



November 2008

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2008 (ARMENIA)

Articles 1, 15, 18, 20 and 24
of the Revised Charter

Introduction

The function of the European Committee of Social Rights is to assess the conformity of national law and practice with the European Social Charter and the Revised Charter. In respect of national reports, it adopts “conclusions” and in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as statements of interpretation formulated by the Committee figure in the General Introduction to the Conclusions¹.

The Revised European Social Charter was ratified by Armenia on 21 January 2004. The time limit for submitting the 2nd report on the application of the Revised Charter to the Council of Europe was 31 October 2007 and Armenia submitted it on 25 April 2008.

This report was the first under the new system for the submission of reports adopted by the Committee of Ministers.² It concerned the accepted provisions of the following articles belonging to the first thematic group “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 of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- right of workers to the protection of claims in the event of insolvency of the employer (Article 25).

Armenia has accepted these articles with the exception of Articles 9, 10, 15§1 and 25.

The applicable reference periods were:

- 1 March 2004 – 31 December 2006 for Articles 1§1, 1§2, 1§3 and 20
- 1 January 2005 – 31 December 2006 for Articles 1§4, 15, 18 and 24.

The present chapter on Armenia concerns 12 situations and contains:

- 4 conclusions of conformity: 1§3, 1§4, 18§4 and 24;
- 1 conclusion of non-conformity: 15§2.

In respect of the 7 other situations concerning Articles 1§1, 1§2, 15§3, 18§1, 18§2, 18§3 and 20, the Committee needs further information. The Government is therefore invited to provide this information in the next report on the articles/provisions in question.

The next Armenian report deals with the accepted provisions of the following articles belonging to the second thematic group “Health, social security and social protection”:

¹ The conclusions as well as state reports can be consulted on the Council of Europe’s Internet site (www.coe.int/socialcharter).

² Decision adopted at the 963rd meeting of the Ministers’ Deputies on 3 May 2006.

- 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 the report was 31 October 2008.

Article 1 – The right to work

Paragraph 1 – Policy of full employment

The Committee takes note of the information provided in Armenia's report.

Employment situation

The Committee notes that, according to Eurostat, growth in Armenia accelerated during the reference period, from 10.5% in 2004 to 13.3% in 2006.

The employment rate continued its upward trend with a slight increase during the reference period, from 50% in 2004 to 50.3% in 2006. The rate was significantly higher among men than among women (61.6% and 39.5% respectively in 2005). These rates are well below the EU-15 average (65.3% for the population at large and 57.7% for women in 2005).

The unemployment rate decreased during the reference period, from 31.6% in 2004 to 28.1% in 2006. The female unemployment rate also declined, from 37.6% in 2004 to 34.9% in 2006. Among young people (15-24) the unemployment rate fell from 57.4% in 2004 to 55.9% in 2006. These unemployment rate are very high and are significantly above the EU-15 average (respectively 7.7%, 8.5% and 15.7% in 2006).

The Committee notes from another source¹ that the long-term unemployed as a proportion of all unemployed amounted to about 78% in 2005, compared with an EU-15 average of 42.1% in 2006. It notes that this rate is extremely high and asks what measures are taken to remedy the problem of long-term unemployment in Armenia.

According to the report, the number of persons with disabilities in employment has risen from 1 039 in 2005 to 1 928 in 2006. The Committee asks for information on the unemployment situation of persons with disabilities.

Employment policy

According to the report, the main objective of the Government's employment policy are to achieve full employment, and more specifically to:

- eliminate of all forms of discrimination in employment;
- adapt vocational guidance to the specific requirements of the labour market;
- guarantee social protection for the unemployed.

The Committee asks for information on changes in legislation during the reference period and on passive measures.

Priority is given to active measures and to the most vulnerable groups on the labour market – persons with disabilities, the long-term unemployed and refugees. The report describes various programmes to offer the unemployed training or retraining, encourage them to create small businesses or place them in subsidised jobs in the private or public sectors. The Committee requests the next report to comment the low employment rate among women.

It notes from the report that 952 persons took part in training in 2006 (1,205 in 2005), and 10,254 were given subsidised employment in the public sector (7,913 in 2005). It asks for information on the total number of persons benefiting from the various active measures and for the activation rate, that is the number of unemployed taking part in active measures as a percentage of the total number of jobseekers.

The Committee asks for details in the next report of total expenditure on employment policies as a percentage of GDP, specifying what proportions are devoted to active and passive measures.

¹ Website of the ILO: www.ilo.org

Conclusion

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

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

The Committee takes note of the information provided in Armenia's report.

1. Elimination of all forms of discrimination in employment

The Committee notes that under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of sex, race, ethnic origin, religion, disability, age, sexual orientation and political opinion (Conclusions 2006, Albania).

The legislation must also cover both direct and indirect discrimination (Conclusions XVIII-1, Austria). With regard to indirect discrimination, the Committee points out that Article E of the Revised Charter prohibits "all forms of indirect discrimination" and that "such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all" (Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §52).

As with other states that have accepted Article 15§2 of the Revised Charter, the Committee will examine Armenia's legislation banning discrimination based on disability under this provision. Similarly, for states such as Armenia that have accepted Article 20, the right to equal treatment and opportunities without discrimination based on sex is considered under this provision.

