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European Committee of Social Rights

Conclusions 2020

AZERBAIJAN

This text may be subject to editorial revision.

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

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

The following chapter concerns Azerbaijan, which ratified the Revised European Social Charter on 2 September 2004. The deadline for submitting the 13th report was 31 December 2019 and Azerbaijan submitted it on 17 April 2020.

The Committee recalls that Azerbaijan was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter 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).

Azerbaijan has accepted all provisions from the above-mentioned group except Articles 10, 15, 18 and 25.

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

The conclusions relating to Azerbaijan concern 7 situations and are as follows:

– 1 conclusion of conformity: Article 24;

– 5 conclusions of non-conformity: Articles 1§2, 1§3, 1§4, 9 and 20.

In respect of the situation related to Article 1§1, 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 Azerbaijan under the Revised Charter.

The next report from Azerbaijan 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 Azerbaijan.

The Committee recalls that in 2016, it deferred its conclusion pending information on the number of young people benefiting from labour market measures and on activation measures aimed at the long-term unemployed (Conclusions 2016).

Employment situation

According to Eurostat, the GDP growth rate dropped from 1.1% in 2015 to -3.1% in 2016, before rising sharply to 0.2% in 2017 and then increasing to 1.4% in 2018.

The overall employment rate (persons aged 15 to 64 years) increased from 67% in 2015 to 68.5% in 2018.

The employment rate for men increased from 70% in 2015 to 71.5% in 2018, and the rate for women from 64% in 2015 to 65.4% in 2018.

The overall unemployment rate (persons aged 15 to 74 years) fell very slightly, from 5% in 2015 to 4.9% in 2018.

The unemployment rate for men remained stable at 4.1% in 2015 and in 2018. The unemployment rate for women fell very slightly, from 5.9% in 2015 to 5.8% in 2018. Youth unemployment (15 to 24-year-olds) decreased from 13.4% in 2015 to 12.7% in 2018. The Committee asks for statistics in the next report on long-term unemployment (12 months or more, as a percentage of overall unemployment).

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) stood at 13.2% in 2018.

The Committee notes the economic upturn during the second half of the reference period. In addition, the employment and unemployment rates showed positive trends (rising employment and falling unemployment rates).

Employment policy

In its report, the Government states that the country’s development goals include improving employment quality indicators, creating decent jobs and increasing the participation of socially vulnerable groups in the labour market.

Among the initiatives and measures taken to attain these goals, the Government mentions the adoption of new laws (the Law on Unemployment Insurance in June 2017 and the Law on Employment in June 2018); the establishment of the Government Agency for Sustainable and Operational Social Security (*DOST*) in August 2018, which aims to bring the provision of employment and social welfare services under one roof and, more generally, to improve the governance of labour, employment and social welfare [the agency started operating in 2019, i.e. outside the reference period]; the creation in September 2018 of a centralised electronic information system, whose “Employment” sub-system contains, among other things, lists and services for looking and applying for work online (which also enable employers to search for and access their workforce via the Internet); and the implementation of active employment measures, such as career guidance services, hiring the unemployed in public works projects, job creation and support for entrepreneurship.

In response to the Committee’s question in Conclusions 2016, the Government indicates that increasing youth employment rate is one of its priorities and measures have been taken to this end (to improve career guidance services, organise job fairs, facilitate capacity building and skills development, provide employment programmes, etc.). In particular, almost 102,000 young people received career guidance in 2018, just over 1,000 young people took part in the

Self-Employment programme (2016-2018) and around 1,000 young people participated in a project specifically aimed at helping them to acquire knowledge and skills in entrepreneurship, office work, finding employment and networking (which was part of the Development of Innovation and Employment programme running from 2016 to 2019). The Government adds that 31,884 young people were registered with the State Employment Service in 2018.

The Committee notes that the Government did not provide any information concerning the activation measures aimed at the long-term unemployed. The Committee therefore reiterates its request for information on this point. It also requests that the next report provide information on the labour market measures designed to support migrants, refugees and internally displaced persons.

The Committee further notes that the report contains no information on: a) the activation rate (i.e. the average number of participants in active measures as a percentage of the total number of unemployed); b) public expenditure on active and passive labour market measures (as a percentage of GDP); c) whether employment policies are monitored and how their effectiveness is assessed. The Committee therefore requests that the next report provide information on these points.

The Committee points out that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter with regard to the effectiveness of employment policies.

Conclusion

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

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 Azerbaijan.

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, accordingly, focus its assessment specifically on these aspects. It will also examine responses to any findings of non-conformity or deferrals of its previous conclusion.

