



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

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**THIRD REPORT
ON THE NON-ACCEPTED PROVISIONS OF
THE REVISED EUROPEAN SOCIAL CHARTER
AZERBAIJAN**

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I. SUMMARY

With respect to the procedure provided by Article 22 of the 1961 Charter – examination of non-accepted provisions – the Committee of Ministers decided in December 2002 that "states having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and had "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned".

Following this decision, five years after ratification of the Revised European Social Charter and every five years thereafter, the European Committee of Social Rights (ECSR) reviews the non-accepted provisions with the countries concerned, with a view to securing a higher level of acceptance, given that selective acceptance of Charter provisions was meant to be a temporary phenomenon. The aim of the Article 22 procedure is therefore to review the situation after five years and encourage acceptance of more provisions.

Azerbaijan ratified the Revised Charter on 2 September 2004 accepting 47 of the 98 paragraphs of the Revised Charter. At the time of ratification, Azerbaijan did not consider it bound by 51 numbered paragraphs of the Revised Charter, namely Art.2§§1–7, Art.3§§1–4, Art.10§§1–5, Art.12§§1–4, Art.13§§1–4, Art.15§§1–3, Art.17§§1 and 2, Art.18§§1–3, Art.19§§1–12, Art.23, Art.25, Art.30 and Art.31§§1–3.

For the first time, the procedure provided by Article 22 of the 1961 Charter took place in 2009, and a meeting between members of the European Committee of Social Rights and representatives of various institutions of Azerbaijan was held in Baku on 23–24 June 2009.

The issue of non-accepted provisions was also addressed at the meeting held in Baku on 9 July 2013. However, the main aim of that meeting was the promotion of the collective complaints procedure as well as providing information in relation to cases of non-conformity concerning Azerbaijan.

The second meeting on the non-accepted provisions of the Revised Charter was held in Baku on 25 June 2014.

The third examination of the situation in Azerbaijan as regards the non-accepted provisions of the Revised Charter takes place in a written form, based on the third report on non-accepted provision submitted by the Azerbaijan Government in 2019.

According to the national report, the Azerbaijan authorities consider it possible to ratify additionally the following provisions of the Revised Charter: Art.12§§1 and 3, Art.15§§1–3 and Art.19§§1–12. Concerning Article 25, the Azerbaijan authorities suggest to organise a workshop or a study visit by the experts of the Council of Europe to analyze further the possibility of ratification. As regards other non-accepted provisions, the Azerbaijan authorities indicate that the ratification of these provisions is not currently under consideration.

The European Committee of Social Rights remains at the disposal of the authorities of Azerbaijan and encourages them to take the necessary steps towards acceptance of the indicated provisions of the Revised Charter and the collective complaints procedure.

The factsheet on the provisions of the Revised Charter accepted by Azerbaijan appears in Appendix I.

The next examination of the provisions not yet accepted by Azerbaijan will take place in 2024.

II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS

In the written report the Azerbaijan authorities present the situation in Azerbaijan concerning the non-accepted provisions of the Revised Charter, indicating for each non-accepted article whether they consider acceptance of respective provisions feasible or whether ratification of concerned provision is currently not under consideration.

Article 2§§1–7 *The right to just working conditions*

Situation in Azerbaijan

According to Article 89 of the Labour Code, the length of the normal working day shall not exceed 8 hours, while the length of the normal working week corresponding to normal working day shall not exceed 40 hours.

According to Article 37 of the Constitution of the Republic of Azerbaijan, for those working based on labor agreements an 8-hour working day, national holidays and at least one paid vacation with duration of at least 21 calendar days are guaranteed. Article 114 paragraph 2 of the Labour Code also confirms that employees are provided with paid leave of at least 21 calendar days.

According to Article 92 of the Labour Code, for employees engaged in industries, occupations and with working conditions hazardous to human health related to physical, chemical, biological and other industrial factors, working hours shall be reduced and shall not exceed 36 hours per week. This provision of the Labour Code is enacted by Resolutions of the Cabinet of Ministers No. 106 (from 12 August 2003) and No. 175 (from 6 November 2004).

National holidays which are not considered working days are defined in Article 105 of the Labour Code.

According to Article 104 of the Labour Code all employees shall be provided the opportunity to take rest days during the week. The number of days off during a week for employees on a five-day schedule shall be two days; for employees on a six-day schedule, one day.

An amendment to Article 9 of the Labour Code enacted in 2013 introduced the right of employees to access in real-time regime information on his/her employment contract notification in the electronic information system.

Article 97 of the Labour Code defines night work as work performed between 10 pm and 6 am.