Under Article 14§1 of the Armenian Constitution, everyone is equal before the law. Discrimination on grounds of gender, race, skin colour, ethnic or social origin, genetic characteristics, language, religion, philosophy, political or other convictions, membership of a national minority, property status, disability, age or other factors of a personal or social nature is prohibited. Article 3§1.3 of the Labour Code provides for equality of parties to employment relationships irrespective of gender, race, nationality, language, origin, citizenship, social status, religion, marital and family status, age, philosophy and convictions, membership of a political party, trade union or public organisation and other factors unrelated to the employee's professional qualities.

The Committee notes that sexual orientation is not explicitly included in the grounds on which the legislation bans discrimination. It considers that this ground is covered by "other factors of a personal nature", in the case of the Constitution, and "other factors unrelated to the employee's professional qualities" in the case of the Labour Code. However, it asks the Government to confirm this interpretation, if appropriate with reference to court rulings. It also asks for information on any steps taken to avoid discrimination, particularly on this ground.

The Committee has concluded that the discriminatory acts and provisions prohibited by this provision may apply to all aspects of recruitment and employment conditions in general, including remuneration, training, promotion, transfer, dismissal and other forms of detriment (Conclusions XVI-1, Austria). It asks for information in the next report showing how the aforementioned legal provisions are applied and enforced for each of the forms of employment discrimination prohibited by Article 1§2. It also asks whether there is a national strategy for combating all forms of discrimination in employment.

The Committee asks how the bans on direct and indirect discrimination are enforced.

The Committee has concluded that exceptions to the ban on discrimination may be authorised for essential occupational requirements or to permit positive action

(Conclusions 2006, Bulgaria). Under Article 3§2 of the Labour Code, employment rights may be restricted, but only by law and if this is necessary for the protection of public security, public order, public health and morals, rights and interests of others, or persons' honour and good reputation. The Committee asks how this is applied and interpreted.

The Committee has also concluded that in order to make the prohibition of discrimination effective, domestic law must at least provide for:

- the power to set aside, rescind, abrogate or amend any provision contrary to the principle of equal treatment which appears in collective labour agreements, in employment contracts or in firms' own regulations (Conclusions XVI-1, Iceland). The Committee asks what the legislation stipulates in this regard and how it is enforced;
- protection against dismissal or other retaliatory action by the employer against an employee who has lodged a complaint or taken legal action (Conclusions XVI-1, Iceland). The Committee again asks what the legislation stipulates in this regard and how it is enforced;
- appropriate and effective remedies in the event of an allegation of discrimination; remedies available to victims of discrimination must be adequate, proportionate and dissuasive. Therefore the imposition of pre defined upper limits to compensation that may be awarded are not in conformity with Article 1§2 as in certain cases these may preclude damages from being awarded which are commensurate with the actual loss suffered and not sufficiently dissuasive (Conclusions 2006, Albania). Article 41 of the Administrative Violations Code provides for penalties of up to 100 times the minimum wage, and 200 times in the event of a further offence within twelve months, for employers in breach of the employment legislation. The Committee asks whether these penalties are paid to the state or represent compensation to the employees concerned. If they do not constitute compensation, it asks what damages are payable where discrimination is found and whether they are subject to an upper limit. It also asks what remedies are available for persons who think they have suffered discrimination.

In disputes relating to an allegation of discrimination in matters covered by the Charter, the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment. The Committee asks for a description in the next report of the situation regarding the burden of proof in disputes concerning allegations of discrimination.

The Committee considers that other means of combating discrimination in accordance with Article 1§2 of the Revised Charter include:

- recognising the right of trade unions to take action in cases of discrimination in employment, including action on behalf of individuals (Conclusions XVI-1, Iceland). The Committee asks whether trade unions have this right;
- granting groups with an interest in obtaining a ruling that the prohibition of discrimination has been violated the right to take collective action. The Committee asks whether such collective action is possible;
- setting up a specialised and independent body to promote equal treatment, particularly by providing discrimination victims with the support they need to take proceedings (Conclusions XVI-1, Iceland). The Committee asks whether such a specialised body exists.

The Committee recalls that States Parties may make foreign nationals' access to employment on their territory subject to possession of a work permit, they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G; restrictions on the rights guaranteed by the Charter are admitted only if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic

society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority (Conclusions 2006, Albania). The Committee asks whether foreign nationals have full access to employment, and in particular whether jobs in the public service are reserved for Armenian nationals and if so how such restrictions are justified.

Finally, the Committee has ruled that excluding persons from public functions, in the form of refusal to recruit or dismissal, because of their previous political activities, is prohibited when it is not “necessary”, within the meaning of Article G, because it does not apply solely to departments with responsibilities in the field of law and order and national security or to functions involving such responsibilities (Conclusions 2006, Lithuania). The Committee asks whether such exclusion is possible with regard to past or present political activities and if so in what way it can be deemed necessary, within the meaning of Article G.