The Committee recalls that Azerbaijan has accepted Article 20 of the Charter. For aspects concerning discrimination in employment on grounds of gender, the Committee thus refers to its Conclusion on Article 20. It further recalls that since Azerbaijan has not accepted Article 15§2 of the Charter, aspects concerning discrimination in employment on grounds of disability will be examined under Article 1§2 of the Charter.

As regards the legislation prohibiting discrimination in general terms, the report indicates that Article 16 of the Labour Code prohibits discrimination in labour relations based on citizenship, gender, race, religion, nationality, language, place of residence, economic status, social origin, age, family situation, religion, political views, affiliation with trade unions or other public associations, professional standing or other factors unrelated to the professional qualifications, job performance, or professional skills of the employees. It shall not be permitted to establish privileges and benefits or directly or indirectly limit rights based on the above mentioned grounds. The report adds that certain measures taken in respect of disabled employees shall not be considered discrimination.

With regard to discrimination in employment on grounds of disability, the Committee asked previously whether jurisprudence requires employers to make reasonable accommodation for persons with disabilities and details of any case law concerning discrimination on grounds of disability (Conclusions 2012). In its previous conclusion, the Committee concluded that the situation is not in conformity with the Charter on the ground that it has not been established that employers are required to make reasonable accommodation for persons with disabilities (Conclusions 2016).

The current report indicates that according to Article 25 "Right to Equality", paragraph VI of the Constitution, persons with disabilities are entitled to all rights and carry all duties enshrined in the Constitution, except in cases when enjoyment of rights and performance of duties is impeded by their limited abilities. The report further states that according to Article 21 of the "Law on the Rights of Persons with Disabilities" of 31 May 2018, persons with disabilities have the right to engage in labour activity on an equal basis with others, including to earn a living by participating in the labour market, which they freely choose or accept in an open, inclusive and accessible working environment. Any discrimination on the basis of disability in employment relations, as well as the limitation of the right to work of persons with disabilities in collective and employment contracts is prohibited. According to Article 22 of the same Law, the state ensures employment of persons with disabilities by providing training on special programs and creating additional jobs, facilities, and organizations with conditions suitable for persons with disabilities on the labour market.

The report does not specify whether employers are required to make reasonable accommodation for persons with disabilities. The Committee asks for information on the concrete measures taken to increase the employment of persons with disabilities on the labour market in general and to ensure that employers provide reasonable accommodation for employees with disabilities. In the meantime, the Committee reiterates its conclusion of non-conformity on this point. It therefore concludes that the situation is not in conformity with Article 1§2 of the Charter on the ground that it has not been established that employers are required to make reasonable accommodation for persons with disabilities.

With regard to discrimination in employment on grounds of sexual orientation, the Committee has repeatedly asked for information on any cases alleging discrimination on grounds of sexual orientation in employment brought before the courts or any other body and whether any measures have been taken to raise awareness on discrimination on grounds of sexual orientation (Conclusions 2012 and Conclusions 2016). The report does not provide the requested information. Given the lack of information, the Committee concludes that the situation is not in conformity with Article 1§2 of the Charter on the ground that it has not been established that protection against discrimination in employment on grounds of sexual orientation is ensured.

As regards discrimination on grounds of nationality, the Committee concluded previously that the situation is not in conformity with Article 1§2 of the Charter on the ground that nationals of the other States Parties to the Charter do not have access to civil service posts, which constitutes a discrimination on grounds of nationality (Conclusions 2016). The Committee notes in the Report of the Governmental Committee concerning Conclusions 2016 that the representative of Azerbaijan stated that there is no prohibition whatsoever in the legislation concerning the employment of foreigners in the civil service of Azerbaijan. The same source indicates that according to Article 16 of the Constitution, foreigners and stateless persons can be admitted to civil service in the order established under the legislation. The representative of Azerbaijan to the Governmental Committee informed that in 2014 a draft of the Civil Service Code was prepared. In 2015 the draft was under discussion by various Government agencies. However, due to dissolution of the State Civil Service Commission in April 2016 and the establishment of the State Examination Centre as a substitute for it, further consideration on the draft has been postponed. The Committee asks for confirmation in the next report that the nationals of the other States Parties to the Charter have access to civil service posts. It also asks which jobs/posts in the civil service are exclusively reserved to nationals of Azerbaijan. Meanwhile, it reserves its position on this point.

The current report does not provide information on specific measures taken to counteract discrimination in the employment of migrants and refugees. This was requested by the Committee through the specific, targeted questions for this provision on prohibition of discrimination in employment (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 reiterates its request for information on specific measures taken to counteract discrimination in the employment of migrants and refugees and reserves its position on this point. The Committee underlines that, should the information requested not be provided in the next report, nothing will allow to show that the situation is in conformity with Article 1§2.