The report recognises that the situation in Azerbaijan does not comply with requirements of Article 2§§2 and 3. On these grounds the authorities do not currently consider ratification Article 2 of the Charter.

Opinion of the European Committee of Social Rights

The information provided in the national report is too scarce to permit a thorough assessment of the situation. No specific information is provided about the regulation of overtime and on-call duties, which does not allow an assessment of the situation as regards Article 2§1. The report appears to suggest that national holidays are unpaid, which would

not comply with Article 2§2. The report does not specify how work performed on public holidays is additionally compensated.

The minimum duration of annual paid leave (21 calendar days) falls short of the requirements (4 calendar weeks or 20 working days) of Article 2§3 of the Charter. Detailed information is missing on whether in some circumstances annual holidays may be postponed or replaced by financial compensation.

Article 2§4 requires states to take the necessary measures to eliminate risks in inherently dangerous or unhealthy occupations. This is closely linked to Article 3 of the Charter on the right to safe and healthy working conditions, but Article 3 is neither ratified by Azerbaijan. Given the link between Articles 2§4 and 3§2, more detailed information on implementation of the legislation and the situation in practice would be important to assess the adequacy of protection and compliance with requirements of Article 2§4.

Article 2§5 guarantees a weekly rest period, subject to certain derogations in very exceptional cases. The weekly rest period may be deferred to the following week, insofar as no worker works more than twelve days consecutively before being granted a two-day rest period. The rest period may not be replaced by compensation and workers may not be permitted to give it up.

Article 2§6 guarantees the right of workers to written information (included in the employment contract or another document) when starting employment. This information must include: the identities of the parties; the place of work; the date of commencement of the contract or employment relationship; in the case of a temporary contract or employment relationship, the expected duration thereof; the remuneration; the length of the employee's normal working day or week; the amount of paid leave; and the length of the periods of notice in case of termination of the contract or the employment relationship.

Article 2§7 guarantees compensatory measures for persons performing night work.

Given the information provided, the Committee wishes to encourage authorities to continue taking necessary measures, which will bring the situation into conformity with Article 2§§1–7 of the Charter, and thus allowing the acceptance of this provision.

Article 3§§1–4 *The right to safe and healthy working conditions*

Situation in Azerbaijan

Occupational safety is regulated by Section IX of the Labor Code.

A Decent Work Programme of Azerbaijan 2016–2020 was signed between the social partners and the ILO with the aim to improve labour conditions of the employees, upgrade occupational safety system and strengthen the enforcement of labour legislation. Furthermore, a Memorandum of Understanding was signed between the Ministry of Labour and Social Protection of Population and the International Finance Corporation to improve control mechanisms by the State Labour Inspectorate Service, to develop modern methodologies and procedures for risk-based inspections and to increase the capacity of the inspectorate in risk analysis and assessment.

Article 221 of the Labour Code has foreseen the establishment of an Occupational Safety Fund. A draft statute of the Occupational Safety Fund has been prepared and submitted to the Government.

The report indicates that ratification of Article 3 of the Charter is not currently under consideration.

Opinion of the European Committee of Social Rights

The information provided in the national report is too scarce to permit a thorough assessment of the situation in Azerbaijan as regards Article 3 of the Charter.

Article 10§§1–5 *The right to vocational training*

Situation in Azerbaijan

The right to vocational training is regulated by the Law on Employment (for unemployed and employed persons), the Law on Education (from 19 June 2009), the Law on General Education (from 29 March 2019) and the Law on Vocational Education (from 24 April 2018).

According to the Law on Education and the Law on General Education, the state secures the right to compulsory general secondary education for all citizens without discrimination. Students enrolled in the public educational institutions enjoy the right to free-of-charge general education.

Article 4 of the Law on Vocational Education stipulates the right to vocational education on equal terms for citizens of the Republic of Azerbaijan, foreigners and stateless persons and those residing in the territory of the Republic of Azerbaijan. Vocational training is defined as the retraining of job seekers and unemployed persons to acquire qualifications (profession) or new specialty (profession) in the educational institution in accordance with the requirements of the labor market.

According to Article 7§5 of the Labour Code, the terms, procedures and duration of employee's training in a new profession or specialty and the parties' obligations shall be governed by an appropriate agreement or employment contract.

According to Article 24 of the Law on Vocational Education, vocational education institutions may conclude contracts with employers to provide industrial training and on-the-job training. The Strategic Roadmap for the Development of Vocational Education and Training in the Republic of Azerbaijan (approved by a Presidential Decree No. 1138 from 6 December 2016), envisages the possibility of concluding an apprenticeship agreement.

The report indicates that ratification of Article 10 of the Charter is not currently under consideration.

