilities to culture and leisure activities including sporting activities, especially for those in rural areas.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 15§3 of the Charter on the grounds that:

- during the reference period, there was no legislation prohibiting discrimination on grounds of disabilities covering the fields of housing, transport, telecommunications and cultural and leisure activities;
- it has not been established that persons with disabilities have effective access to housing;
- it has not been established that persons with disabilities have effective access transport.

Article 18 - Right to engage in a gainful occupation in the territory of other States Parties

Paragraph 1 - Applying existing regulations in a spirit of liberality

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

Article 18 - Right to engage in a gainful occupation in the territory of other States Parties

Paragraph 2 - Simplifying existing formalities and reducing dues and taxes

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

The Committee recalls that in its letter requesting national reports it stated that no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

Administrative formalities and time frames for obtaining the documents needed for engaging in a professional occupation

The report states that the procedure for issuing a work permit is established under the procedure approved by Decision of the Government of the Republic of Armenia No. 493-N of 12 May 2016 (incorporated by Government Decision No 917-N of 18 July 2019), which lists the occupations entitling highly qualified foreign nationals to work in Armenia without a work permit. The report states that Article 23 of the Law "On foreigners" also prescribes certain exceptions, where a foreign citizen may work in Armenia without a work permit. The Committee asks that the next report provide information about these exceptions.

The Committee notes from the report that a foreign national must first obtain a work permit and that only then may he or she apply for a residence permit. The report further states that the employer is required to submit to the authorised body the relevant application to obtain a work permit for a particular foreign national. The decision on whether to issue a work permit must be rendered within five working days after receiving the documents. Pursuant to 15§1(b) of the Law "On foreigners", a work permit may be issued within a period of ten days and constitutes a ground for granting a foreign national temporary residence status or extending his or her residence. Work permits are issued by the State Employment Agency. According to the report, under the current regulations, a foreign national can obtain a work permit for a period longer than the duration of his or her residence permit.

The report also states that the Law "On foreigners" provides for a 30-day period for rendering a decision granting or denying residence status.

The Committee notes from the report that the requirement for foreign nationals to obtain a work permit entered into force on 1 January 2019 (outside the reference period). The Committee understands that, prior to this date, there was no system of work permits.

The Committee requests that the next report provide further information on this subject. In particular, it asks for more information on the documents and administrative procedures required for obtaining the necessary permits, and on the procedures that must be followed by employees and employers. In addition, it asks whether applications can be filed in Armenia as well as in the country of origin. The Committee also asks that the next report clearly indicate whether the same formalities apply to self-employed workers.

Given that the requirement for foreign nationals to obtain a work permit entered into force on 1 January 2019 – outside the reference period -, the Committee defers its conclusion on this point. It notes that conformity with Article 18§2 presupposes the possibility of completing formalities for obtaining a residence permit and work permit in the country of destination as well as in the country of origin and obtaining the residence and work permits at the same time and through a single application. It also implies that the documents required (residence/work permits) will be delivered within a reasonable time.

Chancery dues and other charges

The report states that under the Law on State Duty employers are charged the sum of AMD 25,000 (€48), for obtaining a work permit for a foreign worker in Armenia. The Committee understands from the report that the state duty for issuing a foreign salaried worker with a

residence permit amounts to 105,000 AMD (€108) for temporary residence and 140,000 AMD (€264) for permanent residence. The report also states, however, that certain categories of persons may be exempt.

The Committee recalls, that, according to Article 18§2 of the Charter, with a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, States Parties are under an obligation to reduce or abolish chancery dues and other charges paid either by foreign workers or by their employers. The Committee observes that in order to comply with such an obligation, states must, first of all, not set an excessively high level for the dues and charges in question, that is a level likely to prevent or discourage foreign workers from seeking to engage in a gainful occupation, and employers from seeking to employ foreign workers.

In the light of the above, the Committee considers that the fees are excessive and that, consequently, the situation is not in conformity with the Charter on the ground that the fees charged for work permits are excessive.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 18§2 of the Charter on the ground that the fees charged for work permits are excessive.

Article 18 - Right to engage in a gainful occupation in the territory of other States Parties

Paragraph 3 - Liberalising regulations

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

Article 18 - Right to engage in a gainful occupation in the territory of other States Parties

Paragraph 4 - Right of nationals to leave the country

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

Article 20 - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

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

The Committee notes that this report responds to the targeted questions on this provision, which relate specifically to equal pay (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities"). The Committee will therefore focus specifically on this aspect. It will also assess the replies to all findings of non-conformity or deferral in its previous conclusion.