The Committee further 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, allowing to provide reinstatement and compensation, as well as adequate penalties effectively enforced by labour inspection; furthermore, an appropriate adjustment of the burden of proof which should not rest entirely on the complainant, as well as the setting-up of a special, independent body to promote equal treatment. The Committee explicitly requested information on remedies for this examination cycle.

With regard to judicial or administrative procedures available, the Committee noted previously that anyone who considers that they have been discriminated against may appeal to the courts (Conclusions 2008). The Committee previously asked in particular detailed information on the concrete means/remedies available to victims of discrimination in employment in practice. It also asked whether protection is guaranteed against dismissal or other retaliatory action by the employer against an employee who has lodged a complaint or taken a legal action (Conclusions 2016).

The current report indicates that an employer or any other natural person who permits discrimination as stipulated in the Article 16 (1) of the Labour Code among employees in the process of labour relations shall be held liable in accordance with the law (Article 16 (3) of the Labour Code). An employee subject to discrimination can seek recourse in a court of law to restore his/her violated rights (Article 16 (4) of the Labour Code).

In its previous conclusion, the Committee asked for information on the cases alleging discrimination in employment before the courts or the Ombudsman. It also requested detailed information on the mandate and powers of the Commissioner for Human Rights (Ombudsman) relating to discrimination in employment and information on the activities/supervision of the state labour inspectorate in this area, including the examination and the outcomes of complaints submitted by workers (Conclusions 2016). The Committee outlined that, should the information not be provided in the next report, nothing would allow to establish that the situation is in conformity with regard to the effective implementation in practice of the legislation prohibiting discrimination in employment (Conclusions 2016).

The current report does not provide the requested information. It only refers to the fact that according to the Law No 1410 IVQ "On Suspension of Inspections in the Field of Entrepreneurship" of 20 October 2015, inspections of business entities were suspended for two years and in accordance with the amendments to this Law as of 31 October 2017, the suspension was extended until 1st of January 2021. The report states that only inspections based on submitted complaints are currently carried out.

The Committee notes from another source that according to the Report of March 2016 of the European Commission against Racism and Intolerance (ECRI), the Ombudsperson's mandate is limited to the public sector and there is no specialised institution responsible for combating racism and discrimination in the private sector (CRI (2016)17, 17 March 2016, page 9 and paragraph 13). It also notes that in a Direct Request, the ILO CEACR referring to its comments under the Labour Inspection Convention, 1947 (No. 81), noted that for several years no annual report on the work of the labour inspection services has been received by the ILO (Direct Request (CEACR) – adopted 2016, published 106th ILC session (2017), Labour Inspection Convention No. 81, 1947 – Azerbaijan (Ratification: 2000)).

As regards the burden of proof in cases of alleged discrimination in employment, the Committee concluded previously that the situation in Azerbaijan is not in conformity with Article 1§2 of the Charter on the grounds that legislation does not provide for a shift in the burden of proof in discrimination cases (Conclusions 2016, Conclusions 2012). The current report does not provide any information on this point. The Committee maintains its conclusion of non-conformity.

The Committee asks that the next report provide:

- whether legislation provides for upper limits of compensation in cases of discrimination in employment and for information on compensation granted to victims of discrimination in practice;
- whether legislation provides for any sanctions/penalties to be enforced against the employers in cases of discrimination in employment (the minimum/maximum amount of fines);
- information on cases of discrimination in employment dealt with by the courts or other competent authorities, including information on measures/sanctions

- imposed on employers and the amount of compensation granted to victims of discrimination;
- information on the remedies available for victims in case of discriminatory termination of employment (whether reinstatement is available and upper amount of compensation).

In the meantime, noting the lack of information in respect of remedies, the Committee concludes that the situation is not in conformity with Article 1§2 of the Charter on the ground that it has not been established that appropriate and effective remedies are provided to victims of alleged discrimination in employment.

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 Musselle 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*, par. 123; *C.N. and V. v. France*, par. 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 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 not replied to the specific, targeted questions for this provision on 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”).

Criminalisation and effective prosecution

The Committee refers to the Criminal Code and notes that Article 144-1 penalises human trafficking namely “recruiting, obtaining, keeping, harbouring, transporting, transferring or accepting a person with a view to exploiting him/her under the threat of violence or using violence, threats or other means of coercion, abduction, fraud, deception, abuse of power over vulnerable persons, or helplessness, or providing or receiving material and other values, privileges or benefits to obtain the consent of the person that exercises control over another person. These shall be penalised with five to ten years’ imprisonment”.

Article 144-2 penalises forced labour as a separate offence in the field of human trafficking. Under Article 144-2.1, “forcing a person to perform certain work (or a service) by means of threats, use or threat of coercion, or by means of confinement other than in the situations prescribed by the law — shall be penalised with four to eight years’ imprisonment.”

