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European Social Charter (REVISED)

European Committee of Social Rights

Conclusions 2023

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, the Committee, the national reports as well as the Statement of interpretation on Article 17 adopted by the Committee during the supervision cycle can be found in the General Introduction to all Conclusions.

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 requested from the States Parties concerned the following provisions of the thematic group IV " Children, families and migrants ":

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

The reference period was from 1 January 2018 to 31 December 2021.

The following chapter concerns Azerbaijan, which ratified the Revised European Social Charter on 2 September 2004. The deadline for submitting the 16th report was 31 December 2022 and Azerbaijan submitted it on 19 April 2023.

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, 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 the previous conclusions of non-conformity, deferral and conformity pending receipt of information (Conclusions 2019).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If, in its previous conclusion (Conclusions 2019), the Committee concluded that the situation was in conformity, there was no examination in 2023.

Azerbaijan has not accepted the following provisions from the above-mentioned group: 17§§1-2, 19§§1-2, 31§§1-3.

The conclusions relating to Azerbaijan concern 19 situations and are as follows:

- 3 conclusions of conformity: Articles 7§2, 7§8, 8§3.
- 16 conclusions of non-conformity: Articles 7§1, 7§§3-7, 7§§9-10, 8§§1-2, 8§§4-5, 16, 27§§1-3.

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

Article 7 - Right of children and young persons to protection

Paragraph 1 - Prohibition of employment under the age of 15

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

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 7§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Children, families and migrants”).

The Committee has observed that many states’ legislation is in conformity with the Charter regarding the minimum age for employment. Nevertheless, the Committee is concerned about the situation in practice. There are data that suggest that in many countries there are significant numbers of children working illegally. However, there are few official data on the extent of the problem. Therefore, as targeted questions to the States, the Committee asked for information on the measures taken by the authorities (e.g. Labour Inspectorates and social services) to detect child labour, including children working in the informal economy. It also asked for information on the number of children actually working, as well as on measures taken to identify and monitor sectors where it is strongly suspected that children are working illegally.

In its previous conclusion (Conclusions 2019) the Committee considered that the situation was not in conformity on two grounds:

- work done at home by children under the age of 15 is not monitored in practice;
- it has not been established that the prohibition of employment of children under the age of 15 is enforced in practice, in particular in the informal economy and agriculture.

As regards the first ground of non-conformity, the Committee has previously observed that children’s home-based work was not monitored. The Committee recalled that States Parties are required to monitor the conditions under which work done at home by children is performed in practice (Conclusions 2006, General Introduction on Article 7§1) and considered that the situation in Azerbaijan was not in conformity with the Charter in this respect. It now notes from the report that children’s home-based work is still not monitored. The Committee therefore considers that in the absence of any evidence that child labour is effectively monitored and prevented in practice in the home-based environment, the situation is not in conformity with Article 7§1 of the Charter.

As regards the second ground of non-conformity, the Committee notes from the CEACR Observation (2021) regarding the Minimum Age Convention (No. 138) that a significant number of children are involved in informal work in the agricultural sectors of tea, tobacco and cotton, including in hazardous situations, as well as children who work on their own account. The CEARC took note of the Government’s indication that various awareness-raising events on preventing child labour were conducted by the State Labour Inspectorate for employers, police officers, and students in 2020. The Government also indicated that in 2020, the police identified 21 cases of work performed by children without an employment agreement. In addition, three cases of the use of child labour were identified by the State Labour Inspectorate. In this connection, administrative fines of 3,000 Azerbaijani manats (AZN) were imposed on the employers for employing children under 15 years of age, in accordance with section 192.8 of the Code of Administrative Offences.

The CEACR observed that while a significant number of children are involved in informal work in the agricultural sectors of tea, tobacco and cotton, including in hazardous situations, only few cases of the use of child labour were identified by the state labour inspectorate and the police.

The Committee notes from the report that, in 2019-2021, the State Labour Inspection Service imposed administrative fines of AZN 16 500 on employers in a total of 13 cases after reviewing the applications filed by state bodies and citizens regarding employing individuals under the age of 15 years.

According to the report, the prevention of child labour, exposure of teenagers to street life and involvement in and incitement to vagrancy and begging are the priority directions of police and public security agencies' activity, and are carried out in accordance with orders, guidelines and instructions issued by the Ministry of Internal Affairs, which are in line with the requirements and provisions of the national legislation and international standards in the field of children's rights.

The report further states that the Draft Law of the Republic of Azerbaijan on Amendments to the Labour Code of the Republic of Azerbaijan was prepared and discussed in the Tripartite Commission on Social and Economic Issues to ensure the implementation of the works stipulated in the Action Plan. The draft law also aims to prevent the informal use of child labour by formalising employment relationships. The draft was adopted as Law of the Republic of Azerbaijan No. 286-VIQD of 2 April 2021.

Between 1 April and 21 October 2021, the State Committee for Family, Women and Children Affairs held workshops on the Prevention of Child Labour Exploitation in order to organise interagency work to detect and prevent child labour exploitation. These workshops were attended by police inspectors working with minors, entrepreneurs engaged in small- and medium-sized businesses, commanders of patrol services of district police departments, executive committees working with minors and the protection of their rights and the State Labour Inspection Service employees. Participants were awarded certificates at the end of the workshops.

The Committee considers that, despite the efforts made, there is not sufficient evidence that children under the age of 15 are not involved in activities, in particular in agriculture and the informal economy, that go beyond what can be considered as light work under the Charter. Therefore, the situation is not in conformity with the Charter on the ground that the prohibition on employing children under the age of 15 is not enforced effectively.

The Committee has previously observed (Conclusions 2019) that the provisions of the Labour Code allowing light work by children who have reached the age of 14 were repealed. It further noted that the labour law was being amended to identify types of light work activities permitted for children between 15 and 16 years of age and asked for the next report to provide information on any new developments in this regard. The Committee has also noted previously from another source (Direct Request (CEACR) – adopted in 2017, published at the 107th ILC session (2018), Minimum Age Convention, 1973 (No. 138), Azerbaijan) that “there appear to be no more provisions in the national legislation to authorise light work for children below the age of 16 years, under certain circumstances”. The Committee called for the next report to confirm its understanding that children under the age of 15 are not allowed to perform any work, not even light work. The Committee notes that the report does not provide this information. Therefore, the situation is not in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 7§1 of the Charter on the grounds that:

- work done at home by children under the age of 15 is not monitored in practice;
- the prohibition of employment of children under the age of 15 is not effectively enforced in practice, in particular in the informal economy and agriculture.

Due to the failure to provide the information listed below the Committee concludes that the situation in Azerbaijan is not conformity with Article 7§1 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter. The information is missing on the following:

Confirmation that children under the age of 15 are not allowed to perform any work, including light work.