2. Prohibition of forced or compulsory labour

The Committee considers that forced or compulsory labour in any form must be prohibited. Failure to apply in practice legislation that is incompatible with the Charter is not sufficient to bring the situation into line with the Charter (Conclusions XIII-3, Ireland). Forced labour is prohibited under Article 32 of the Constitution and Article 3§2 of the Labour Code. Under Article 3§2 of the Labour Code, employment rights may be restricted, but only by law and if this is necessary for the protection of public security, public order, public health and morals, the rights and interests of others, or persons' honour and good reputation. The Committee asks how these provisions are applied and interpreted, and what penalties may be imposed.

Prison work

The Committee recalls that Article 1§2 of the Revised Charter requires strict regulation of prison work, in terms of remuneration, working hours and so on, particularly when the prisoners work for private employers. Prisoners may only be employed by private companies with their consent and in conditions as similar as possible to those normally associated with a private employment relationship (Conclusions XVI-1, Germany).

Working conditions in prison are governed by the Prison Code, which specifies that as far as possible prisoners should be entitled to work or be allowed to seek it. Employment conditions are subject to normal labour law, except where specified by law. The pay must be no lower than the minimum wage. With their consent, prisoners may be asked to perform up to two hours' unpaid work on behalf of the prison on working days.

To complete this information, the Committee asks the Government to answer the questions on prison work in the General Introduction to Conclusions 2006, namely:

- Can a prisoner be required to work (irrespective of consent)
 - A. for a private undertaking/enterprise?
 - i) within the prison?
 - ii) outside the prison?
 - B. for a public/state undertaking?
 - i) within the prison?
 - ii) outside the prison?
- What types of work may a prisoner be obliged to perform?
- What are the conditions of employment and how are they determined?

3. Other aspects of the right to earn one's living in an occupation freely entered upon

The Committee recalls that several other practices may cause problems from the standpoint of Article 1§2:

Part-time work

There must be various legal safeguards attached to part-time work. The Committee needs to know whether there is a minimum working week and whether there are rules to avoid undeclared work in the context of overtime and ones requiring equal pay, in all its aspects, between part-time and full-time workers (Conclusions XVI-1, Austria). The Committee notes that the report fails to deal with this matter. It therefore asks for information in the next report on the legal safeguards attached to part-time work and how they are applied.

Requirement to accept the offer of a job or training

The Committee considers that in general the conditions to which the payment of unemployment benefits is subjected, including any obligations to take up offered employment, should be assessed under Article 12§1 of the Revised Charter (or Article 12§3 in the case of new developments). However, in certain cases and under certain circumstances the loss of unemployment benefits on grounds of refusal to accept offered employment could amount, indirectly, to a restriction on the freedom to work and as such the situation would be assessed under Article 1§2. (See General introduction to Conclusions 2008).

The Committee has ruled that the right to earn a living in an occupation freely entered upon means that for a reasonable initial period job seekers must be able to refuse job offers that do not correspond to their qualifications and experience without risking the loss of their unemployment benefits (Conclusions 2004, Cyprus). The Committee asks for information in the next report on this subject.

Privacy at work

The Committee asks for information to enable it to determine how far human freedom and dignity are protected by legislation and the courts against intrusions into personal or private life that may be associated with or result from the employment relationship (see observations on Article 1§2, General Introduction to Conclusions 2006, §§13-21).

Restrictions linked to the fight against terrorism

The Committee invites the Government to reply to its question in the General Introduction to Conclusions 2006 as to whether a legislation exist against terrorism and whether it precludes persons from taking up certain employment.

Conclusion

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

Paragraph 3 – Free placement services.

The Committee takes note of the information provided in Armenia's report.

The national employment agency, which is answerable to the ministry of labour and social affairs, is mainly responsible for providing information and implementing employment policies, but it also finds work for jobseekers and puts them in contact with employers. During the reference period, the agency had 51 local branches.

The Committee notes that services are provided to users free of charge.

According to the report the number of vacant posts notified to the public employment services rose during the reference period from 1,129 in 2005 to 1,167 in 2006. It also refers to a total of 1,429 other job vacancies recorded in the statistics. The Committee asks whether these are data from private employment agencies.

According to the report, the number of persons found work by the public employment services rose from 6,300 in 2005 to 7,000 in 2006, meaning that the placement rate increased from nearly 56% in 2005 to about 60% in 2006. A total of 7,915 persons received guidance from the national employment agency. The Committee asks how much time elapses on average between a person registering as unemployed and receiving an offer of an active measure.

It also asks what percentage of the market the public employment services cater for – in other words how many placements they make compared to total recruitments on the labour market.

According to the report, private agencies may offer placement services without the prior need for a licence. They are recorded on a register maintained by the justice ministry. The Committee asks whether their activities are subject to scrutiny by the ministry or whether they are required to submit an annual report.

The Committee notes that trade unions and employers' organisations are involved in the management of public employment services at both national and local levels.

Conclusion

The Committee concludes that the situation in Armenia is in conformity with Article 1§3 of the Revised Charter.

Paragraph 4 – Vocational guidance, training and rehabilitation

The Committee takes note of the information provided in Armenia's report.