The Committee refers to the 2018 GRETA Report (Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Azerbaijan, Second Evaluation Round, GRETA (2018)17, 23 November 2018). This report indicates that Azerbaijan is a source and destination country for trafficking in human beings. According to this report, Azerbaijan should increase efforts to proactively identify victims of THB for the purpose of labour exploitation in the sectors most at risk, such as construction, agriculture and domestic work, by involving labour inspectors and trade unions.

In the absence of any information related to the implementation of the current legislation, 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 European Court of Human Rights 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 implementation of Article 144-2 of the Criminal Code in practice, particularly with regard to labour exploitation in the forms of forced labour or services, slavery and servitude. The report should provide information (including statistics, examples of case law and specific penalties effectively applied) on the prosecution and conviction of exploiters during the next reference period, in order to assess how the national legislation is interpreted and applied to combat labour exploitation covering work situations that differ significantly from normal working conditions as defined by the labour law concerning mainly remuneration, working time, health and safety, holidays, and decent treatment of workers.

Prevention

The Committee notes from the abovementioned GRETA Report that since 2015, the Azerbaijani Government has suspended all inspections related to entrepreneurial activity for two years, as a measure intended to stimulate business development. The suspension was extended for another period until 1 January 2021. The Committee perceives this measure as a real barrier to the 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.

The Committee recalls 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 the labour inspection. 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.

Information is also requested on whether the domestic 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.

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 report does not provide any relevant information on this point.

The Committee asks for information in the next report on the number of formally identified victims of forced labour and labour exploitation and the number of such victims benefiting from protection and assistance measures. It also asks for general information on the type of assistance provided by the 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 asks for information in the next report if 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, not only moral damage but also lost wages and unpaid social security contributions. The Committee also asks for statistics on the number of victims awarded compensation and examples of the sums awarded.

Domestic work

The Committee notes from the 2018 GRETA Report that labour inspectors can enter private homes only if employees working there have a tax number and lodge a complaint.

In this regard, 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, 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).

The Committee asks that the next report provide detailed information on the number of inspections carried out relating to registered domestic workers during the next reference

period, and the number, if any, of victims of forced labour or labour exploitation identified as a result.

“Gig economy” or “platform economy” workers

The report provides no information on the measures taken to protect workers in the “gig economy” or “platform economy”.

The Committee requests that the next report contain information on concrete measures taken or envisaged to protect workers in the “gig economy” or “platform economy” against all forms of exploitation and abuse. It asks to be informed on the status and rights of these workers (employees or self-employed, or an intermediary category, and their rights in terms of working hours, paid holiday and minimum wage), on whether labour inspection services have any mandate to prevent exploitation and abuse in this particular sector and on any existing remedies they have access to, in particular to challenge their employment status.

Conclusion

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

- it has not been established that employers are required to make reasonable accommodation for persons with disabilities;
- it has not been established that protection against discrimination in employment on grounds of sexual orientation is ensured;
- legislation does not provide for a shift in the burden of proof in discrimination cases;
- it has not been established that appropriate and effective remedies are provided to victims of alleged discrimination in employment;
- the suspension of all inspections related to entrepreneurial activity until 1 January 2021 is a barrier to the mandate of labour inspection services in preventing forced labour and labour exploitation;
- it has not been established that the national authorities have fulfilled their obligations to prevent forced labour and labour exploitation, to protect victims, to effectively investigate the offences committed, and to punish those responsible for forced labour offences.

Article 1 - Right to work

Paragraph 3 - Free placement services

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

In its previous conclusion (Conclusions 2016) the Committee considered that the public employment services did not operate in an efficient manner, given the low placement rate, the low share of placements made by the State Employment Service (SES) among the total hirings in the labour market and the lack of necessary information on quantitative indicators. The Committee asked for updated information regarding quantitative indicators used by the Committee to assess the situation. In particular, it asked for the following:

- the number of jobseekers and unemployed persons registered with SES;
- the number of vacancies notified to SES;
- the number of persons placed via SES;
- the placement rate (i.e. placements made by the employment services as a share of notified vacancies).

In reply to these questions, the Committee notes from the report that in 2018, 119,230 people applied to the SES; 5,174 of them were provided with suitable jobs, 1,022 were involved in paid public works and 2,559 in vocational training courses, and unemployment benefits were granted to 2,449 unemployed people. In 2018 vocational training courses were organised in Regional Vocational Training Centers of SES where 2,559 unemployed people were involved.

In 2018, job fairs were organised in 58 cities and regions where 2,132 businesses offered vacancies. At the fairs, 4,256 unemployed people were directed to workplaces, of whom 3,548 were employed, 221 were involved in vocational training courses and 141 in paid public works.