Opinion of the European Committee of Social Rights

The Committee notes that for the purposes of Article 10§1 of the Charter, the notion of vocational training covers general and vocational secondary education, university and non-university higher education, and vocational training organised by other public or private actors, including continuing training. University and non-university higher education are considered to be vocational training as far as they provide students with the knowledge and skills necessary to exercise a profession. To comply with the requirements of Article 10§1 of the Charter, the States Parties shall also build bridges between secondary vocational education and university and non-university higher education; introduce mechanisms for the recognition/validation of knowledge and experience acquired in the context of training/working activity in order to achieve a qualification or to gain access to general,

technical and university higher education; introduce mechanisms for the recognition of qualifications awarded by continuing vocational education and training.

The indicators to assess compliance with Article 10§1 of the Charter include the capacity of the education and training system (in particular, the ratio between training places and candidates), the total spending on education and training as a percentage of the GDP; the completion rate of young people enrolled in vocational training courses and of students enrolled in higher education; the employment rate of people who hold a higher-education qualification and the waiting-time for these people to get a first qualified job.

The scope of vocational education in Azerbaijan appears to be too narrow to comply with requirements of Article 10§1, while information on the relevant indicators is missing.

According to Article 10§2, young people have the right to access to apprenticeship and other training arrangements. Apprenticeship is assessed on the basis of the following elements: length of the apprenticeship and division of time between practical and theoretical learning; selection of apprentices; selection and training of trainers; termination of the apprenticeship contract.

Under Article 10§3 the right to continuing vocational training must be guaranteed to employed, self-employed and unemployed persons, including young unemployed people. As regards employed persons, States Parties shall provide facilities for training and retraining of adult workers to prevent deskilling and the risk of unemployment. As regards unemployed people, vocational training must be available.

In accordance with Article 10§4, States Parties must fight long-term unemployment (for 12 months or more) through retraining and reintegration measures.

Article 10§5 provides for complementary measures to make access to vocational training effective in practice. Under Article 10§5(a) States must ensure that vocational training is provided free of charge or that fees are progressively reduced. Under Article 10§5(b) States must provide financial assistance either universally, or subject to a means-test, or awarded on the basis of the merit. In any event, assistance should at least be available for those in need and shall be adequate. It may consist of scholarships or loans at preferential interest rates. The number of beneficiaries and the amount of financial assistance are also taken into consideration for assessing compliance with this provision. The granting of financial assistance to students and trainees shall be based on equal treatment between own nationals and nationals of other States Parties lawfully resident or regularly working, while no length of residence may be required. For a thorough assessment of the situation in practice, the Committee seeks additional information on the types and nature of financial assistance available and the conditions of entitlement.

With regard to Article 10§5(c), the time spent on supplementary training at the request of the employer must be included in the normal working-hours. With regard to Article 10§5(d), states must evaluate their vocational training programmes for young workers, including the apprenticeships. In particular, the participation of employers' workers' organisations is required in the supervision process.

Given the information provided, the Committee wishes to encourage authorities to continue taking necessary measures, which will bring the situation into conformity with Article 10§§1–5 of the Charter, and thus allowing the acceptance of this provision.

Article 12§§1–4 *The right to social security*

Situation in Azerbaijan

The report makes reference to the Law on Social Insurance, but does not provide further details. According to the MISSCEO database, the social security system in the Republic of Azerbaijan consists of the social insurance and social protection schemes. The social insurance system includes pension and invalidity insurance, sickness, maternity and unemployment insurance, which cover economically active persons (employees, self-employed people, farmers and civil servants), their family members and some assimilated groups. The social insurance benefits are primarily financed from social security contributions. Other social protection benefits are based on needs. The payment of social benefits is regulated by the Law on Social Benefits (from 7 February 2006), while the amounts of benefits are determined by the Decrees and Orders of the President.

According to MISSCEO database, as of 1 October 2019 the amount of minimum old-age and invalidity labour pension was 200 manat.

The report does not contain information on bilateral social security agreements or other measures taken to ensure social security rights for persons in cross-border situations. According to MISSCEO database, as of June 2016 Azerbaijan has bilateral social security agreements with Georgia, Ukraine, Turkmenistan, Uzbekistan, Kazakhstan, Moldova, Belarus and Turkey on aggregation of insurance periods for the calculation of old-age and invalidity pensions. The agreements with Turkey and Belarus also covered export of pensions, while the agreement with Turkey covered also coordination of unemployment and family benefits.

The report suggests that ratification of Article 12§§1 and 3 of the Charter is possible as obligations under these paragraphs do not contradict the national legislation. On the other hand, ratification of Article 12§2 is not being considered as the Republic of Azerbaijan has not ratified the European Code of Social Security.