Article 7 - Right of children and young persons to protection

Paragraph 2 - Prohibition of employment under the age of 18 for dangerous or unhealthy activities

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

The Committee recalls that no targeted questions were asked for Article 7§2 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

In its previous conclusion (Conclusions 2019) the Committee noted that the list of dangerous or unhealthy types of work which are prohibited for young workers under 18 was approved by the Resolution No. 58 of 24 March 2000 of the Cabinet of the Ministers.

The Committee notes from the report that the Resolution of the Cabinet of Ministers of March 24, 2000 established the list of production sites and professions (positions) with harmful and labour-intensive working conditions, as well as underground operations, where the employment of workers under the age of 18 is prohibited. The Committee takes note of the list of such occupations, which cover, among others, mining and underground facilities, metallurgy, energy production and transmission, oil and gas production, production of drugs, medical and bacteriological preparations, machinery and metal procession, shipbuilding, electrical industry etc.

According to the report, with the establishment of the Labour Contract Notifications subsystem, it is now possible to identify workplaces where 15-18-year old children are employed and exercise state control over compliance with labour legislation in these workplaces. For this purpose, inquiries are sent to those business entities to ensure that appropriate working conditions for children are established.

According to Section 9 of Article 192 of the Administrative Offences Code, employers are fined between 3,000 and 4,000 manats for engaging children in activities that endanger their life, health or morals, and legal entities are fined between 10,000 and 13,000 manats.

In 2019-2021, the State Labour Inspection Service detected 1 case of violating labour legislation by engaging children in activities that could endanger their life, health or morals and employers were fined by 3,000 manats.

Conclusion

The Committee concludes that the situation in Azerbaijan is in conformity with Article 7§2 of the Charter.

Article 7 - Right of children and young persons to protection

Paragraph 3 - Prohibition of employment of children subject to compulsory education

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

The Committee recalls that no targeted questions were asked for Article 7§3 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

In its previous conclusion (Conclusions 2019) the Committee found that the situation was not in conformity with the Charter on the grounds that it has not been established that the prohibition of employment of children subject to compulsory education is guaranteed in practice.

According to Article 250 of the Labour Code, it is prohibited to employ individuals under the age of 18, who fall under the Law of compulsory general secondary education, to carry out work that may deprive them of the opportunity of receiving compulsory education in its entirety.

In 2021, in collaboration with other NGOs, the NGO Coalition Against Trafficking carried out 44 monitoring exercises in 31 agricultural businesses, 4 industrial companies and 8 road construction entities spread across 18 districts and cities. This was with the goal of determining criminal facts involving forced labour and, in particular, cases of child exploitation. No victims of forced labour were detected.

According to Article 19.14 of the Law on Education, general secondary education is mandatory in the Republic of Azerbaijan. Students who have completed grade 9 (15 years old) can work if they do not continue their education. According to the report, there is no practice of schoolchildren working during the summer holidays.

The Committee refers to its conclusion under Article 7§1 where it noted that although, according to the CEACR, a significant number of children are involved in informal work in the agricultural sectors of tea, tobacco, and cotton, including in hazardous situations, only a few cases of the use of child labour were identified by the State Labour Inspectorate and the police.

The Committee considers that even if, according to the report, the legislation prohibits the employment of children who are in compulsory education, there is no information as regards whether light work is also included in the prohibition. Moreover, to the extent that the Labour Inspectorate is not sufficiently effective in revealing cases of child labour, the situation is still not in conformity with the Charter on the ground that the prohibition of the employment of children still subject to compulsory education is not guaranteed in practice.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 7§3 of the Charter on the ground that the prohibition of the employment of children still subject to compulsory education is not guaranteed in practice.

Article 7 - Right of children and young persons to protection

Paragraph 4 - Working time

The Committee takes note of the information contained in the report submitted by Azerbaijan. It also takes note of observations submitted by the European Trade Union Confederation (ETUC).

The Committee recalls that no questions were asked for Article 7§4 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

The Committee recalls that Article 7§4 requires that the working hours of persons under 18 years of age are limited in accordance with the needs of their development, and particularly with their need for vocational training.

The Committee deferred its previous conclusion pending receipt of the information requested on supervision labour inspection and monitoring activities (Conclusions 2019).

In its previous conclusion, the Committee requested information on the number of inspections conducted by the State Labour Inspectorate Service, the number of violations detected and the sanctions imposed in practice for violation of the legislation concerning the reduced working time for young persons who were not subject to compulsory education.

The report states that during 2019-2021, the State Labour Inspection did not identify violations and did not impose administrative fines for non-compliance with the normal work and rest schedule in violation of labour legislation. The Committee also notes an information issued by the President's Office that in November 2021 the President approved a decree on amendments to 'Regulation on the State Labor Inspection Service under the Ministry of Labor and Social Protection of Population of the Republic of Azerbaijan expanding the competencies of labour inspectorate.

Furthermore, the Committee refers to its conclusion under Article 7§1, in which it noted from the report that children's home-based work is not monitored and in which it considered that in the absence of any evidence that child labour is effectively monitored and prevented in practice in the home-based environment, the situation is not in conformity with the Charter.

In the light of the above, the Committee concludes that it cannot be considered that the supervision and monitoring of working time of young workers is effective. The situation is, accordingly, not in conformity with Article 7§4 of the Charter.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 7§4 of the Charter on the ground that supervision and monitoring of working time of young workers is not effective.

Article 7 - Right of children and young persons to protection

Paragraph 5 - Fair pay

The Committee takes note of the information contained in the report submitted by Azerbaijan. It also takes note of observations submitted by the European Trade Union Confederation (ETUC).

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 7§5 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Children, families and migrants”).

In its previous conclusion, the Committee considered that the situation in Azerbaijan was not in conformity with Article 7§5 of the Charter on the ground that the young workers wages were not fair (Conclusions 2019). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions.

Fair remuneration for young workers and apprentices

In the previous conclusion, the Committee noted that although attempts were being made to increase monthly minimum wage, the adult reference wage was too low and did not comply with Article 4§1 of the Charter.

The Committee recalls that, in application of Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentices appropriate allowances. This right may result from statutory law, collective agreements or other means. The “fair” or “appropriate” character of the wage is assessed by comparing young workers’ remuneration with the starting wage or minimum wage paid to adults (aged eighteen or above). In accordance with the methodology adopted under Article 4§1, wages taken into consideration are those after deduction of taxes and social security contributions. The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker’s wage which respects these percentage differentials is not considered fair (Conclusions XII-2 (1992), Malta). In the present case, as the young workers’ wage is at the same level as the adult workers’ wage, the Committee examines whether the net minimum wage of young workers represents 80% of the minimum threshold required for adult workers (60% of the net average wage). This is at least a 48% of the net average monthly wage.

The report states that according to part 1 of Article 155 of the Labour Code, an employee has the right to receive remuneration that is not less than the state-established minimum wage for the work performed, without any discrimination. It further states that, as a result of a gradual increase in the minimum wage in recent years, there has been significant progress in the dynamics of the ratio of the minimum monthly wage to average wage in the direction of adapting to international standards. In 2019-2022, the ratio of minimum wage to average monthly wage increased from 30.7% to 35.7%.