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. States must provide these services, grant access to them to all those interested and ensure equality of treatment for nationals of other States Parties and for persons with disabilities.

Article 1§4 is completed 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, education and training), which contain more specific rights to vocational guidance and training. However, Armenia has not accepted these provisions and the Committee assesses the conformity of the situation under Article 1§4.

The Committee considers the following questions from the standpoint of Article 1§4:

- whether the labour market offers vocational guidance and training services for employed and unemployed persons and guidance and training aimed specifically at persons with disabilities;
- access: how many people make use of these services;
- the existence of legislation explicitly prohibiting discrimination on the ground of disability in the field of training.

Vocational guidance

Under Government Decree No. 1915N of 14 December 2006, a vocational guidance centre for young people was set up. It is administered by the Ministry of Labour and Social Affairs and employs qualified staff offering advice to pupils aged 14 to 16.

In the labour market, vocational guidance is provided free of charge by the national employment office through its 51 regional centres and through the vocational guidance centre for young people. Guidance services may also be provided by private commercial bodies.

The national employment office has 405 employees and the vocational guidance centre for young people has nine. In 2005, 6,503 people were given some form of vocational guidance. In 2006, this figure rose to 7,915.

According to the report, no separate account is kept of the budget allocated to vocational guidance. The Committee asks what expenditure is more particularly related to guidance.

The Committee asks what the situation is as regards guidance targeted more particularly at people with disabilities.

Continuing vocational training

Article 49 of the Labour Code sets out the arrangements for continuing training and Article 174 contains the provisions on special educational leave. Under Article 200, employees must continue to be paid their average daily wage when they attend training at their employer's request. Where employees follow a training course on their own initiative, payment conditions are governed by a collective agreement or a one-off agreement between the two parties.

On 29 December 2005, the Government adopted a strategy to establish a national continuing training policy. Continuing training is provided for employees and unemployed persons by teaching establishments or other non-educational public or private organisations. Training programmes are drawn up in accordance with labour market needs. All persons are treated equally.

During the reference period, the national employment office organised training relating to 51 occupations on 35 sites, eight of which were national public institutions. The number of unemployed people who were given vocational training fell from 1,205 in 2005 to 952 in 2006. The Committee asks why this figure decreased and how many employees attended training.

Where companies hold training courses, the Committee asks whether training costs are covered by the companies or the trainees themselves.

Guidance, education and training for persons with disabilities

During the reference period, regional and local employment offices held training courses for people with disabilities covering areas such as civil service activities and various specific occupations such as cooking, plumbing and computing.

The Committee asks for information in the next report on measures taken to provide persons with disabilities with guidance, education and vocational training in the labour market, in the framework of general schemes wherever possible or, where this is not possible, through specialised public or private bodies. It also asks how many people make use of these services.

According to the report, all the persons concerned are guaranteed equal treatment, including citizens of other States Parties, stateless persons and persons with disabilities.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Armenia is in conformity with Article 1§4 of the Revised Charter.

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 provided in Armenia's report.

According to the report, in 2005, there were 141,382 registered persons with disabilities, of whom 79,174 persons with disabilities were of working age (16-63 years of age). While noting that the number of employed disabled persons increased during the reference period from 1,039 persons in 2005 to 1,928 persons in 2006, the Committee still considers the employment rate of persons with disabilities very low.

Moreover, the Committee reiterates that it systematically asks to also be provided with up-to-date figures concerning the total number of persons with disabilities employed (on the open market and in sheltered employment), those benefiting from employment promotion measures and those seeking employment as well as of those who are unemployed. In the absence of these figures, it cannot be established whether the situation is in conformity with Article 15§2.

Definition of disability

The Committee reiterates that it wishes to know whether the WHO International Classification of Functioning, Disability and Health – ICF 2001 is included in the reference classifications of the Government Decree N780/2003 which defines the classifications used during the socio-medical expertise which determines the disability status.

Non-discrimination legislation

In its previous conclusion (Conclusions 2007), the Committee recalled that under Article 15§2, anti-discrimination legislation is required in order to create genuine equality of opportunities in the open labour market. It therefore asked whether explicit anti-discrimination legislation in the field of employment exists, its content and the forms of judicial and non-judicial redress it provides in cases of discrimination on the basis of disability, including pertinent case law. From the report it is not clear whether such a legislation exists and no information is provided with regard to remedies and case-law. The Committee therefore reiterates all its questions.

In addition, the Committee asks for clarifications concerning the practical application of Article 17 of the Law on Social Protection of Disabled Persons which prohibits administrations to refuse to hire or dismiss a disabled person, to promote or redeploy him/her to another workplace except in cases when a medical-social expertise concludes that the disabled person's health hinders the performance of occupational duties or threatens the health and occupational safety of other persons. Moreover, the Committee asks whether this legislation covers only the public sector.

Finally, in order to assess whether the right to non-discrimination in employment is effectively guaranteed for persons with disabilities, the Committee asks the next report to indicate how the reasonable accommodation obligation, which is stipulated by the Law on Social Protection of Disabled Persons, is implemented in practice, whether there is case law on the issue and whether it has prompted an increase in employment of persons with disabilities in the open labour market.