In 2018, the Labour Exchange, which is part of the SES, provided 2,905 unemployed people, including 1,591 women, 1,255 young people, 134 refugees and IDPs and 14 persons with disabilities with temporary jobs.

The Committee observes that the report does not contain full information on the quantitative indicators. In particular, the report fails to provide information on the number of vacancies notified to the SES and the number of placements made. Hence, the Committee cannot estimate the placement rate. The Committee asks the next report to provide total numbers of placements made by the SES, including through job fairs, and the total number of jobs notified to SES in the year. The Committee also asks the next report to provide this information for all years of the reference period, so that the Committee can take note of the trend. Besides, the Committee asks what is the number of placements made by private employment agencies.

The Committee considers that given the lack of information concerning quantitative indicators, it cannot be established that the free placement services operate in an efficient manner.

Finally, the Committee asks the next report to indicate whether a fully-fledged free employment services operate throughout the country. The Committee recalls in this regard that fees imposed on employers for the notification of vacancies is contrary to Article 1§3, even where the fees are small and aimed only at covering administrative costs (Conclusions XIV-1 (1998), Turkey). The existence of fee-charging by private employment agencies is not contrary to Article 1§3 provided that fully-fledged free employment services exist in all occupational sectors and geographical areas.

Conclusion

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

Article 1 - Right to work

Paragraph 4 - Vocational guidance, training and rehabilitation

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

The Committee recalls that 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") no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

Article 1§4 guarantees the right to vocational guidance, continuing vocational training for employed and unemployed persons and specialised guidance and training for persons with disabilities. It is complemented by Articles 9 (right to vocational guidance), 10§3 (right of adult workers to vocational training) and 15§1 (right of persons with disabilities to vocational guidance and training), which contain more specific rights to vocational guidance and training.

As Azerbaijan has not accepted Articles 10§3 and 15§1, the Committee assesses under Article 1§4 the conformity of the situation relating to the right of adult workers to vocational training and the right of persons with disabilities to vocational guidance and training in case the previous conclusion was one of non-conformity or a deferral.

Equal treatment

In its previous conclusion (Conclusions 2016), the Committee asked whether continuing vocational training, including adult education, was also available to foreign employed persons without any restrictions related to their length of residence. In the meantime, it reserved its position on this point.

The report indicates that, in accordance with Article 4 of the Law "On Vocational Education" (adopted in 2018), foreign citizens and stateless persons residing in the territory of the Republic of Azerbaijan have the right to receive education in vocational educational institutions on an equal basis with the citizens of Azerbaijan. The report also indicates that the Law "On Employment", which regulates, *inter alia*, vocational training and retraining of job seekers and unemployed persons in educational institutions, also applies to foreigners and stateless persons residing in Azerbaijan.

In light of the information provided, the Committee considers that the situation is in conformity with Article 1§4 of the Charter on this issue.

Vocational guidance

As regards measures related to vocational guidance, the Committee refers to its assessment under Article 9 (Conclusions 2020), in which it considers that the situation is not in conformity with the Charter on the grounds that it has not been established that the right to vocational guidance within the education system and in the labour market is guaranteed. Accordingly, the Committee considers that it has not been established that the situation is in conformity with Article 1§4 on the same grounds.

Vocational guidance and training for persons with disabilities

The Committee refers to its assessment under Article 9 (Conclusions 2020) as regards measures related to vocational guidance of persons with disabilities. It considers that it has not been established that the right to vocational guidance within the education system and in the labour market is guaranteed to persons with disabilities. Accordingly, the Committee considers that it has not been established that the right to vocational guidance is guaranteed to persons with disabilities.

The Committee previously concluded that the situation was not in conformity with Article 1§4 on the ground that there was no legislation explicitly protecting persons with disabilities from discrimination in training (Conclusions 2016).

The report refers to the Law "On the Rights of Persons with Disabilities", adopted in 2018, according to which persons with disabilities have the right to engage in labour activity on an equal basis with others. The law also prohibits discrimination on the basis of disability in employment relations. The Committee asks the next report to provide information on the implementation of the Law "On the Rights of Persons with Disabilities".

The report indicates that the Law "On Vocational Education", adopted in 2018, establishes the responsibility of the State *vis à vis* ensuring both the right to vocational education for children and adults with disabilities and helping them to find employment in accordance with their speciality. The report points out that the Law "On Employment", adopted in 2018, establishes that the State is responsible for providing equal opportunities for all persons to freely choose their occupation and to take measures aiming to promote employment of persons with disabilities. The report also clarifies that increasing employment opportunities for persons with disabilities, providing social protection, as well as creating favourable conditions for their participation in all spheres of public life are among the main directions of social policy of Azerbaijan. The Committee asks the next report to provide information on measures taken to implement the Law "On Vocational Education" and the Law "On Employment" as well as on funding, staffing and the number of beneficiaries of related services.