Opinion of the European Committee of Social Rights

The absence of more detailed information on various legal criteria and the applicable rates of benefits does not permit a detailed assessment of the situation as regards the level of social security system which is necessary for the ratification of the European Code of Social Security. The Committee notes however, that formal ratification of the Code is not a prerequisite for ratification of Article 12§2.

As regards Article 12§4, the Committee notes that the limited number of bilateral agreements and moreover their limited scope, and the absence of other measures does not ensure compliance with the obligations of the Charter for persons moving between or working on the territories of more than one of the States Parties.

The Committee welcomes the consideration of Azerbaijan authorities to ratify Article 12§§1 and 3 of the Charter and encourages the authorities to proceed towards ratification without delay.

Article 13§§1–4 *The right to social and medical assistance*

Situation in Azerbaijan

The Law on Targeted Social Assistance (from 1 July 2006) regulates the payment of means-tested social assistance benefits for vulnerable low-income families. The Law on protection of population health regulates the provision of health care services and ensures

equal access to free health care services at public health care facilities for citizens and stateless persons permanently residing in Azerbaijan.

The report indicates that ratification of Article 13 of the Charter is not currently under consideration.

Opinion of the European Committee of Social Rights

Article 13§1 provides for the right to social and medical assistance benefits, for which individual need is the main criterion for eligibility, in circumstances when the persons is unable to obtain adequate resources from a social security system or other sources. For the purposes of Article 13§1 social assistance may take the form of benefits in cash or in kind. To assess the adequacy of the level of assistance, social assistance benefits are compared with the poverty threshold.

As regards medical assistance, everyone who lacks adequate resources must be able to obtain free of charge in the event of sickness the care necessitated by his/her condition.

Under Article 13§2, persons receiving assistance must not suffer as a result any diminution of their political or social rights.

Article 13§3 concerns free of charge services offering advice and personal assistance specifically addressed at persons without adequate resources or at risk of becoming so. Article 13§3 has connections to Article 14§1 of the Charter, the latter provision being accepted by Azerbaijan. Article 13§3 does not require specific services separate from the social welfare services of Article 14, so long as persons without adequate resources receive benefits and services adapted to their needs, which are provided free of charge.

Article 13§4 grants non-resident foreign nationals an entitlement to emergency social and medical assistance.

The Committee wishes to encourage authorities to continue taking necessary measures, which will bring the situation into conformity with Article 13§§1–4 of the Charter, and thus allowing the acceptance of this provision.

Article 15§§1–3 *The right of persons with disabilities to independence, social integration and participation in the life of the community*

Situation in Azerbaijan

The Law on the Rights of Persons with Disabilities was adopted on 31 May 2018. The law defines the basis for state policy and the state's responsibilities for the protection of the rights of persons with disabilities, the elimination of all forms of discrimination based on disability, the rehabilitation of persons with disabilities, their full participation in the life of the community and regulation of their social integration.

Azerbaijan ratified the UN Convention on the Rights of Persons with Disabilities on 28 January 2009.

The report suggests that ratification of Article 15§§1–3 of the Charter would be appropriate with a view to the work undertaken to ensure the conformity of the national legislation with international conventions.

Opinion of the European Committee of Social Rights

The Committee notes that Article 15 applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age.

According to Article 15§1, all persons with disabilities have a right to education and training: primary education, general and vocational secondary education as well as other forms of vocational training. Article 15§1 of the Charter entails an obligation for States Parties to provide education for persons with disabilities in mainstream or special schools, while the priority shall be given to education in mainstream establishments. The existence of non-discrimination legislation is an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes.

Article 15§2 requires States Parties to promote an equal and effective access to employment on the open labour market for persons with disabilities, while States enjoy a certain margin of discretion concerning the measures to promote access to employment of persons with disabilities.

Regarding work conditions there must be obligations on the employer to take steps in accordance with the requirement of reasonable accommodation to ensure effective access to employment and to keep in employment persons with disabilities, in particular persons who have become disabled while in their employment as a result of an industrial accident or occupational illness. Sheltered employment facilities must be reserved for those persons with disabilities who, due to their disability, cannot be immediately integrated into the open labour market, but these facilities shall aim to assist their beneficiaries to enter the open labour market subsequently.

Under Article 15§3 there shall be comprehensive non-discrimination legislation covering both the public and private sphere in fields such as housing, transport, telecommunications and cultural and leisure activities. Such legislation may consist of general anti-discrimination legislation, specific legislation or a combination of the two. There shall also be effective remedies for those who have been treated unlawfully.