Measures to promote employment

The Committee refers to its previous conclusion (Conclusions 2007.) for a description of the vocational training and rehabilitation opportunities offered to disabled job seekers. In this regard, it notes that the number of disabled persons involved in vocational training

activities increased during the reference period from 66 persons in 2005 to 98 in 2006. The report further informs that in 2008 (outside the reference period) an Employment Rehabilitation Centre was established to help integrating persons with disabilities in the open labour market. The Committee asks the next report to provide information on the results in this regard of the new Centre. It also reiterates that it wishes to receive more details on other measures in place to promote the employment of persons with disabilities.

The Committee notes that, in 2006, 11 disabled persons were hired thanks to a programme providing partial financial compensation to employers hiring persons from uncompetitive groups in the labour market.

The Committee reiterates that to assess the conformity of the situation under Article 15§2, it has to know how many disabled persons benefit from the measures in place to enable their integration into the ordinary labour market as well as the general rate of progression of disabled persons from sheltered employment to the ordinary labour market.

Finally, the Committee asks again whether trade unions are active in sheltered employment facilities. It also asks for further details on the requirements set by legislation as regards the calculation of salary paid to persons working in sheltered employment where production is the main activity.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 15§2 of the Revised Charter on the ground that it has not been established that persons with disabilities are guaranteed effective protection against discrimination in employment.

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

The Committee takes note of the information provided in Armenia's report.

Anti-discrimination legislation and integrated approach

The Committee reiterates that the right of persons with disabilities to social integration provided for by Article 15§3 requires the removal of barriers to communication and mobility to give disabled persons access to road, rail, sea and air transport, public, social and private housing, and cultural activities and leisure, such as social and sporting activities. For this purpose, Article 15§3 requires the following to be established:

- anti-discrimination legislation covering both the public and private spheres in fields such as housing, transport, telecommunications, culture and leisure, as well as effective remedies for those who have been treated unlawfully;
- a coherent policy for the disabled, and positive action measures to achieve the aims of social integration and full and comprehensive participation by people with disabilities. These measures must be co-ordinated and based on clear legal foundations.

In its previous conclusion (Conclusions 2007), the Committee noted that the Act on the Social Protection of Disabled Persons amended in 2005 governed the rehabilitation of people with disabilities and questions of access. In the absence of any information on this legislation in this report, the Committee asks for the next report to provide information on the existence of any anti-discrimination legislation covering the spheres cited above, as well as its content and any judicial or non-judicial remedies that it provides for in the event of discrimination, along with a description of any relevant case-law.

In respect of social integration policy, the report states that as a result of Decree N747 of 10 October 2006, a Council made up of representatives of the authorities and NGOs has

been set up to look into questions relating to persons with disabilities. Its aim is to promote the integrated planning of the actions of these people in society and to create the conditions for equal treatment in all spheres of community life. Under Decree N98-N of 25 February 2008, the Council was reconstituted in the form of a National Commission on Persons with Disabilities.

Consultation

The Committee notes that there has been no change in the situation which it previously considered (Conclusions 2007, Armenia) to be in conformity.

Forms of financial aid to increase the autonomy of persons with disabilities

Under sections 21 and 25 of the State Benefits Act, a disability allowance is granted to persons who have been certified disabled by the competent authority following a social and medical assessment. Under Government Decision N2317-N of 29 December 2005, a person's disability is taken into account when evaluating the financial status of a family to determine whether it is entitled to poverty benefit. In such cases, disabilities are regarded as a factor of social vulnerability.

Measures to overcome obstacles

Technical aids

According to the report, Government decision N1780/2003, under which persons with disabilities were entitled to free prosthetic and orthopaedic appliances and other technical aids, was amended by Government decision N453-N of 14 April 2007. The latter sets out a new procedure for issuing prosthetics, orthopaedic apparatus and other technical aids. The Committee asks for the next report to provide information on how this decision is applied in practice and how these aids are granted.

The Committee refers to its statement of interpretation on Article 15§3 in the General Introduction to these conclusions.

It asks whether persons with disabilities are entitled to free technical aids or must contribute themselves to the cost. If an individual contribution is required, the Committee asks whether the state provides some financial contribution to the cost of obtaining technical aids. It also asks whether disabled persons are entitled to free support services, such as personal assistance or home help, when required, or have to meet some of the cost of such measures. The Committee finally asks whether mechanisms are in place to assess the barriers to communication and mobility faced by individual persons with disabilities and to identify the technical aids and support measures that may be required to assist them in overcoming these barriers.

Communication

Under the 2006-2015 Strategy for the social protection of the disabled, several television companies now broadcast programmes in sign language. "Speaking books" are also available for blind people, and books and newspapers are produced in Braille for people with poor eyesight. In the absence of any reply in the report, the Committee asks again if measures have been taken to promote access to the new information and telecommunication technologies.

Mobility and transport

One of the main aims of Government Decree N392-Ü of 16 February 2006 is to improve transport for the disabled by adapting street furniture and facilities in the underground as well as installing ramps and light and sound signals. The Committee asks for information in the next report on the practical implementation of this decree.