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

Legal framework

The report indicates that Article 178(2) of the Labour Code provides for equal pay for the same or equivalent work. The Committee notes from the observations published by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) in 2017 (106th session of the International Labour Conference) concerning Convention No. 100 on Equal Remuneration (1951) that, pursuant to an amendment of the Labour Code in 2014, Article 178(3) provides that "the salary shall comprise the basic salary and all additional salary paid by the employer to the employee for the performed work". The Committee recalls that the concept of remuneration must cover all elements of pay, i.e. basic pay and all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter's employment. It therefore requests that the next report contain information on this point.

The report indicates that Article 4(1)(3) of the Law on ensuring equal rights and equal opportunities for women and men of 2013 prohibits differences in terms of wages for the same or similar work, any changes in wages (increase or decrease) and any erosion of working conditions on the ground of sex.

As regards the public sector, the report indicates that Article 4 of the law on the remuneration of persons holding public office ensures equal pay for equal work and equivalent experience, without any gender discrimination.

The Committee points out that under Articles 4§3 and 20 of the Charter (and Article 1 (c) of the 1988 Additional Protocol), the right of women and men to equal pay for work of equal value must be expressly provided for in legislation. The equal pay principle applies both to equal work and to work of equal or comparable value (University Women of Europe (UWE) v. France, Complaint No. 130/2016, decision on the merits adopted on 5 December 2019, §163). The Committee observes that the law provides for equal pay for men and women for "equal work" and for "equivalent work" but not for "work of equal or comparable value." It takes note that this wording is narrower than the principle set out in the Charter. In this connection it notes that the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) also indicated in its observations published in 2017 (106th session of the International Labour Conference) concerning Convention No. 100 on Equal Remuneration (1951) that equal pay for "equal work or for similar work" was narrower than the principle of equal remuneration for men and women for work of equal value set out in the Convention. The CEACR pointed out that the concept of "work of equal value" allowed a broad scope of comparison, including, but going beyond, equal remuneration for "equal", the "same" or "similar" work, and also encompassed work that was of an entirely different nature, which was nevertheless of equal value.

In the light of the above, it considers that the obligation to recognise the right to equal pay has not been complied with and the Committee therefore reiterates its finding of non-conformity on the ground that there is no explicit statutory guarantee of equal pay for women and men for equal work or work of equal value.

Effective remedies

The Committee recalls that domestic law must provide for appropriate and effective remedies in the event of alleged pay discrimination. Workers who claim that they have suffered discrimination must be able to take their case to court. Effective access to courts must be guaranteed for victims of pay discrimination. Therefore, proceedings should be affordable and timely. Anyone who suffers pay 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 to act as a deterrent. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and from being sufficiently dissuasive is contrary to the Charter. The burden of proof must be shifted. The shift in the burden of proof consists in ensuring that where a person believes she or he 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 non-discrimination (Conclusions XIII-5, Statement of interpretation on Article 1 of the 1988 Additional Protocol). Retaliatory dismissal in cases of pay discrimination must be forbidden. Where a worker is dismissed on grounds of having made a claim for equal pay, the worker should be able to file a complaint for dismissal without valid reason. In this case, the employer must reinstate her/him in the same or a similar post. If reinstatement is not possible, the employer must pay compensation, which must be sufficient to compensate the worker (i.e. cover pecuniary and non-pecuniary damage) and to deter the employer (see in this respect collective complaints Nos. 124 to 138, University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden, 5-6 December 2019).

In its conclusions regarding Article 20 (Conclusions 2016), the Committee found that the situation was not in conformity with the Charter on the ground that the limits imposed on compensatory awards in gender discrimination cases might prevent such violations from being adequately remedied and effectively prevented. In its conclusions concerning Article 4§3 (Conclusions 2018), the Committee also noted that the situation was not in conformity with the Charter on the ground that the upper limit on the amount of compensation that could be awarded in gender discrimination cases might preclude damages from making good the loss suffered and from being sufficiently dissuasive. There is no new information in the report on this issue. Therefore, the Committee notes that the situation which it had previously found not to be in conformity with the Charter has not changed and reiterates its finding of non-conformity in this respect.