States shall adopt a coherent policy in the disability context which includes positive action measures to achieve the goals of social integration and full participation of persons with disabilities. Such measures should have a clear legal basis and be coordinated, and people with disabilities should have a voice in the design, implementation and review of such policy.

States shall also remove barriers to communication and mobility to enable access to transport (land, rail, sea and air), housing (public, social and private), cultural activities and leisure (social and sporting activities). They shall establish mechanisms to assess the barriers to communication and mobility faced by persons with disabilities, and identify the support measures that are required to assist them in overcoming these barriers. All public transport vehicles, all newly constructed or renovated public buildings, facilities and buildings open to the public should be physically accessible, and there shall be tangible progress in adapting existing environment.

Technical aids (prostheses, walkers, wheelchairs, guide dogs etc) must be available either free of charge or subject to an appropriate contribution towards their cost and taking into account the beneficiary's means. Support services (such as personal assistance and auxillary aids) must be available, either free of charge or subject to an appropriate contribution towards their cost and taking into account the beneficiary's means. Telecommunications and new information technology must be accessible, and sign language must have an official status.

The needs of persons with disabilities must be taken into account in housing policies, including the construction of an adequate supply of suitable housing including social housing. Financial assistance should be provided for the adaptation of existing housing. The situation in practice would be of importance in order to assess how the effective exercise of the right to independence, social integration and participation in the life of the community of persons with disabilities is ensured.

The Committee welcomes the consideration of Azerbaijan authorities to ratify Article 15§§1–3 of the Charter and encourages the authorities to proceed towards ratification without further delay.

Article 17§§1 and 2 *The right of children and young persons to social, legal and economic protection*

Situation in Azerbaijan

According to Article 17 of the Constitution, taking care of the children and their upbringing is the duty of the parents. The state shall supervise the implementation of this duty.

The relevant legal framework includes the Law on Children Rights, and the Law on the Legal Protection of Children who have lost Parents and are Deprived of Parental Care.

Children who do not have parents or guardians, or who are deprived of parental care are under the protection of the State. It is prohibited to involve children in activities that may threaten their lives, health or morality. Children under the age of 15 may not be employed for work. The State supervises the implementation of children's rights.

The state, through government agencies and NGOs, has implemented measures of social protection of children and youth, including provision of social services, referral to relevant bodies to solve their problems, provision of shelter and reintegration services, and measures to prevent them becoming victims of violence, human trafficking and forced labor.

For the time being, about 10,000 children who are deprived of parental care or children with disabilities live in state childcare facilities or are provided daily care services. Activities to prevent children from being institutionalised and to provide community-based and family support services for children are being expanded. Awareness-raising measures to expand foster family services are planned.

According to the Law on Education, the state secures the right to compulsory general secondary education. All students enrolled in public educational institutions enjoy the right to free-of-charge general education. Ensuring the right to general education of students is controlled by the Ministry of Education and local education management bodies along with local authorities and law enforcement agencies.

Azerbaijan ratified the UN Convention on the Rights of the Child on 21 July 1992. Additionally, Azerbaijan has joined the Optional Protocol on Child Trafficking, Child Prostitution and Child Pornography and the Optional Protocol on the Involvement of Children in Armed Conflicts (both from 3 July 2002).

The report indicates that ratification of Article 17 of the Charter is not currently under consideration.

Opinion of the European Committee of Social Rights

Article 17§1 integrates into the Charter rights which are guaranteed by the UN Convention on the Rights of the Child, and Article 17 is interpreted in light of the UN Convention on the Rights of the Child.

Article 17§1 covers the following issues: the legal status of the child; rights of children in public care; protection of children from violence, ill-treatment and abuse; children in conflict with the law; and the right to assistance.

Article 17§2 requires States Parties to establish and maintain an education system that is both accessible and effective. There shall be a functioning system of primary and secondary education, which includes an adequate number of schools fairly distributed over the country. Education must be compulsory until the minimum age for admission to employment, while the primary and secondary education must be free of charge. There shall be a mechanism to control the quality of teaching and the methods used. Measures must be taken to encourage school attendance and to actively reduce the number of children dropping out or not completing compulsory education and the rate of absenteeism

As Azerbaijan has ratified the UN Convention on the Rights of the Child, the Committee invites Azerbaijan to consider the acceptance of Article 17 of the Charter.

Article 18§§1–4 *The right to engage in a gainful occupation in the territory of other Parties*

Situation in Azerbaijan

According to the report, the legislation of Azerbaijan does not pose any restrictions for its citizens to engage in income-generating activities in the territory of other Parties.