The Committee notes from the State report to the UN Committee on the Rights of Persons with Disabilities that pursuant to an amendment to the Constitution it is established that persons with disabilities enjoy all rights and bear duties enshrined in the Constitution, except for the rights and duties which are difficult for them to be implemented due to their disabilities. The same report indicates that, following the adoption of the Law "On the Rights of Persons with Disabilities", the Ministry of Labour and Social Protection of Population (MLSPP) prepared draft laws for the purposes of replacing the term "disabled" with the term "person with disability" as part of the initiatives aiming at shifting from a medical model to a social model. The Committee asks the next report to provide updated information on further adaptation of the legislation on this issue, particularly as regards vocational education and training of persons with disabilities.

The Committee notes that the current report provides information on legislation prohibiting discrimination against persons with disabilities in employment relations and access to vocational education and considers that the situation is now in conformity with Article 1§4 in this respect.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 1§4 of the Charter on the following grounds:

- it has not been established that the right to vocational guidance within the education system and in the labour market is guaranteed;
- it has not been established that the right to vocational guidance is guaranteed to persons with disabilities.

Article 9 - Right to vocational guidance

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

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.

As Azerbaijan has not accepted Article 15 of the Charter, measures relating to vocational guidance for persons with disabilities will be dealt with under Article 9.

The Committee previously asked the next report to clarify whether foreign nationals are accordingly also entitled to free guidance services both in the education system and in the labour market (Conclusions 2016).

The report states that Article 4 of the Law of the Republic of Azerbaijan "On Vocational Education" dated April 24, 2018, provides the right to citizens of the Republic of Azerbaijan, foreign citizens and stateless persons who reside in the territory of the Republic of Azerbaijan to receive education on equal terms in vocational educational institutions. The Committee seeks confirmation that this also encompasses vocational guidance. It further repeats its request as to whether foreign nationals are entitled to free guidance services in the labour market

Vocational guidance within the education system and Vocational guidance in the labour market

The Committee recalls that the right to vocational guidance must be guaranteed within the school system (information on training and access to training) and within the labour market (information on vocational training and retraining, career planning, etc.). The Committee notes that the current report does not contain separate information on vocational guidance in the education system and on vocational guidance in the labour market. The Committee therefore will deal with the two issues in a joint manner. It however asks the next report to provide detailed disaggregated information and figures concerning on the one hand vocational guidance within the education system and on the other hand vocational guidance in the labour market, including measures relating to vocational guidance for persons with disabilities.

In its previous conclusion (Conclusions 2016) the Committee found that it had not been established that the right to vocational guidance was guaranteed within the education system and in the labour market. In particular, the Committee had found no indication in the report concerning the qualification and number of staff or the level of expenditure in vocational guidance activities nor on the number of beneficiaries of such services.

The current report indicates that according to Article 22 of the Law of the Republic of Azerbaijan "On Employment" No. 1196-VQ dated June 29, 2018, the Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan conducts interviews and tests with students and pupils of educational institutions, job seekers and unemployed to organize their professional development and provides vocational guidance to assist with choosing occupations and specialities, formation of professional interests in accordance with their education, abilities and personal qualities. The Committee further notes from the report that outside the reference period the "Guidelines for Rendering Consulting Services on Vocational Guidance" were approved (Resolution 266 of the Cabinet of Ministers of the Republic of Azerbaijan dated June 11, 2019).

According to the report, vocational guidance on the right career choice is offered to senior students of secondary schools in cities and regions, as well as young job seekers who apply to Employment centres. The report indicates that as a result of these activities, 340.699 people were offered vocational guidance over the years 2016-2018.

The Committee notes that the report does not contain any information on the qualification and number of staff involved in vocational guidance services or the level of expenditure in such

activities. The Committee recalls that vocational guidance – within the education system and in the labour market – must be provided by qualified (counsellors, psychologist and teachers) and sufficient staff, to a significant number of persons by aiming at reaching as many people as possible and with an adequate budget. Given the repeated lack of information on such issues, the Committee reiterates its previous conclusion of non-conformity on this point.

As Azerbaijan has not accepted Article 15 of the Charter, measures relating to vocational guidance for persons with disabilities will be dealt with under Article 9. The Committee previously noted (Conclusions 2016) that vocational guidance for persons with disabilities within the education system is provided by the Ministry of Education in the “special boarding schools for children with limited health”. It further took note of the implementation of a State Programme on inclusive education for 2016-2023, aimed inter alia at providing vocational guidance and training for people with disabilities. The Committee asked the next report to provide updated information on the implementation of the measures under way, as well as figures on the budgetary resources and qualified staff involved in the provision of vocational guidance to persons with disabilities in the education system and the number of beneficiaries of such services.