The Committee observes that it had concluded in its conclusions under Article 4§1 (Conclusions 2022) that the net minimum amounted to 38% of the net average wage and as such did not ensure a decent standard of living within the meaning of Article 4§1 of the Charter. Accordingly, the young worker’s wage is likewise not considered fair.

Fair remuneration in atypical jobs

For the present monitoring cycle, the Committee requested updated information on net minimum wages and allowances payable to persons under 18 years of age. In particular, it asked for information on measures taken to ensure that fair remuneration is guaranteed to young workers:

- i) in atypical jobs (part-time work, temporary work, fixed-term work, casual and seasonal work, self-employed people, independent workers and homeworkers.)
- ii) in the gig or platform economy and
- iii) having zero hours contracts.

The report does not provide any information in this regard.

Enforcement

In the context of the present monitoring cycle the Committee also requested information on measures taken to ensure that this right of young persons to fair pay is effectively enforced (e.g., through Labour Inspectorates and similar enforcement authorities, trade unions).

The report does not reply to this question.

Due to the failure to provide the information the Committee concludes that the situation in Azerbaijan is not conformity with Article 7§5 of the Charter as regards the enforcement of this right and the fair remuneration in atypical jobs. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter.

Missing information:

- on enforcement of the right of young persons to fair pay in practice.
- on measures taken to ensure that fair remuneration is guaranteed to young workers in atypical jobs.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 7§5 of the Charter on the ground that the young workers' wages are not fair.

Due to the failure to provide the information listed below the Committee concludes that the situation in Azerbaijan is not conformity with Article 7§5 of the Charter as regards the enforcement of this right and the fair remuneration in atypical jobs. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter.

List of questions:

- enforcement of the right of young persons to fair pay in practice.
- measures taken to ensure that fair remuneration is guaranteed to young workers in atypical jobs.

Article 7 - Right of children and young persons to protection

Paragraph 6 - Inclusion of time spent on vocational training in the normal working time

The Committee takes note of the information contained in the report submitted by Azerbaijan. It also takes note of observations submitted by the European Trade Union Confederation (ETUC).

The Committee recalls that no questions were asked for Article 7§6 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

The Committee recalls that Article 7§6 requires that time spent on vocational training by young people during normal working hours must be treated as part of the working day (Conclusions XV-2 (2001), Netherlands). Such training must, in principle, be done with the employer’s consent and be related to the young person’s work. Training time must thus be remunerated as normal working time, and there must be no obligation to make up for the time spent in training, which would effectively increase the total number of hours worked (Conclusions V (1977), Statement of Interpretation on Article 7§6). This right also applies to training followed by young people with the consent of the employer and which is related to the work carried out, but which is not necessarily financed by the latter.

The Committee deferred its previous conclusion pending receipt of the information requested on the monitoring activity and findings (violations detected and sanctions applied) of the Labour Inspectorate in relation to the inclusion of time spent on vocational training in the normal working time (Conclusions 2019).

The report states that as of September 2004, pursuant to an amended part 3 of Article 247 of the Labour Code of the Republic of Azerbaijan time spent by employees under the age of 18 on vocational training during a working day is considered working time with the consent of the employer. There were no complaints about this stipulation, and the State Labour Inspection Service under the Ministry found no violations of the law.

The Committee refers to its conclusions under Articles 7§1 and 7§4, in which it considered, in the absence of any evidence that young workers’ labour is effectively monitored, that the situation is not in conformity with the Charter.

In the light of the above, the Committee concludes that it cannot be considered that the supervision and monitoring of working time of young workers is effective. The situation is, accordingly, not in conformity with Article 7§6 of the Charter.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 7§6 of the Charter on the ground that the inclusion of time spent by young workers on vocational training in the normal working time is not effectively monitored in practice.

Article 7 - Right of children and young persons to protection

Paragraph 7 - Paid annual holidays

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

The Committee recalls that no targeted questions were asked for Article 7§7 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

In its previous conclusion, the Committee concluded that the situation in Azerbaijan was not in conformity with Article 7§7 of the Charter on the ground that young workers had the option of waiving their right to paid annual holidays for financial compensation (Conclusions 2019).

The report notes that, while the legal provisions in question remained in place, work is underway on preparing the necessary legal amendments that would abolish the option that young workers under 18 years of age have, of waiving their right to paid annual holidays in return for financial compensation. The Committee therefore reiterates its previous conclusion of non-conformity.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 7§7 of the Charter on the ground that young workers under 18 years of age have the option of waiving their right to paid annual holidays in return for financial compensation.

Article 7 - Right of children and young persons to protection

Paragraph 8 - Prohibition of night work

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

The Committee recalls that no targeted questions were asked for Article 7§8 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

In its previous conclusion, the Committee concluded that the situation in Azerbaijan was in conformity with Article 7§8 of the Charter (Conclusions 2019). Therefore, the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Azerbaijan is in conformity with Article 7§8 of the Charter.

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

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

The Committee recalls that no targeted questions were asked for Article 7§9 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

In its previous conclusion, the Committee concluded that the situation in Azerbaijan was in conformity with Article 7§9 of the Charter, pending receipt of the information requested (Conclusions 2019).

The Committee asked for information on the nature and number of violations detected by monitoring bodies, as well as the sanctions imposed on employers in practice for breach of the rules concerning the medical examination of young workers under 18 years of age. The report notes that the inspections of business entities were suspended during the reference period, pursuant to the Law No. 1410 IVQ On Suspension of Inspections in the Field of Entrepreneurship of 20 October 2015. Therefore, the Committee concludes that the situation in Azerbaijan is not in conformity with Article 7§9 of the Charter on the ground that the effective implementation of the law is not guaranteed in practice.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 7§9 of the Charter on the ground that the effective implementation of the law is not guaranteed in practice.

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

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

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 7§10 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Children, families and migrants”).

In its previous conclusion, the Committee concluded that the situation in Azerbaijan was not in conformity with Article 7§10 of the Charter on the ground that not all forms of corporal punishment were prohibited in all settings (Conclusions 2019). The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of non-conformity and the targeted questions.

Protection against sexual exploitation

The Committee has previously asked for confirmation that children engaged in prostitution could not be prosecuted. It also requested information on the functioning of a mechanism for monitoring the sexual exploitation of children, as well as measures to ensure that child victims of sexual exploitation were not punished (Conclusions 2019).

In the targeted questions, the Committee asked for updated information on measures taken to strengthen the protection of children, including migrant, refugee, and displaced children, from sexual exploitation and abuse (in particular, in response to the risks posed by the Covid-19 pandemic) during the reference period, including information on the incidence of such abuse and exploitation.

The report states that Article 171 of the Criminal Code provides for criminal liability for involving minors in prostitution. Prostitution, on the other hand, is an administrative offence and consequently, criminal liability is not possible.