Applications related to migration issues are based on the principle of 'one window'. The State Agency for Public Service and Social Innovations accepts applications for migration and related issues from foreigners and stateless persons in an electronic form. The former obligation of foreigners and stateless persons to register at the place of residence has been eliminated.

The report indicates that ratification of Article 18 of the Charter is not currently under consideration.

Opinion of the European Committee of Social Rights

Under Article 18§1 the assessment of the degree of liberality used in applying existing regulations is based on figures showing the refusal rates for work permits. Economic or social reasons may justify certain limits for access of foreign workers to the national labour market.

Article 18§2 presupposes the possibility of completing formalities for foreign workers both in the country of destination as well as in the country of origin, and obtaining the residence and work permits at the same time and through a single application. States Parties shall reduce or abolish chancery dues and other charges paid either by foreign workers or by their employers.

Under Article 18§3, States are required to liberalise periodically the regulations governing the employment of foreign workers in areas of access to the labour market, the right to engage in an occupation and rights in the event of loss of employment.

According to Article 18§4, States undertake not to restrict the right of their nationals to leave the country to engage in gainful employment in other Parties to the Charter. The only permitted restrictions are those provided for in Article G of the Charter.

The Committee wishes to encourage authorities to continue taking necessary measures, which will bring the situation into conformity with Article 18§§1–4 of the Charter, and thus allowing the acceptance of this provision.

Article 19§§1–12 *The right of migrant workers and their families to protection and assistance*

Situation in Azerbaijan

The report suggests that ratification of Article 19§§1–12 of the Charter is possible and would be appropriate given that the relevant provisions of national legislation are in line with the provisions of the Charter.

Opinion of the European Committee of Social Rights

Article 19§1 guarantees the right to free information and assistance to nationals wishing to emigrate and to nationals of other States Parties who wish to immigrate. Information should be reliable and objective and cover issues such as formalities to be completed and the living and working conditions they may expect in the country of destination (such as vocational guidance and training, social security, trade union membership, housing, social services, education and health).

Another obligation under this provision is that States Parties must take measures to prevent misleading propaganda relating to immigration and emigration. Such measures should prevent the communication of misleading information to nationals leaving the country and act against false information targeted at migrants seeking to enter.

To be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia as well as women trafficking. Such measures, which should be aimed at the whole population, are necessary inter alia to counter the spread of stereotyped assumptions that migrants are inclined to crime, violence, drug abuse or disease. States Parties must also take measures to raise awareness amongst law enforcement officials, such as awareness training of officials who are in first contact with migrants.

Article 19§2 obliges States Parties to adopt special measures for the benefit of migrant workers, beyond those which are provided for nationals to facilitate their departure, journey and reception. ‘Reception’ means the period of weeks which follows immediately from their arrival, during which migrant workers and their families most often find themselves in situations of particular difficulty, and the measures at issue must include not only assistance with regard to placement and integration in the workplace, but also assistance in overcoming problems, such as short-term accommodation, illness, shortage of money and adequate health measures.

The obligation to “provide within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey” relates to migrant workers and their families travelling either collectively or under the public or private

arrangements for collective recruitment. The Committee considers that this aspect of Article 19§2 does not apply to forms of individual migration for which the State is not responsible.

The scope of Article 19§3 extends to migrant workers immigrating as well as migrant workers emigrating to the territory of any other State. Contacts and information exchanges should be established between public and/or private social services in emigration and immigration countries, with a view to facilitating the life of emigrants and their families, their adjustment to the new environment and their relations with members of their families who remain in their country of origin. Formal arrangements are not necessary, the provision of practical co-operation on a needs basis may be sufficient.

Article 19§4 guarantees the right of migrant workers to a treatment not less favourable than that of the nationals in the areas of: (a) remuneration and other employment and working conditions, (b) trade union membership and the enjoyment of benefits of collective bargaining, and (c) accommodation.

States are required to guarantee certain minimum standards in these areas with a view to assisting and improving the legal, social and material position of migrant workers and their families. States are obliged to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service/vocational training and promotion. The right to membership of a trade union includes the right to be founding member and access to administrative and managerial posts in trade unions. This also applies to workers who provide services within the host state but are contracted by an employer in another state. There must be no legal or de facto restrictions on access to public or private accommodation including home-buying, access to subsidised housing or housing aids, such as loans or other allowances.

Article 19§5 recognises the right of migrant workers to equal treatment in law and in practice in respect of the payment of employment taxes, dues or contributions.

Article 19§6 obliges States to allow the families of migrants legally established in their territory to join them. The worker's children entitled to family reunion are those who are dependent and unmarried, and who fall under the legal age-limit in the receiving state (under the Charter the age limit for admission under family reunion is set at the age of majority, which in most countries is 18 years).