The report indicates that the issue of *the burden of proof* in cases of gender pay discrimination is governed by the Code of Civil Procedure. Under Article 210(1), the courts assess and decide on individual labour disputes related to amending or terminating an employment contract and to disciplinary measures. Pursuant to Article 213, the respondent bears the responsibility of proving the facts. The Committee also notes that a law on legal equality containing rules on sharing the burden of proof is being drafted by the Ministry of Justice. The Committee requests that the next report contain information on the legislative developments on the matter, including the information on if an employee may bring a claim before a court in case a dispute arises due to illegal practices not related to the amendments or termination of an employment contract or to disciplinary measures. In the meantime, it concludes that the situation is not in conformity with Article 20 of the Charter on the ground that it has not been established that legislation provides for a shift in the burden of proof in gender pay discrimination cases.

The Committee requests that the next report indicate the rules applicable to the event of dismissal in retaliation for a complaint about equal pay.

It also asks whether sanctions are imposed on employers in the event of gender pay discrimination in employment.

Pay transparency and job comparisons

The Committee recalls that pay transparency is instrumental in the effective application of the principle of equal pay for work of equal value. Transparency contributes to identifying gender bias and discrimination and it facilitates the taking of corrective action by workers and employers and their organisations as well as by the relevant authorities. States should take measures in accordance with national conditions and traditions with a view to ensuring adequate pay transparency in practice, including measures such as those highlighted in the European Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, notably an obligation for employers to regularly report on wages and produce disaggregated data by gender. The Committee regards such measures as indicators of compliance with the Charter in this respect. The Committee also recalls that, in order to establish whether work performed is equal or of equal value, factors such as the nature of tasks, skills, as well as educational and training requirements must be taken into account. States should therefore seek to clarify this notion in domestic law as necessary, either through legislation or case law. In this respect, job classification and evaluation systems should be promoted and where they are used, they must rely on criteria that are gender-neutral and do not result in indirect discrimination (see in this respect Complaints Nos.124 to 138, UWE, *op. cit*.).

The Committee recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter, and does so therefore every two years (under thematic group 1 “Employment, training and equal opportunities”, and thematic group 3 “Labour rights”). Articles 20 and 4§3 of the Charter require the possibility to make job comparisons across companies (see in this respect Complaints Nos. 124 to 138, UWE, *op. cit*.).

In this regard, the Committee refers to its previous conclusion on Article 4§3 (Conclusions 2018) in which it noted that comparisons of remuneration across companies could be conducted at the level of a collective agreement (when, for example, conditions of remuneration for work and mechanisms regulating remuneration for work provided for by Article 49(3)1 of the Labour Code must be defined by collective agreements concluded at branch or territorial levels of social partnership); comparisons between organisations at branch level could include companies carrying out activities within one or more branches of the economy (industry, services, professions), and at the territorial level, companies carrying out activities within a certain territory.

The Committee requests that the next report indicate whether a real and/or hypothetical comparator of remuneration is required by law to establish or prove a difference in treatment.

As for the employment classification system, the report indicates that Government Decree No. 737 of 3 July 2014 sets out the official rates for persons carrying out civil engineering work or providing technical services in state bodies. According to the report, the amount of a public sector employee’s salary may therefore be calculated clearly on the basis of the post occupied and the years of service.

The Committee requests that the next report provide more information on the parameters making it possible to establish the equal value of the work carried out (such as the nature of the work, training and working conditions).

The Committee reiterates its request that the next report provide information on the job classification and promotion systems in place in private sector as well as strategies adopted and the measures taken to ensure pay transparency in the labour market (notably the possibility for workers to receive information on pay levels of other workers), including the setting of concrete timelines and measurable criteria for progress. In the meantime, it reserves its position on this point.

Enforcement

The Committee notes from the comments by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2017 (106th session of the International Labour Conference) concerning Convention No. 100 on Equal Remuneration (1951) that following the amendment made to the Labour Code in 2014 and the adoption of the State Labour Inspectorate Act which came into force in January 2015, Article 34 of the Labour Code and the previous law on the state labour inspectorate are no longer in force; therefore, the implementation of the labour legislation is no longer monitored and there is no institution which is able to raise awareness of discrimination issues.

The Committee requests that the next report provide information about how equal pay is ensured, notably, about the monitoring activities conducted in this respect by the competent bodies.