As for vocational guidance for persons with disabilities within the labour market, the Committee previously concluded (Conclusions 2016) that it had not been established that the right to vocational guidance within the labour market was guaranteed. In particular, the Committee noted that the report did not contain any information on the expenditure, staffing and number of persons with disabilities who benefited from vocational guidance services in the labour market and asked the next report to provide such information.

In this respect, the current report indicates that, over the period 2016-2018, 976 out of the 340,699 senior students of secondary schools in cities and regions and young job seekers who apply to Employment centres were persons with disabilities.

The report further indicates that according to Article 11 of the Law of the Republic of Azerbaijan “On Vocational Education” dated 24 April, 2018, the State provides guarantees to persons with special needs and difficulties in finding employment through the creation of additional jobs and social enterprises, by organizing vocational training courses based on adapted training programs for them, as well as establishing a quota. Moreover, the report indicates that the new Employment Strategy, approved on October 30, 2018, places emphasis on inclusive employment promotion.

According to the report, over the period 2016-2018, 5,487 persons with disabilities applied to the State Employment Service agencies and 300 were involved in vocational training courses in various fields.

The current report further indicates that the Ministry of Labour and Social Protection of Population implements a number of projects with international organizations to increase employment opportunities of persons with disabilities. In particular, the Committee takes note of the project “Increasing the Employment Opportunities of Persons with Disabilities”, launched in 2018 and implemented by the British Council in collaboration with the Ministry of Labour and Social Protection of Population. According to the report, about 200 persons with disabilities are involved in this project with the aim to expand their employment opportunities by enhancing their skills. To this end, the project provides participants with training in special fields (e.g. tax specialist, cashier, call centre operator) as well as with appropriate psychological support and vocational counselling.

The Committee notes that the report does not contain any information on the expenditure and staffing related to vocational guidance services offered to persons with disabilities. It asks the next report to provide such information. In the meantime, it finds that it has not been established that the right to vocational guidance is guaranteed to persons with disabilities within the school system and in the labour market.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 9 of the Charter on the grounds that it has not been established that:

- the right to vocational guidance within the school system and in the labour market is guaranteed;
- the right to vocational guidance within the school system and in the labour market is guaranteed to persons with disabilities.

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 Azerbaijan.

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 Committee noted previously that Article 16 of the Labour Code prohibited any discrimination in employment on grounds of gender. Under Article 154 of the Labour Code, discrimination in employment is unacceptable and employee wages may not be reduced in any way. Article 9 of the Law on Gender Equality (2006) provides for equal pay to men and women with the same qualifications, performing equal work of equal value, in equal working conditions, in the same company.

The Committee notes that this wording is narrower than the principle set out in the Charter. In this respect, it notes too that the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) also found in its comments published in 2017 (106th session of the International Labour Conference) concerning Convention No. 100 on Equal Remuneration (1951) that this definition was narrower than the principle laid down by the Convention. The CEACR reiterated that the principle of equal remuneration for men and women for work of equal value as enshrined in the Convention encompasses not just the same work performed under equal conditions and with the same skills, but also allows for a comparison between jobs that are of an entirely different nature yet still 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.

In its previous conclusion (Conclusions 2016), the Committee observed that the situation was not in conformity with Article 20 of the Charter on the ground that not all professions were open to women, which constitutes gender discrimination. Since the report provides no information on this issue, the Committee reiterates its finding of non-conformity on this point.

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).

The report states that a person subject to employment discrimination may bring legal action. The Committee asks for the next report to provide details about remedies available to victims of gender pay discrimination in employment.

The report does not contain any information regarding the burden of proof in cases of gender pay discrimination. In its previous conclusions (Conclusions 2016 and 2012), the Committee noted that during judicial proceedings in discrimination cases there had been no shift in the burden of proof and therefore found that the situation was not in conformity with the Charter. The Committee refers to its previous conclusion on Article 4§3 (Conclusions 2018) in which it noted that if an individual believes that discrimination on grounds of sex in matters related to pay has occurred, he or she may ask the employer to provide evidence that the wage difference is not based on grounds of gender. The Committee asked whether that meant that the defendant was required to prove that there had been no discrimination. It reiterates this question regarding Article 20. In the meantime, the Committee reiterates its finding of non-conformity on this point.

The report does not contain any information concerning the level of compensation in cases of gender pay discrimination. The Committee also noted previously that there was no upper limit on compensation awarded to victims of gender discrimination (Conclusions 2012). The Committee requests more information in the next report about the compensation awarded by the courts in cases of gender pay discrimination. In particular, it asks for details of the number of discrimination cases brought before the courts with specific information on their outcome, the sanctions applied against the employers and the level of compensation paid to the victims. Moreover, it asks whether the obligation to compensate the difference of pay is limited in time or is awarded for entire period of unequal pay, and if there is the right to compensation for pecuniary and non-pecuniary damages.