Due to the failure to provide the requested information on the functioning of a mechanism for monitoring the sexual exploitation of children, mechanisms for collecting statistical data in this field, a national action plan to combat the sexual exploitation of children, measures to ensure that child victims of sexual exploitation are not punished, the Committee concludes that the situation in Azerbaijan is not in conformity with Article 7§10 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter.

In reply to the targeted question, the report states that significant steps were taken to ensure the protection of children from sexual exploitation. In 2019, a summer camp for children from low-income families was organised, during which the children were informed of their rights. In 2021, the children taking part in a summer school were informed of their rights and the dangers that threaten them.

The report provides data on various crimes, such as human trafficking (146 in 2019, 155 in 2020 and 156 in 2021), forced labour (4 in 2019, 5 in 2020 and 3 in 2021), involvement of minors in prostitution (1 in 2019, 1 in 2020 and 3 in 2021) and others.

Protection against the misuse of information technologies

The Committee has previously asked for information on the implementation of the new legislation on the protection of children against the misuse of information technology and the “Parent-Internet Security and Control” programme (Conclusions 2019). In the targeted question, the Committee asked for information on the protection of children from all forms of

violence, exploitation and abuse in the digital environment, in particular sexual exploitation and abuse and solicitation for sexual purposes (grooming).

The report states that the Law on the Protection of Children from Information that Harms their Health and Development came into force in 2020, and the programme “Parent-Internet Security and Control” was created. It seeks to protect children on the Internet, to inform parents about websites accessed by children and their search queries.

The report also states that in 2020, online training was presented on “Child internet safety and ways to ensure it”, and other events related to safety on the Internet took place.

In reply to the targeted question, the report states that according to the Law on Information, Computerisation and Protection of Information, the owner of an informational resource on the Internet is prohibited from posting content related to pornography, including child pornography. On the basis of the information received from individuals, legal entities and State institutions, a written warning can be issued to the owner of the resource. If the objectionable content is not removed within eight hours from notification, the request to restrict the use of the internet resource is sent to the court.

Protection from other forms of exploitation

The Committee has previously asked for the Government’s comments on the report from the Group of Experts on Trafficking in Human Beings (GRETA) of 13 July 2018 where it was stated that no specific referral mechanism for child victims of trafficking had been set up and there were no standard operating procedures concerning child victims’ identification and referral to assistance. It also asked to be informed on the measures taken to protect and assist children in vulnerable situations, with particular attention to street children and children at risk of child labour, including those in rural areas (Conclusions 2019).

The report states that workplaces where children between 15 and 18 work are regularly monitored. Under Article 193 of the Code of Administrative Offences, any employer forcing an employee to carry out work that does not fall within the scope of their duties is liable to a fine. The report further states that a UNICEF representative office and other international organisations held more than 50 conferences, seminars and training in order to effectively define preventive measures for children at risk, including those in street situations. Neglected children were provided with legal, psychological and other assistance.

Due to the failure to provide the requested information on the referral mechanism for child victims of trafficking and measures taken to protect and assist children in vulnerable situations, the Committee concludes that the situation in Azerbaijan is not in conformity with Article 7§10 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter.

Corporal punishment

The Committee previously concluded that the situation in Azerbaijan was not in conformity with Article 7§10 of the Charter on the ground that not all forms of corporal punishment were prohibited in all settings (Conclusions 2019).

The report provides no information with regard to the conclusion of non-conformity. The Committee notes from other sources (Concluding observations on the combined fifth and sixth periodic reports of Azerbaijan by the Committee on the Rights of the Child of 22 February 2023) that there is no explicit prohibition of corporal punishment. The Committee therefore reiterates that the situation in Azerbaijan is not in conformity with Article 7§10 of the Charter on the ground that not all forms of corporal punishment are prohibited in all settings.

Covid-19

In the context of the Covid-19 pandemic, the Committee asked for information on the impact of the pandemic on the monitoring of the exploitation and abuse of children, as well as measures taken to strengthen monitoring mechanisms.

The Committee recalls that Article 7§10 of the Charter guarantees protection against sexual and other exploitation of children as well as protection against the misuse of information technology and social media (for the purposes of online bullying, child pornography, grooming, harassment, etc.), which is particularly pertinent in view of the acceleration of digitalisation and online activity brought about by the pandemic (Statement on Covid-19 and social rights, 24 March 2021).

The report states that during lockdown, booklets were distributed on human trafficking.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 7§10 of the Charter on the ground that not all forms of corporal punishment are prohibited in all settings.

Due to the failure to provide the information listed below, the Committee concludes that the situation in Azerbaijan is not in conformity with Article 7§10 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter.

List of questions/Information missing:

- on the functioning of a monitoring mechanism on the sexual exploitation of children and mechanisms for collecting statistical data in this field;
- on a national action plan to combat the sexual exploitation of children;
- on measures taken to ensure that child victims of sexual exploitation are not punished;
- on the referral mechanism for child victims of trafficking and measures taken to protect and assist children in vulnerable situations.

Article 8 - Right of employed women to protection of maternity

Paragraph 1 - Maternity leave

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

The Committee recalls that no targeted questions were asked in relation to Article 8§1 of the Charter, only a question in relation to Covid-19. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the thematic group "Children, families and migrants").

In its previous conclusion (Conclusions 2019), the Committee found that the situation in Azerbaijan was not in conformity with Article 8§1 of the Charter on the ground that it had not been established that the right to compulsory maternity leave was guaranteed.

Right to maternity leave

In its previous conclusion, the Committee concluded that the situation in Azerbaijan was not in conformity with Article 8§1 of the Charter on the ground that it had not been established that the right to compulsory maternity leave was guaranteed (Conclusions 2019).

The report does not address whether there is a period of compulsory postnatal leave and whether part of the leave could be relinquished at the employee's request. The report states that the "non-mandatory pre-natal part" of her parental leave can be used at the discretion of the pregnant worker before or after childbirth.

Due to the failure to provide the requested information on whether the right to compulsory maternity leave is guaranteed, the Committee concludes that the situation in Azerbaijan is not in conformity with Article 8§1 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter.

Right to maternity benefits

The Committee had previously concluded that the situation in Azerbaijan was in conformity with the Charter on this point. Therefore, there was no examination of the situation in 2023 and the Committee reiterates its previous conclusion.

Covid-19

In the context of the Covid-19 crisis, the Committee asked all States to provide information on whether the Covid-19 crisis had an impact on the right to paid maternity leave.

The report indicated that there were no changes, complaints or violations on maternity, paternity and parental benefits during the Covid-19 pandemic.

Conclusion

Due to the failure to provide the information listed below, the Committee concludes that the situation in Azerbaijan is not in conformity with Article 8§1 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter.

Information missing:

- whether there is a period of compulsory postnatal leave;
- whether part of the leave could be relinquished at the employee's request.