Obligations to promote the right to equal pay

The Committee recalls that in order to ensure and promote equal pay, the collection of high-quality pay statistics broken down by gender as well as statistics on the number and type of pay discrimination cases are crucial. The collection of such data increases pay transparency at aggregate levels and ultimately uncovers the cases of unequal pay and therefore the gender pay gap. The gender pay gap is one of the most widely accepted indicators of the differences in pay that persist for men and women doing jobs that are either equal or of equal value. In addition, to the overall pay gap (unadjusted and adjusted), the Committee will also, where appropriate, have regard to more specific data on the gender pay gap by sectors, by occupations, by age, by educational level, etc. The Committee further considers that States are under an obligation to analyse the causes of the gender pay gap with a view to designing effective policies aimed at reducing it (see in this respect Complaints Nos.124 to 138, UWE, *op. cit*.).

In its previous conclusions (Conclusions 2016), the Committee found that the situation was not in conformity with the Charter on the ground that the unadjusted pay gap was manifestly too high.

The Committee notes that statistics provided by the Office of National Statistics of Armenia on the average monthly salary per economic sector indicate that in all economic sectors, women's average monthly salary is lower than that of men. In 2017, the average monthly salary for women was 79.2% of men's salary in the agriculture, forestry and fishing industries, while the figure was 80.2% in the education sector, 69.1% in healthcare and social services, 68% in manufacturing industry and 60.2% in the financial and insurance sector. According to the report, women earned, overall in all occupations, around 66.5% of men's salary in 2015 and 66.4% in 2016. In 2017, the average salary for women was 67.5% of that of men (compared with 65.9% in 2014 and 63.7% in 2012, see Conclusions 2016); in other words, the wage gap (i.e., the difference between the average nominal monthly salary of men and women, expressed as a percentage of men's nominal monthly salary) was 32.5%.

The Committee notes from the report that between 2007 and 2017, the gender pay gap decreased by 8.3% (by 7.2% between 2006 and 2016).

In light of the above, the Committee notes that the pay gap of approximately 32.5% remains manifestly high. The Committee asks for the next report to provide updated information on the specific measures and activities implemented to promote gender equality, overcome gender segregation in the labour market and reduce the gender pay gap, together with information on the results achieved. In the meantime, the Committee finds that the situation is not in conformity with Article 20 (c) of the Charter on the ground that the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 20 (c) of the Charter on the grounds that:

- there is no explicit statutory guarantee of equal pay for women and men for equal work or work of equal value;
- 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;
- it has not been established that legislation provides for a shift in the burden of proof in gender pay discrimination cases;
- the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.

Article 24 - Right to protection in case of dismissal

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

Scope

In its previous conclusions (Conclusions 2012, 2016) the Committee noted that according to Article 113 of the Labour Code, the employers have the right to terminate employment prior to the expiry of the employment contract when the employee reaches retirement age. The Committee concluded that the situation was not in conformity with the Charter on this ground.

The Committee now notes from the report that amendments were made to the Labour Code by Law HO-96-N of 22 June 2015 "On making supplements and amendments to the Labour Code of the Republic of Armenia". Amendments were made to Article 113 (termination of an employment contract upon the initiative of the employer). In particular, point 11 of part 1 of Article 113 of the Code has been edited, according to which the employer has the right to rescind the employment contract concluded with an employee for an indefinite time, as well as the employment contract concluded therewith for a fixed time, before its validity period expires, in cases where the employee entitled to an old-age pension has reached the age of 63, or where the employee not entitled to an old-age pension has reached the age of 65, only if the relevant ground is provided for by the employment contract.

According to the report, the new regulation provides that rescission of an employment contract upon the initiative of the employer on the aforementioned ground is only possible in cases where the relevant ground is provided for in the employment contract concluded with the employee, whereas if this is not explicitly provided for in the contract, the employer cannot terminate the employment relationship. According to the report, this regulation (point 11 of part 1 of Article 113 of the Code) gives the employer the possibility to rescind the employment contract but does not impose an obligation on the employer to mandatorily terminate employment.

The Committee understands that with the amendments to Article 113 of the Labour Code, termination of the employment contract at the initiative of the employer on the ground that the employee has reached the retirement age (63 years or 65 years) is only possible if there is a clause in the employment contract which so provides.