The Committee also asks for the next report to state what rules apply in the event of dismissal in retaliation for a complaint about equal pay.

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 its conclusions regarding Articles 20 and 4§3 (Conclusions 2012, 2016 and 2018), the Committee asked whether it was possible to make pay comparisons across companies in equal pay litigation cases. As the report does not provide this information, it reiterates its question. In order to clarify this issue, the Committee considers that provision should be made for the right to challenge unequal remuneration resulting from legal regulation and collective agreements. In addition, there also should be the possibility to challenge unequal remuneration resulting from internal pay system within a company or a holding company, if remuneration is set centrally for several companies belonging to such holding company. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Azerbaijan is in conformity with Article 20 of the Charter.

The Committee also 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.

The report contains no information about *pay transparency* in the labour market or in job classification systems. Nor does it contain any information about the criteria for assessing work of equal value set down in law. However, from 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), the Committee notes that the remuneration of workers is determined by their job results, personal efficiency and level of skills.

The Committee asks again for information in the next report on the job classification and promotion systems in place and on the strategies adopted to guarantee wage 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.

Enforcement

The report states that the State Labour Inspectorate found no cases of employment discrimination in 2018.

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 Labour Inspectorate and other 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 conclusion (Conclusions 2016), the Committee already noted that the situation was not in conformity with the Charter on the ground that the unadjusted gender pay gap was manifestly too high. According to the report, the average wage for women is half that of men. In 2017, the average wage for men was 663 manat (€324 at the rate of 31 December 2017) compared with 335 manat (€164 at the rate of 31 December 2017) for women. According to the report, 70% of women work in the fields of education, health care, culture, arts, social services and other fields financed from the State budget. In these sectors, the Unified Tariff Schedule (UTS) used as a wage system is based on the minimum wage which is low.

The Committee notes that women's average monthly earnings amounted to 50.5% of men's in 2017 (compared with 47.5% in 2014). It notes that the gender wage gap, defined as the difference between average monthly earnings, remains considerable. Consequently, it finds again that the situation is not in conformity on this point on the ground that the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.

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. It also asks that the next report provide information on the employment rate for both men and women and the gender wage gap for each year in the reference period.

Conclusion

The Committee concludes that the situation in Azerbaijan 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;
- women are not permitted to work in all professions which constitutes discrimination based on sex;
- the legislation does not provide 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 Azerbaijan.

Scope

The Committee notes that there have been no changes to the situation which it has previously considered to be in conformity with the Charter.

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 the 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 that, according to Article 74, part 1 c of the Labour Code, an employment contract shall be terminated in cases where the employee cannot perform his/her job for more than 6 months because of full and permanent disability, unless the law sets a longer period. According to the Note to Article 74, total work incapacity is determined on the basis of the opinion of the relevant executive authority. Total work incapacity means unfitness for work for at least one year and the executive authority determines the relevant degree of disability of the employee or limited health capacity of those under the age of 18. Temporary loss of work capacity for a period of less than 6 months shall not be taken as ground for termination of the employment contract. Employees who temporarily lose their ability to work, are paid a benefit at the expense of the employer for the first 14 days while retaining their workplace and position according to the rate and order established by the relevant executive authority; the remaining period is paid for at the expense of mandatory state social insurance contributions. Moreover, the opinion of the relevant executive authority shall be taken into account in relation to employees who partially lose their ability to work for a period not exceeding one year.

The Committee understands that employees are protected against dismissal for temporary absence from work due to sickness for 6 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 sanctions

The Committee notes that in its previous conclusions (Conclusions 2012 and 2016) it considered that the situation was in conformity with the Charter as regards remedies in case of unlawful dismissal. It further notes from the report that according to Article 195 of the Labour Code, when the employment contract is terminated unlawfully and there is a binding court decision (order) regarding the unlawfulness of such termination, the employer shall bear full financial liability for the pecuniary and moral damage of an employee. The Committee also notes that according to Article 196 (5) and Article 290 (3) of the Labour Code the pecuniary amount of the moral damage caused to an employee shall be determined by the court on the basis of the employee's application pursuant to the degree of said damage, the personality of the employer and employee, the actual arguments of the case and other objective factors for the adoption of a fair decision.

According to the report, in the period 2017-2019, 73 unlawfully dismissed employees were reinstated to their positions by the authority exercising state control over labour legislation – the State Labour Inspection Service under the Ministry of Labor and Social Protection of the Population of the Republic of Azerbaijan.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Azerbaijan is in conformity with Article 24 of the Charter.