The Committee considers that certain conditions may excessively inhibit family reunion and are therefore violations of the Charter, e.g. refusal on health grounds except where the condition is a threat to public health, order or security; a requirement that the migrant has been resident for more than one year; a requirement that the family have sufficient accommodation which is too restrictive; a requirement that the family have sufficient means which is too restrictive; or language tests which must be passed in order to be allowed to join the family in the State.

Under Article 19§7 States Parties must ensure that migrants have access to courts, to lawyers and legal aid on the same conditions as their own nationals.

Article 19§8 obliges States Parties to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality.

Under Article 19§9 migrants must be allowed to transfer money (earnings and savings) to their own country or any other country both during their stay and when they leave their host country. There may be legal limits, but not excessive restrictions. This provision includes the right to transfer moveable property in their possession.

To comply with Article 19§10, States must ensure equal treatment of self-employed persons and wage-earners as well as self-employed migrants and self-employed nationals as regards the rights covered by Art19§§1–9 and Art.19§§11–12.

Under Article 19§11 States should promote and facilitate the teaching of the national language to migrants and their family members which is the main means to integrate into the world of work and society at large. The Committee holds that national language classes shall be provided free of charge otherwise these are not accessible to many migrants, and a requirement to pay substantial fees is not in conformity with the Charter.

In accordance with Article 19§12, States should promote and facilitate the teaching of the languages most represented among the migrants present on their territories in schools, voluntary associations, NGOs etc.

The Committee welcomes the consideration of Azerbaijan authorities to ratify Article 19§§1–12 of the Charter and encourages the authorities to proceed towards ratification without delay.

Article 23 *The rights of elderly persons to social protection*

Situation in Azerbaijan

Social protection of elderly persons is regulated by the Law on Labour Pensions, the Law on Social Services and other acts. The social protection of elderly persons includes social services at home and in institutions, and payment of pensions and social benefits. Moreover, in 2006 the State Program for Strengthening of Social Protection of Elderly was approved. It is planned to take the necessary measures to ensure active participation of older persons in the social, political and economic life of the country in accordance with the principles of the Madrid International Plan of Action on Ageing and the Vienna Ministerial Conference on Ageing.

The report indicates that ratification of Article 23 of the Charter is not currently under consideration.

Opinion of the European Committee of Social Rights

Under Article 23 States Parties shall combat age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services, healthcare, education, services such as insurance and banking products, participation in policy making/civil dialogue, allocation of resources and facilities. An adequate legal framework is required to combat age discrimination in these areas. There should also be a legal framework on assisted decision making for the elderly guaranteeing their right to make decisions for themselves unless it is shown that they are unable to make them.

To assess the adequacy of resources, all social protection measures guaranteed to elderly persons and aimed at maintaining income level allowing them to lead a decent life and participate actively in public, social and cultural life are taken into account. The emphasis is on minimum level of pensions, but other complementary cash benefits available to elderly persons are also considered. These resources are compared with the median equivalised income in the country concerned. The Committee also takes into consideration indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

The Committee assesses the existence, extent and cost of home help services, community based services, specialised day care provision (e.g. for persons with dementia and related illnesses) and services such as information, training and respite care for families caring for elderly persons, in particular, highly dependent persons, as well as cultural leisure and educational facilities available to elderly persons. States must also have a system for monitoring the quality of services, a procedure for complaining about the standard of services and an appropriate regulation of fees for services.

Housing law and policy must take account of the special needs of elderly persons. There shall be sufficient supply of adequate and appropriate housing for elderly persons, and assistance for the adaptation of homes and provision of sheltered/supported housing to allow elderly persons to remain in their own homes for as long as possible. There must also be health care programmes and services (in particular primary health care services including domiciliary nursing/health care services), specifically aimed at the elderly, mental health programmes for any psychological problems in respect of the elderly, as well as adequate palliative care services.

Elderly persons living in institutions must be guaranteed the right to appropriate care and adequate services, the right to privacy, the right to personal dignity, the right to participate in decisions concerning the living conditions in the institution, the protection of property, the right to maintain personal contact with persons close to the elderly person and the right to complain about treatment and care in institutions.

As regards acceptance of Article 23 of the Charter, the situation in practice is of particular importance in order to assess the extent to which the effective exercise of the right of elderly persons to social protection is ensured.

The Committee wishes to encourage authorities to continue taking necessary measures in law and in practice, which will bring the situation into conformity with Article 23 of the Charter, and thus allowing the acceptance of this provision.