Article 8 - Right of employed women to protection of maternity

Paragraph 2 - Illegality of dismissal during maternity leave

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

The Committee recalls that no targeted questions were asked in relation to Article 8§2 of the Charter only a question in relation to Covid-19. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the thematic group “Children, families and migrants”).

In the previous conclusions (Conclusions (2019)), the Committee the Committee concluded that the situation was in conformity with Article 8§2 of the Charter pending further information on the levels of compensation in cases of unlawful dismissal and relevant examples of case law showing how compensation is applied when employees were dismissed unlawfully during their pregnancy or maternity leave.

Prohibition of dismissal

The Committee had previously concluded that the situation in Azerbaijan was in conformity with the Charter on this point. Therefore there was no examination of the situation in 2023 and the Committee reiterates its previous conclusion of conformity.

Redress in case of unlawful dismissal

In reply to the Committee’s question regarding compensation levels in the event of unlawful dismissal during pregnancy or maternity leave, the report confirms that employees unlawfully dismissed can claim, in addition to reinstatement, compensation for damage taking into account loss of salary during the period of unemployment, legal and other expenses occurred and non-pecuniary damage.

No further information was submitted on levels or ceilings on compensation. Due to the failure to provide the requested information , the Committee concludes that the situation in Azerbaijan is not in conformity with Article 8§2 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter.

Covid-19

The Committee asked whether the Covid-19 crisis has had an impact on the possibility of dismissing pregnant employees and those on maternity leave; it also asked whether there had been any exceptions to the ban on dismissal during pregnancy and maternity leave during the pandemic.

The report states that the Covid-19 crisis has had no impact on the possibility of dismissing pregnant employees and those on maternity leave, or on the exceptions to the ban on dismissal during pregnancy and maternity leave.

Conclusion

Due to the failure to provide the information listed below the Committee concludes that the situation in Azerbaijan is not in conformity with Article 8§2 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter.

Missing information:

- Ceilings and levels of compensation that may be awarded in cases of unlawful dismissal.

Article 8 - Right of employed women to protection of maternity

Paragraph 3 - Time off for nursing mothers

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

The Committee recalls that no targeted questions were asked for Article 8§3 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the thematic group Children, families and migrants”).

As the previous conclusion found the situation in Azerbaijan to be in conformity with the Charter (Conclusions 2019), there was no examination of the situation in 2023.

Therefore, the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Azerbaijan is in conformity with Article 8§3 of the Charter.

Article 8 - Right of employed women to protection of maternity

Paragraph 4 - Regulation of night work

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

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions in relation to Article 8§4 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Children, families and migrants”).

In its previous conclusion, the Committee concluded that the situation was in conformity with Article 8§4 of the Charter pending receipt of information requested (Conclusions 2019). The assessment of the Committee will therefore concern the information provided by the Government in response to the information previously requested and the targeted question.

In its targeted question the Committee asked for confirmation that no loss of pay results from the changes in the working conditions or reassignment to a different post and that in case of exemption from work related to pregnancy and maternity, the woman concerned is entitled to paid leave.

The Committee previously noted that night work was prohibited for women who were pregnant or had children under the age of three and asked whether the women concerned were transferred to daytime work until their child was three years old and what rules applied if such a transfer were not possible (Conclusions 2019).

According to the report the Labour Code provides that pregnant women or women with a child under three years of age who normally work nights shall be transferred to day time work and shall maintain their previous salary.

No information is provided as to whether where transfer to daytime work is not possible women are entitled to take leave and receive 100% of their previous salary. Due to the failure to provide the requested information, the Committee concludes that the situation in Azerbaijan is not in conformity with Article 8§4 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter.

Conclusion

Due to the failure to provide the information listed below the Committee concludes that the situation in Azerbaijan is not in conformity with Article 8§4 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter.

Information missing

- whether where transfer to daytime work is not possible pregnant women, women who have recently given birth or are breastfeeding are entitled to take leave due to the risks posed by night work and are entitled to receive 100% of their previous salary.

Article 8 - Right of employed women to protection of maternity

Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work

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

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions in relation to Article 8§5 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Children, families and migrants”).

In its previous conclusion, the Committee concluded that the situation was not in conformity with Article 8§5 of the Charter on the grounds that it had not been established that pregnant women, women who have recently given birth and women who are breastfeeding were entitled to paid leave if it is impossible to transfer them to lighter duties; and in case of reassignment to a different post, the law did not guarantee the right of the women concerned to return to their previous post at the end of the maternity/breastfeeding period (Conclusions 2019). The assessment of the Committee will therefore concern the information provided by the Government in response to the previous conclusion of non-conformity and targeted question.

In its targeted question the Committee asked for confirmation that no loss of pay results from the changes in the working conditions or reassignment to a different post and that in the case of exemption from work related to pregnancy and maternity, the woman concerned is entitled to paid leave and women concerned retain the right to return to their previous employment once their condition permits.

According to the report if the work of pregnant women exposes them to harm or interferes with the breastfeeding of a child under one year and employer must transfer the employee to alternative employment and must maintain their original salary. No information is provided as to where a transfer to an alternative post is not possible, whether women are entitled to take leave and receive 100% of their previous salary. Due to the failure to provide the information requested the Committee concludes that the situation in Azerbaijan is not in conformity with Article 8§5 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter.

The Committee notes that according to the report a draft law "on Amendments to the Labour Code of the Republic of Azerbaijan" seeks to amend Article 94 of the Labour Code to allow women to return to their previous work schedule after pregnancy and childbirth. The Committee understands from this that during the reference period women assigned to lighter duties due to pregnancy or breastfeeding had no right to return to their previous post at the end of the protected period. Therefore the Committee concludes that the situation is not in conformity with the Charter on this point.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 8§5 of the Charter on the grounds that during the reference period women assigned to lighter duties due to pregnancy or breastfeeding had no right to return to their previous post at the end of the protected period and

Due to the failure to provide the information listed below the Committee concludes that the situation in Azerbaijan is not in conformity with Article 8§5 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter.

Information missing:

- whether where transfer to an alternative post is not possible women are entitled to take leave and receive 100% of their previous salary.

Article 16 - Right of the family to social, legal and economic protection

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

The Committee recalls that for the current reporting cycle, States were asked to respond to several targeted questions for Article 16 of the Charter as well as, where applicable, previous conclusions of non-conformity, deferral or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the Charter's implementation in respect of the provisions relating to the "Children, family and migrants" thematic group).

In its previous conclusion (Conclusions 2019), the Committee found that the situation in Azerbaijan was not in conformity with Article 16 of the Charter on the grounds that:

- it had not been established that women were ensured adequate protection, in law and in practice, against domestic violence;
- it had not been established that adequate childcare facilities were available;
- equal treatment of nationals of States Parties as regards family benefits was not ensured because of the excessive length of residence required (two years);
- family benefits did not ensure the economic protection of a significant number of families by appropriate means;
- it had not been established that the right to adequate housing for families was effectively guaranteed;
- it had not been established that associations representing families are consulted when family policies are drawn up.