According to the report, special teams have been appointed to help people with disabilities at airports. The Committee asks what measures have been taken to improve access to other types of transport (rail, road and sea).

Housing

The report describes the legislation relating to housing policy in general (Decree N1473-Ü of 29 August 2002 and Decree N812 of 21 December 1998) and to housing policy more specifically aimed at people with disabilities (Decree N392-Ü of 16 February 2006). Decree N392-Ü includes a requirement to cater for disabled access when constructing private housing or public buildings, particularly through the installation of access ramps, lifts and light and sound signals. The Committee asks if financial assistance is provided for the conversion of existing housing.

Culture and leisure

Another of the main aims of Government Decree N392-Ü of 16 February 2006 is to improve disabled access to sports facilities. Furthermore, under the building standards introduced in 2006 to facilitate disabled access to public buildings, cultural and sports facilities (such as museums, theatres, cinemas and sports centres) are required to reserve special places for persons with disabilities.

Conclusion

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

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

Paragraph 1 – Applying existing regulations in a spirit of liberality

The Committee takes note of the information provided in Armenia's report.

Foreign population and migration flows

The Committee previously (Conclusions 2007) wished to be informed of trends observed in Armenia in migration flows from States Parties. In the absence of a reply, it reiterates its question.

Work permits

In reply to the Committee, the report specifies that there are three types of residence permit under the new law on foreign nationals of 25 December 2006: temporary, permanent and special. The temporary permit has a one year period of validity, renewable for one year provided that the application is submitted not later than one month before the expiry date of the initial permit. The permanent permit is valid for five years and is renewable for the same period, provided that the applicant can furnish proof of continuous residence for at least three years in Armenia. The special permit, issued only to foreign nationals of Armenian origin, is valid for ten years and renewable.

In reply to the Committee, the report points out that the authority responsible for examining work permit applications is the same as for residence permits, but does not specify which authority. The Committee reiterates its question.

Relevant statistics

The Committee previously (Conclusions 2007) requested statistics on applications for grant/renewal of residence permits lodged by nationals of States Parties and on the number of accepted applications or refusals.

In reply, the report emphasises that figure-supported data of this kind cannot be obtained as the legislation now stands. The Committee points out that if the next report does not contain such data, there will be nothing to show that the existing regulations are applied to these nationals in a spirit of liberality.

Conclusion

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

Paragraph 2 – Simplifying existing formalities and reducing dues and taxes

The Committee takes note of the information provided in Armenia's report.

It stresses that unless the next report answers the questions put by the Committee, there will be nothing to show that the situation in Armenia is in conformity with Article 18§2 of the Revised Charter.

Administrative formalities

The Committee asked previously (Conclusions 2007):

- whether, for foreign nationals not already in Armenia, it was possible to apply for a residence permit and complete the relevant formalities in their country of origin;
- what was the average time taken to obtain a residence permit after lodging a formal application with the competent authority.

In the absence of a reply, it reiterates its questions.

The Committee also asks that the next report provide further information on the conditions for having a work permit issued and renewed.

Chancing dues and other charges

According to the report, applications for residence permits are subject to the payment of fees amounting, respectively, to 105,000 Armenian drams (AMD, about 281 €) for a temporary permit, 140,000 AMD (almost 321 €) for a permanent permit, and 150,000 AMD (about 344 €) for a special permit. Renewal of the permit also carries a fee, the amount of which is unchanged for a temporary permit, whereas renewals cost 200,000 AMD (almost 46 €) for the permanent permit and 12,000 AMD (about 28 €) for the special permit. The Committee finds these figures high. It recalls having considered earlier (Conclusions XV-2, Austria) that it was unjustified to charge even modest fees at the application stage, and invites the Government to explain the reasons for maintaining the practice. The Committee also wishes to know whether the fees can be waived or reduced in certain circumstances. Meanwhile it reserves its position on this point.

Conclusion

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

Paragraph 3 – Liberalising regulations

The Committee takes note of the information provided in Armenia's report.

It stresses that unless the next report answers the questions put by the Committee, there will be nothing to show that the situation in Armenia is in conformity with Article 18§3 of the Revised Charter.

Access to national labour market

The Committee notes that employment of foreign nationals is particularly contingent on the existence of a demand for manpower in a specific sector. It asks that the next report provide further information on the authority responsible to acknowledge the existence of a demand for manpower in a specific sector. The Committee also wishes to know whether certain jobs are closed to foreign nationals and on what grounds.

Exercise of employment

The report confirms that the regulations in the matter do not, as things stand, subject the employment of foreign workers to separate rules from those governing Armenian nationals. The Committee wishes to be kept informed of the development of the relevant legislation.

Consequences of loss of employment

In reply to the Committee, the report states that, in case of termination of the employer's activities, any foreign worker may enter into a new employment contract with another employer within the term of validity of his work permit, provided that it is still valid for three months and the new employer has received permission from the authority responsible for examining the application for renewal of the work permit.

According to the report, renewal of the residence permit is closely linked with the validity of the work permit. Consequently, when the work permit expires no foreign worker having lost a job may remain in the country. It recalls that where such is the case Article 18 of the Revised Charter requires extension of the validity of the residence permit to provide sufficient time for a job to be found (Conclusions XVII-2, Finland). Accordingly, the Committee enquires whether a change of legislation is contemplated to enable foreign workers who have lost their jobs to remain in the country in order to seek new

employment, while making an application for renewal of the work permit and residence permit.