The Committee recalls that Article 24 establishes in an exhaustive manner the valid grounds on which an employer can terminate an employment relationship. Two types of grounds are considered valid, namely on the one hand those connected with the capacity or conduct of the employee and on the other hand those based on the operational requirements of the enterprise (economic reasons).

The Committee further recalls that, under Article 24, dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age (age when an individual becomes entitled to a pension) will be contrary to the Charter, unless the termination is properly justified with reference to one of the valid grounds expressly established by this provision of the Charter. The Committee asks whether the employer would need to also invoke one of these valid grounds to justify the termination of employment on the basis of the above mentioned clause in the employment contract.

The Committee addressed specific targeted questions to the States (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities") concerning strategies and measures that exist or are being introduced to ensure dismissal protection for workers (labour providers), such as "false self-employed workers" in the "gig economy" or "platform" economy. The Committee notes that the report does not provide information in this respect. It asks what safeguards exist to ensure that employers hiring workers in platform or gig economy do not circumvent labour law as regards protection against dismissal on the grounds that a person

performing work for them is self-employed, when in reality, after examination of the conditions under which such work is provided it is possible to identify certain indicators of the existence of an employment relationship.

Prohibited dismissals

The Committee addressed to the Government a targeted question concerning the safeguards that exist against dismissal due to temporary absence from work due to illness or injury (e.g. time limit on protection against dismissal, rules applying in case of permanent disability and compensation for termination of employment in such cases).

The Committee notes from the report in this regard that pursuant to point 7 of part 1 of Article 113 of the Labour Code, the employer has the right to terminate the employment contract concluded with the employee for an indefinite time, as well as the employment contract concluded for a fixed time before its validity period expires, if the employee has a long-term incapacity for work (i.e. if the employee has failed to attend work due to temporary incapacity for work for more than 120 consecutive days, or for more than 140 days during the last 12 months, unless the relevant law and other regulatory legal acts prescribe that the workplace and the respective position are preserved for a longer period in case of certain diseases).

Pursuant to part 1 of Article 118 of the Code, the workplace and the respective position of the employee having lost his or her capacity for work due to occupational disease, are retained until the recovery of the capacity for work or determination of the disability group. The employer may rescind the employment contract on the grounds provided for by Chapter 15 of the Code if the capacity for work of an employee is not recovered and his or her disability group is determined.

The Committee understands that the employer may terminate the employment relationship for temporary absence from work due to illness and that the time limit that is placed on protection is 120 days (four months). The Committee recalls that, under Article 24 of the Charter, dismissal on the ground of temporary absence from work due to illness or injury must be prohibited. A time limit can be placed on protection against dismissal in such cases. Absence can constitute a valid reason for dismissal if it severely disrupts the smooth running of the undertaking and a genuine, permanent replacement must be provided for the absent employee. The Committee asks what rules apply in case of termination of employment on the ground of long-term or permanent disability, such as the procedure for establishing long-term disability and the level of compensation paid in such cases.

Remedies and sanction

In its previous conclusion the Committee asked what rules applied as regards compensation for unlawful dismissal. It notes that, as regards the compensation that may be awarded in discrimination cases, in cases where the court does not reinstate an employee to his/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, 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/her employment, in the amount of not less than the average salary, but not more than twelve times the average salary.

The Committee recalls that under the Charter, workers dismissed without valid reason must be granted adequate compensation or other appropriate relief. Compensation systems are considered to comply with the Charter when they provide for:

- reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body;
- the possibility of reinstatement of the worker and/or

- compensation of a high enough level to dissuade the employer and make good the damage suffered by the victim (Finnish Society of Social Rights v. Finland, Complaint No. 106/2014, decision on admissibility and the merits of 8 September 2016, §45; Conclusions 2016, Bulgaria).

The Committee further recalls that (Statement of interpretation on Article 8§2 and 27§3, Conclusions 2011) compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues, and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.

The Committee notes that the legislation provides for an upper limit to compensation in the amount of twelve times the average salary. As regards other legal avenues to claim compensation for non-material damage for unlawful dismissal, the report refers to Articles 17, 162 and 1087.2 of the Civil Code, according to which claims for compensation of non-material damage may be submitted to the court. The Committee asks whether non-pecuniary damage can be claimed under the Civil Code in case of unlawful dismissal, not linked to discrimination. In the meantime, the Committee reserves its position on this issue.

Conclusion

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