The Committee's assessment will therefore focus on the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions.

Legal protection of families

Rights and obligations, dispute settlement

- **Settlement of disputes**

In its previous conclusion (Conclusions 2019), the Committee reserved its position on this point pending comments on the observations made in the study published by the Council of Europe in 2017 (for more details, see the previous conclusion).

In response, the report reiterates the general information examined previously concerning the division of property and maintenance in the event of divorce.

The Committee observes that the report only partially responds to its requests for information on the legal means available to couples without children in the event of divorce and on women's access to justice, and considers that this failure to provide information amounts to a breach by Azerbaijan of its reporting obligations under Article C of the Charter.

As Azerbaijan has not accepted Article 17§1 of the Charter, the Committee requested, in its previous conclusion, information on the rules applied in respect of restrictions on parental rights and the placement of children.

Due to the failure to provide requested information, the Committee concludes that the situation in Azerbaijan is not in conformity with Article 16 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter.

Domestic violence against women

First of all, the Committee points out that Azerbaijan has neither signed nor ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).

In its previous conclusion (Conclusions 2019), the Committee asked the next report to provide full and updated information on measures taken to ensure the prevention of domestic violence against women, on the prosecution of perpetrators of domestic violence and any other details or indications of integrated policies in this area, also in the light of the recommendations of the Committee on the Elimination of Discrimination against Women (CEDAW). In the meantime, the Committee concluded that the situation was not in conformity with Article 16 of the Charter on the ground that it had not been established that women were ensured adequate protection, in law and in practice, against domestic violence.

In addition, in a targeted question, the Committee requested updated information on measures taken to reduce all forms of domestic violence against women, including information on incidence and conviction rates.

In response, the report states that the National Action Plan to Combat Domestic Violence for 2020-2023 was promulgated by Presidential Decree No. 2307 on 27 November 2020. Two working groups, made up of officials from the relevant public bodies, have been formed by the State Committee for Family, Women and Children Affairs (hereinafter: the State Committee) to coordinate the implementation of the plan's actions.

In addition, the State Committee and the United Nations Population Fund (UNFPA) set up a domestic violence hotline (860) in December 2020. A department for the social rehabilitation of victims of domestic violence has been operating since 1 August 2021 under the aegis of the Ministry of Labour and Social Protection of the Population. The Committee notes that 41 victims of domestic violence, including 23 children, benefited from these services in 2021. Moreover, a communication circle with the capital's metro company ("Baku Metro JSC") has also been set up to raise awareness of domestic violence.

The report states that the Police Academy and other relevant institutions have organised various training courses for more than 3,000 officers from the different branches of the police force, focusing on the prevention of and response to domestic violence (see the report for more details). The report adds that the Government has planned to revise existing legal acts in order to strengthen the obligations of the police in this area.

The Committee notes from the report that 16,475 crimes against women were recorded in the country between 2019 and 2021, of which 6,533 (around 40%) were based on domestic disputes and 7,390 people were prosecuted for these crimes.

Social and economic protection of families

Childcare facilities

In its previous conclusions (Conclusions 2019, 2017 and 2015), the Committee requested detailed information on childcare facilities (types of facilities, coverage in relation to the number of children under six, number of applications rejected for lack of places, number of children in relation to the number of employees, staff qualifications, premises used and parents' financial contribution). It also requested information on the achievement of the objectives of the National Strategy for the Development of Education.

Due to the failure to provide requested information, the Committee concludes that the situation in Azerbaijan is not in conformity with Article 16 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter.

Family benefits

Equal access to family benefits

In a targeted question, the Committee asked whether a condition of length of residence was imposed on nationals of other States parties residing legally in the country in order to be entitled to family benefits.

In its previous conclusions (Conclusions 2019 and 2015), the Committee considered that the situation was not in conformity with Article 16 of the Charter on the ground that equal treatment of nationals of other States Parties was not guaranteed with regard to the payment of family benefits due to the excessive length of residence requirement (two years).

In response, the report repeats the information already examined by the Committee in its previous conclusions. The Committee therefore reiterates its previous conclusion of non-conformity on this point.

Level of family benefits

In its previous conclusion (Conclusions 2019), the Committee considered that the situation was not in conformity with Article 16 of the Charter on the ground that family benefits did not provide adequate economic protection for a significant number of families. It requested information on the amount and number of beneficiaries of family benefits, as well as on the national poverty line.

Among the targeted questions that it raised, the Committee asked for information about the amounts paid in family benefit as well as the median equivalised income for the reference period. It also asked whether family or child benefits were subject to a means-test and, if so, what percentage of families were covered.

The Committee points out that family benefit must be such as to provide a significant number of families with sufficient extra income. Adequacy is assessed with respect to the monthly median equivalised net income.

In response, the report states that targeted state social assistance supports the social protection for low-income families and makes an active contribution to the fight against poverty. The amount of social assistance is calculated as the difference between the family's average monthly income and the sum of the needs criteria for each family member.

The Committee has previously noted that the Ministry of Labour and Social Protection of the Population sets the income threshold below which families are entitled to benefits; this threshold was AZN 200 (€110 at the rate of 31 December 2022; outside the reference period). The subsistence wage was AZN 210 (€116).

According to the report, benefits for families are means-tested. The amount of social assistance paid to families and individuals was respectively AZN 208 and AZN 50.3 (€109 and €26) in 2019 and AZN 280 and AZN 65.2 (€145 and €34) in 2021. In 2021, 47,000 families received this benefit (around 1.2% of the population).

In its previous conclusion, the Committee noted that child benefits are means-tested and paid to children from families receiving targeted social assistance. It appears that this situation has not changed: only children under the age of one are entitled to the benefit, which is solely paid to families with a per capita income of less than €130 (according to MISSCEO). The report states that the amount of this benefit is AZN 55 (€29) in 2020. In view of the above, the Committee considers that the situation is not in conformity with Article 16 of the Charter on the ground that family benefits do not constitute a sufficient income supplement for a significant number of families.

The Committee takes note of three social reform packages that have been implemented outside the reference period. It notes that family allowances have been increased from 1 January 2022 (outside the reference period).

As for the poverty line, the report does not indicate its level, but states that no one in Azerbaijan is currently living below the international poverty line.

Measures in favour of vulnerable families

In its previous conclusion (Conclusions 2019), the Committee requested information on measures specifically aimed at ensuring the protection of vulnerable families such as single-parent families and Roma families.

The report reiterates what the previous report had already indicated, i.e., that the rights of children belonging to the Roma community in Azerbaijan have been analysed and supported by the State Committee and the United Nations Children's Fund in 2017.