Conclusion

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

Paragraph 4 – Right to leave the country

The Committee takes note of the information provided in Armenia's report.

According to the report, all persons with the right to reside in Armenia are entitled to leave, and return to, the country.

In reply to the Committee, the report states that under current legislation, all Armenian citizens over the age of 16 must possess a passport. Passports are valid for ten years and may be renewed for five years. A fee of 1,000 Armenian drams (AMD) (about € 2) is charged for all passports issued.

No reference is made in the report to particular circumstances in which a passport application can be rejected. The Committee repeats its request. It also asks for information on any changes in the legislation in this field.

In reply to the Committee, the report describes cases in which the courts can impose restrictions on the right of nationals to leave the country. For instance, where preventive measures are imposed on a suspect or the accused in a criminal case, the person concerned may not leave the country. Measures of this type must be ordered by a public prosecutor, a court or an investigating judge and must be deemed necessary for the purposes of collecting evidence or to prevent the accused from influencing witnesses in any way or from committing an offence or crime. These matters are considered in the light of aspects such as the accused's age and physical condition. Injunctions prohibiting defendants from leaving the country are served on the persons concerned in writing and will also include other constraints such as the requirement to seek authorisation if they wish to change their place of residence.

Conclusion

The Committee concludes that the situation is in conformity with Article 18§4 of the Revised Charter.

Article 20 – Right to equal opportunities and treatment in employment and occupation without sex discrimination

The Committee takes note of the information provided in Armenia's report.

Equal Rights

The Constitution *inter alia*, prohibits discrimination on grounds of gender. The Labour Code further provides that gender discrimination in employment is prohibited.

The Committee asks whether there is express legislation governing equal pay for work of equal value. The Committee recalls that Article 20 requires that appropriate methods of pay comparison must be devised enabling employees to compare the respective values of different jobs, and that pay comparisons to determine work of equal value beyond a single employer must be possible. It therefore asks the next report to provide more information on the above-mentioned methodology, and whether it covers the question of pay comparison.

The report does not indicate whether there is legislation or regulations in Armenia which aim at encouraging social partners to include the issue of equal pay in collective agreements. The Committee recalls in this respect that the promotion of equal treatment of the sexes and equal opportunities for women and men by means of collective agreements is a prerequisite for the effectiveness of the rights in Article 20. It therefore asks for more information in the next report on how equal treatment for women and men is being promoted by means of collective agreements, in particular as regards equal pay.

Article 20 guarantees equal treatment with regard to social security. Equal treatment with regard to social security implies the absence of any discrimination on grounds of sex, particularly as far as the scope of schemes, conditions of access to schemes, the calculation of benefits and the length of entitlement to benefits are concerned. The Committee asks whether there is equal treatment in matters relating to social security.

The Civil Procedure Code provides that an interested persons may apply to the courts in order to ensure the protection of their rights, further persons who have legal competence may apply to the courts for the protection of the rights of other interested persons. The Committee asks whether this means that for example trade unions may take cases on behalf of employees who believe that they are victims of gender discrimination, it also asks whether the express consent of the alleged victim is required. The Committee notes that in addition claims of discrimination against state bodies may be lodged with the Human Rights Defender, the Committee wishes to receive further information on this.

If the Labour Inspectorate finds, in the course of its duties that a contract of employment is discriminatory on grounds of sex, the contract will be "deemed illegal". The Committee asks what are the consequences of this.

In disputes relating to an allegation of discrimination in matters covered by the Charter, the burden of proof should not rest entirely on the complainant but should be the subject of an appropriate adjustment. In the present case, this consists of ensuring that, where a person believes he or she has suffered as the result of non-compliance with the principle of equal treatment and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of equal treatment. The Committee seeks confirmation that this is the case in Armenia.

The report refers to reinstatement and financial compensation for victims of discrimination. However the Committee wishes to receive further information on these remedies; in particular it recalls that it has held that under Article 20 anyone who suffers discrimination

on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender.

Adequate compensation means:

- reinstatement or retention of employment and compensation for any pecuniary damage suffered in the event of unlawful or unfair dismissal;
- compensation proportionate to the damage suffered, i.e. to cover pecuniary and non-pecuniary damage, where the dismissed employee does not wish to be reinstated or continuation of the employment relationship is impossible;
- in all other cases, bringing the discrimination to an end and awarding compensation proportionate to the pecuniary and non-pecuniary damage suffered.

In accordance with these principles, the Committee considers that compensation should not be subject to an upper limit as this prevents it from being proportionate to the damage suffered and hence adequate

The report proves no information as to whether there are any occupations reserved exclusively for one sex. The Committee repeats its request for this information.

Specific protection measures

The Committee notes the information provided in the report on special measures for pregnant women, women who are breastfeeding and women with young children. It will examine these during its next examination of Article 27 and Article 8 of the Revised Charter.