The report adds that the main issues were education, migration and the neglect of these children. The Department for the Social Reintegration of Neglected, Abandoned and Socially Vulnerable Minors was set up in 2020 under the aegis of the Social Services Agency of the Ministry of Labour and Social Protection. It provided assistance and reintegration services to 117 children between 2020 and 2022, the majority of whom returned to their families or to an institution. The report highlights the efforts and achievements of the authorities and partners in safeguarding and promoting the rights of children from disadvantaged groups in Azerbaijan.

Due to the failure to provide requested information on the concrete measures adopted to protect vulnerable families, such as single-parent families and Roma families, the Committee concludes that the situation in Azerbaijan is not in conformity with Article 16 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter.

Among the targeted questions that it raised, the Committee asked what measures had been taken to ensure that vulnerable families could meet their energy needs, in order to ensure their right to adequate housing (which includes access to essential services).

Due to the failure to provide requested information, the Committee concludes that the situation in Azerbaijan is not in conformity with Article 16 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter.

In a targeted question, the Committee asked whether, in cases where specific temporary measures had been taken to financially support families during the covid-19 pandemic, they would or were expected to be maintained or withdrawn and, if they had been withdrawn, what effect this was expected to have on vulnerable families.

The report has not provided information on this subject.

Housing for families

In its previous conclusions (Conclusions 2011, 2015, 2019), the Committee requested information on access to adequate housing for families, including Roma families, information on legal protection (possible remedies) and on protection against illegal evictions. Having received no relevant information on this subject, the Committee decided in its previous conclusion (Conclusions 2019) that it had not been established that the families' right to adequate housing was effectively guaranteed.

In a targeted question, the Committee asked States Parties which have not accepted Article 31 of the Charter to provide updated information on the availability of adequate affordable housing for families.

The report merely states that affordable housing has been made available to the families of those killed during the war and to disabled persons as a result of the war. The report adds that its strategic objectives include improving housing conditions for low-income families, but does not mention any concrete measures in this regard.

Due to the failure to provide requested information, the Committee concludes that the situation in Azerbaijan is not in conformity with Article 16 of the Charter. The Committee considers that

this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter.

Participation of associations representing families

In its previous conclusion (Conclusions 2019), the Committee considered that the situation was not in conformity with Article 16 of the Charter on this point. It again asked whether associations representing families were consulted when family policies were drawn up. It also asked for information on the role of the State Committee for the Family, Women and Children (its composition, tasks and links with associations representing families).

The report indicates that the State Committee cooperates with various actors to strengthen and protect the rights and well-being of children and families. The Committee takes note of the various events and activities organised by the said Committee (round table on the role of NGOs and civil society in child protection and parental responsibility; online training on early marriage and its repercussions for children and parents).

The Committee notes that the report does not contain any information on the participation of associations representing families in the development of family policies. Furthermore, the report only partially responds to its requests for information on the role of the State Committee for the Family, Women and Children. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter.

Conclusion

The Committee concludes that the situation of Azerbaijan is not in conformity with Article 16 of the Charter on the grounds that :

- equal treatment of nationals of other States Parties regarding the payment of family benefits is not ensured due to the excessive length of residence requirement;
- family benefits do not constitute a sufficient income supplement for a significant number of families.

Due to the failure to provide the information listed below, the Committee concludes that the situation in Azerbaijan is not in conformity with Article 16 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter.

Information missing:

- the legal means available to couples without children in the event of divorce and on women's access to justice;
- the rules applied in respect of restrictions to parental rights and placement of children;
- childcare facilities (types of facilities, coverage in relation to the number of children under six, number of applications rejected for lack of places, number of children in relation to the number of employees, staff qualifications, premises used and parents' financial contribution) and the achievement of the objectives of the National Strategy for the Development of Education;
- measures adopted to protect vulnerable families, such as single-parent families and Roma families;
- the measures taken to ensure that vulnerable families could meet their energy needs;
- the availability of suitable, affordable housing for families;
- the participation of associations representing families in the development of family policies;
- the role of the State Committee for the Family, Women and Children (its composition, tasks and links with associations representing families).

Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

Paragraph 1 - Participation in working life

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

The Committee recalls that no targeted questions were asked in relation to Article 27§1 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

In its previous conclusion, the Committee found that the situation in Azerbaijan was in conformity with Article 27§1 of the Charter, pending receipt of the information requested. The Committee asked the report to provide updated information on any changes to the legal framework as regards employment, vocational guidance and training for workers with family responsibilities and to describe working conditions that may facilitate a reconciliation of working and private life, such as working from home, family-friendly working hours, etc. (Conclusions 2019). The assessment of the Committee will therefore concern the information provided in the report in response to the questions raised in its previous conclusion.

Employment, vocational guidance and training

In previous conclusion (Conclusions 2019), the Committee understood that the situation which it had previously (Conclusions 2015) found to be in conformity with the Charter did not change during the reference period, so it reiterated its finding of conformity on this point.

It also asked for the next report to provide updated information on any changes to the legal framework as regards employment, vocational guidance, and training for workers with family responsibilities.

The Committee concludes from the report that there were no changes.

Conditions of employment, social security

The Committee previously asked (Conclusions 2019, 2015, and 2011) for the report to describe working conditions that may facilitate a reconciliation of working and private life, such as working from home, family-friendly working hours, etc.

In reply, the report states that “according to Cabinet of Ministers Decision No. 122 of 31 March 2022 on the regulation of work during the special quarantine regime in the territory of the Republic of Azerbaijan, it is ensured that the salaries of the employees who are not employed in the state bodies and institutions, or at home, or in the form of remote work or distant work, shall be preserved”. It further states that there is a draft Law on amendments to the Labour Code of the Republic of Azerbaijan which establishes a legal basis for workers to perform their tasks in the form of remote or distant work.

From the above, the Committee concludes that there was an option of teleworking during Covid-19 and that the Government is planning to preserve and further develop the possibility of this type of work by integrating it into the Labour Code.

Furthermore, the report states there were draft amendments prepared and submitted to the Cabinet of Ministers, aiming at improving the Labour Code in relation to the ILO Convention No. 156 on Workers with Family Responsibilities. A draft amendment to Article 3 of the Labour Code defines a worker with family responsibilities, as a worker who faces difficulties in labour activities because they need to take care of a family member (such as dependent or adopted children) or another close relative in need of care or assistance based of an opinion of a medical advisory committee. According to the report, a draft amendment to Article 98 asks

that the special needs of employees with family responsibilities, including needs related to meeting family responsibilities, are taken into account when scheduling shifts and allocating night shifts.

The Committee recalls that it previously (Conclusions 2019) took into account the observation and the direct request of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2018 (107th ILC session) on the Workers with Family Responsibilities Convention No. 156 (1981). The measures to support workers with family responsibilities should be available to men and women on an equal footing, but the legislation in Azerbaijan reflects the assumption that the main responsibility for family care lies with women and excludes men from certain rights and benefits, reinforcing and prolonging stereotypes regarding the roles of women and men in the family and in society.

Based on the legislation in force during the reference period, the Committee finds that the situation in Azerbaijan is not in conformity in regard to employment conditions.

Child day care services and other childcare arrangements

The Committee recalls that, since Azerbaijan has accepted Article 16 of the Charter, measures taken to develop and promote child day-care structures are examined under that provision.

Covid-19

In the context of the Covid-19 crisis, the Committee asked all States to provide information on whether the Covid-19 crisis had an impact on the rights of workers with family responsibilities to equal opportunities and treatment, in particular on the possibilities to work remotely and its consequences.

The report does not provide relevant information.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 27§1 of the Charter on the grounds that the legislation currently in force concerning employment conditions does not facilitate the reconciliation of working and private life for workers with family responsibilities, whether women or men, on an equal footing.

Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

Paragraph 2 - Parental leave

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

The Committee recalls that no targeted questions were asked in relation to Article 27§2 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

In its previous conclusion, the Committee considered that the situation in Azerbaijan was not in conformity with Article 27§2 of the Charter on the ground that the level of parental leave benefit was inadequate (Conclusions 2019). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity and information asked to be provided in the current reporting cycle.

Entitlement to the parental leave

In its previous conclusions (Conclusions 2019 and 2017), the Committee asked whether Article 127 of the Labour Code provides leave to both parents, as an individual right of both mother and father, and whether at least one part of the leave is non-transferable. In 2015, the Committee could not establish that the legislation provides for an individual, non-transferable right to parental leave for each parent, which lead to a conclusion of non-conformity.

The Committee recalls that the States Parties need to provide the possibility for each parent to take parental leave, as an important element for the reconciliation of professional, private and family life, that the national laws should entitle men and women to an individual right to parental leave on the grounds of the birth or adoption of a child, and that with a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided on a non-transferable basis to each parent (Conclusions 2011, Armenia). Furthermore, the States Parties are under a positive obligation to encourage the use of parental leave by either parent (Conclusions 2015, Statement of Interpretation on Article 27§2).

From the information provided by the report, the Committee concludes that according to Article 127 of the Labour Code, only one parent has the right to partially paid social leave for taking care of the child until that child reaches the age of three.

The Committee holds that the situation is not in conformity on the ground that the legislation does not provide for an individual, non-transferable right to parental leave for each parent.

Definition, duration and conditions

The Committee notes the information provided in the report under Article 27§2 on pregnancy leave, childbirth, paternity leave, and leave granted to mothers who adopted children under the age of two months.

However, the Committee had already reminded the government (Conclusions 2011, Azerbaijan) that Article 27§2 provides for the right to parental leave, which is distinct from maternity (and paternity) leave addressed under Article 8§1 of the Charter and focuses on the leave granted after the maternity leave. Therefore, the Committee notes that the correct approach would be for the reports to distinguish between these two rights and to provide distinctive information accordingly.

Remuneration

In its previous conclusion (Conclusions 2019), the Committee found that the level of parental leave benefit is inadequate.

The Committee notes that according to the report, the levels of parental leave remained the same as during the previous assessment. During partially paid parental leave, a monthly allowance of AZN 44 (€23.80) is granted until the child reaches the age of 18 months. After that period and until the child's third birthday, the monthly allowance amounts to AZN 28 (€15.10).

The Committee recalls that the states must ensure that an employed parent is adequately compensated for his/her loss of earnings during the period of parental leave, the modalities of compensation are within the margin of appreciation of the States Parties and may be either paid leave (continued payment of wages by the employer), a social security benefit, any alternative benefit from public funds or a combination of such compensations, but regardless of the modalities of payment, the level must be adequate (Conclusions 2015, Statement of Interpretation on Article 27§2).

The Committee, therefore, reiterates its conclusion on non-conformity on the ground that the level of parental leave benefit is inadequate.

Covid-19

In the context of the Covid-19 crisis, the Committee asked all States to provide information on whether the Covid-19 crisis had an impact on the right of workers with family responsibilities to parental leave.

The report states there were no restrictions on the use of different types of leaves that parents were entitled to.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 27§2 of the Charter on the grounds that:

- the right to parental leave is not established as an individual right of each parent, a part of which is non-transferable and
- the remuneration during the parental leave is not adequate on the ground that it does not replace the income lost due to absence from work to take care of a child.

Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

Paragraph 3 - Illegality of dismissal on the ground of family responsibilities

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

The Committee recalls that no targeted questions were asked in relation to Article 27§3 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

In its previous conclusion, the Committee found that the situation in Azerbaijan was in conformity with Article 27§3 of the Charter, pending receipt of the information requested, namely, the examples of the case law regarding the compensation awarded in unlawful dismissal cases on the ground of family responsibilities (Conclusions 2019). The assessment of the Committee will therefore concern the information provided in the report in response to the question raised in its previous conclusion.

Effective remedies

In its previous conclusions (Conclusions 2019 and 2015), the Committee asked for examples of case law regarding the compensation awarded in unlawful dismissal cases on the ground of family responsibilities.

In reply, the report states that in practice, the courts ensure the effectiveness of the rights specified in Articles 79, 299, 300, and 301 of the Labour Code. In case it is found by a court's judgment that an employer wrongfully dismissed a worker, that worker is reinstated to his/her work positions and paid wages for the period of forced layoff.

More specifically, in line with Article 79 of the Labour Code, the courts examine the employee's claim to be reinstated, as well as the payment of wages and damages. According to Article 299 of the Labour Code, there is no ceiling to the amount awarded. Moreover, according to Article 300 of the Labour Code, the wrongfully dismissed worker is awarded compensation for the expenses that occurred in order to be represented in court by a lawyer, for the sale of personal property, etc. According to Article 301, if the court's decision concerning the settlement of an individual labour dispute is not executed the day it comes into force, criminal proceedings are brought against the employer in accordance with the Criminal Code.

The Committee notes that the report did not provide examples of case law regarding the compensation awarded in unlawful dismissal cases, as previously requested. Due to the failure to provide the requested information, the Committee concludes that the situation in Azerbaijan is not in conformity with Article 27§3 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of its reporting obligations under Article C of the Charter.

Covid-19

In the context of the Covid-19 crisis, the Committee asked all States to provide information on

- whether the Covid-19 crisis had an impact on the prohibition of dismissal on the ground of family responsibilities and whether there were any exceptions to the prohibition of dismissal on the ground of family responsibilities during the pandemic and
- whether a ceiling on compensation for unlawful dismissals was applied on the ground of family responsibilities during the Covid-19 crisis.

The report states there were no cases of dismissals due to family responsibilities during the Covid-19 pandemic.

Conclusion

Due to the failure to provide the information listed below the Committee concludes that the situation in Azerbaijan is not conformity with Article 27§3 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Azerbaijan of their reporting obligations under Article C of the Charter.

List of questions/Information missing: examples of case law regarding the compensation awarded in unlawful dismissal cases.