Position of women in employment and training

The Committee notes the high rate of women in employment

The Committee wishes to receive information any segregation in the labour market and on any pay gap between women and men.

Measures to promote equal opportunities

The Committee notes that the report provides little information on measures taken to eradicate discrimination and ensure equal opportunities. Under Article 20 states must take practical steps to promote equal opportunities. Appropriate measures include:

- adopting and implementing national equal opportunities action plans;
- requiring individual undertakings to draw up enterprise or company plans to secure greater equality between women and men;
- encouraging employers and workers to deal with equality issues in collective agreements;
- setting more store by equality between women and men in national action plans for employment.

As regards the issue of equal pay appropriate classification methods must be devised in order to compare the respective values of different jobs and carry out objective job appraisals in the various sectors of the economy, including those with a predominantly female labour force. Domestic law must make provision for comparisons of pay and jobs to extend outside the company directly concerned where this is necessary for an appropriate comparison.

States must promote positive measures to narrow the pay gap as much as possible, including:

- measures to improve the quality and coverage of wage statistics;

- steps to ensure that more attention is paid to equal pay for women and men in national action plans for employment.

The Committee asks the next report to provide information on all measures taken to promote equal opportunities, including measures taken to ensure equal pay for work of equal value.

Conclusion

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

Article 24 – Right to protection in cases of termination of employment

The Committee takes note of the information provided in Armenia's report.

Scope

The Committee refers to its previous conclusion on Article 24 (Conclusions 2007, Armenia) where it has found the scope of the provisions dealing with the protection against dismissal to be in conformity with the Revised Charter.

Obligation to provide a valid reason for termination of employment

The Committee refers to its assessment of the valid reasons for termination of employment as stipulated in Section 113 of the Armenian Labour Code. It asked for further information on how Article 113 of the Labour Code is interpreted by the courts and asked in particular for further information on the interpretation of economic reasons (Section 113§3) and on the state of health (Section 120) as grounds for termination of an employment contract.

As regards termination of employment because of changes in the volume of production or its structure due to production needs, i.e. on economic grounds, the report specifies that in this case the employer is obliged to inform the employee of his intention to terminate the employment contract two months prior to the dismissal. The employee is further entitled to a severance payment in the amount of his/her average monthly salary.

In reply to the Committee, the report further clarifies that deterioration of the employee's health status can be a valid ground for the termination of the employment contract if pursuant to a corresponding medical exam, the deterioration is permanent and renders it impossible for the employee to continue his work.

The Committee reiterates its request for a summary of significant case law showing how the valid grounds for termination of employment as stipulated in Section 113 of the Labour Code are interpreted by the competent courts in practice. It asks in particular whether courts are empowered to review the facts underlying a dismissal that is based on financial or production-related grounds invoked by the employer.

The Committee further observed in its previous conclusion that an employee may be dismissed on the grounds he/she has reached the retirement age. However, the Committee also observed that the Labour Code prohibits the dismissal of an employee on grounds of age, except in cases where the employee is already entitled to a full old age pension or is in receipt of it. The report specifies in this context that the pension age is fixed by the Law on Pensions which, stipulates in its Article 12 that a person having reached the age of 63 is entitled to a pension. According to Article 31 of the same Law a so-called "social pension" is awarded to a person at the age of 65 who does not fulfil the conditions for an entitlement to the contributory pension scheme.

The Committee asks whether in addition to the above rules on pensionable age, Armenian law provides for termination of the employment relationship on the grounds that an employee has reached a certain retirement age (mandatory retirement ages set by statute, contract or in a collective agreement). It further asks what is the consequence on the employment relationship once an employee has reached such age. The Committee asks in particular whether the law prescribes or provides for termination of the employment relationship on the ground that an employee has reached the retirement age and whether there are specific procedures to be followed or conditions to be fulfilled once an employee reaches the retirement age or whether employees who reach this age are automatically dismissed.

The Committee holds that dismissal on the ground of age will not constitute a valid reason for termination of employment unless a termination is, within the context of national law, objectively and reasonably justified by a legitimate aim such as legitimate employment policy, labour market objectives or the operational requirements of the undertaking, establishment or service and provided that the means of achieving that aim are appropriate and necessary. It wishes the next report to provide information on whether and how the legal framework complies with this approach.

Prohibited dismissals

The Committee examined the situation as regards dismissals prohibited under Armenian law in its Conclusions 2007 and found the situation to be in conformity with the Revised Charter.

Remedies and sanctions

The Committee previously noted that an employee who considers that he has been unlawfully dismissed may appeal to the courts and is entitled to compensation. It further appears from the report that the courts may order reinstatement of an employee unlawfully dismissed and the Committee asks the next report to confirm that this is actually the case. The Committee further asks whether compensation awarded to an employee in the event of an unfair dismissal is subject to a ceiling.

In its Conclusions 2007, the Committee also noted that in proceedings regarding unfair dismissals, the burden of proof lies with the plaintiff. The report specifies that each party has to provide the facts and evidence supporting its position. The Committee holds that in proceedings regarding unfair dismissals, the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment between employee and employer. It asks the next report to clarify whether Armenian law provides for such an adjustment.

Conclusion

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