Article 25 *The right of workers to the protection of their claims in the event of the insolvency of their employer*

Situation in Azerbaijan

According to Article 178§§2 and 3 of the Labour Code, in the event of the closure of an enterprise the employer shall pay in the first place to employees all salaries and benefits, including compensations for unused vacation days. If the company becomes insolvent as a result of bankruptcy these payments shall be compensated to employees in the manner stipulated by the legislation. If the employer does not have the resources to pay outstanding salaries and benefits, payments shall be made by selling the property of the company or through insurance system established by the state pursuant to the relevant regulations.

The Azerbaijan authorities suggest to organise a workshop or a study visit by the experts of the Council of Europe on Article 25 of the Charter to analyse further the possibility of ratification of this article.

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Article 25 of the Charter guarantees individuals the right to protection of their claims in the event of the insolvency of their employer. States have a margin of discretion as to the form of protection of workers' claims. However, regardless of the form of protection, whether by a specific guarantee institution or otherwise, the protection afforded must be adequate and effective, also in situations where the assets of an enterprise are insufficient to cover

salaries owed to workers. The protection should also be effective in situations where the employer's assets are recognised as insufficient to justify the opening of formal insolvency proceedings. On the other hand, a privilege system alone and on its own, where workers' claims have a priority is not regarded as an effective form of protection, as the employer may have no assets.

To demonstrate the adequacy of protection, States Parties must provide information on the average duration of the period from a claim is lodged until the worker is paid and on the overall proportion of workers' claims which are satisfied by the guarantee institution and/or the privilege system.

The report refers both to the privilege system and the insurance system, but information is missing on the practical operation of the protection, whether all employees are covered, what is the average duration of settling the claims, whether there are any applicable limits on the worker's claims etc.

The Committee invites Azerbaijan to continue considering the acceptance of Article 25 of the Charter and remains at the disposal of the authorities of Azerbaijan as regards any necessary further information on this provision.

Article 30 *The right to protection against poverty and social exclusion*

Situation in Azerbaijan

In 2008 a State Program on Poverty Reduction and Sustainable Development in Azerbaijan for 2008–2015" was approved, while in 2012 "Azerbaijan 2020: A look into the future" Development Strategy approved with the aim to reduce absolute poverty. From 1 July 2006 there is a Law on targeted social assistance to provide means-tested social protection for vulnerable low-income families. The poverty line and the minimum subsistence level are being regularly increased.

The report indicates that ratification of Article 30 of the Charter is not currently under consideration.

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Article 30 requires States to adopt an overall and coordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and remove obstacles to access fundamental social rights. There should be in place monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and social exclusion. This approach must link and integrate policies in a consistent way, moving beyond sectoral or target group approach.

The measures taken must promote and remove obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance, addressing the multidimensional phenomena of poverty and social exclusion. The measures should strengthen access to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights, and where necessary, specifically target the most vulnerable groups and regions.

Access to fundamental social rights is assessed by taking into consideration the effectiveness of policies, measures and actions undertaken. As long as poverty and social exclusion persist, there should be an increase in the resources deployed to make social

rights possible. Adequate resources should be allocated to attain the objectives of the strategy. The measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country.

The Committee notes that beyond adoption of state programs and strategies to reduce poverty, the state shall set up mechanisms for monitoring and enforcement involving all relevant actors including civil society, to ensure effective implementation of these strategies in practice. The report makes reference to the poverty line and the minimum subsistence level, but no information is provided on their effective levels or evolution over time.

Given the information provided, the Committee wishes to encourage authorities to continue taking necessary measures, which will bring the situation into conformity with Article 30 of the Charter, and thus allowing the acceptance of this provision.

Article 31 *The right to housing*

Situation in Azerbaijan

According to Article 28 of the Constitution everyone lawfully present on the territory of the Republic of Azerbaijan may move freely and choose the place of residence. According to Article 31 of the Constitution everyone has the right to live in safety, and except in cases envisaged by law it is prohibited to infringe on anybody's life, property and living premises.

The report recognises the growing demand of the population, especially young and poor families, for housing. In this respect reference is made to the Decrees of the President of the Republic of Azerbaijan on the establishment of the Azerbaijan Mortgage Fund OJSC and the establishment of the State Housing Development Agency.

The report indicates that ratification of Article 31 of the Charter is not currently under consideration.

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Article 31 §§ 1, 2 and 3 concern respectively the areas of access to an adequate standard of housing, the prevention of homelessness and access to affordable housing.

Under Article 31§1 States must guarantee to everyone the right to adequate housing. Adequate housing means a dwelling which is: 1) safe from a sanitary and health point of view and possesses all basic amenities (such as water, heating, waste disposal, sanitation facilities, electricity, etc); 2) not over-crowded – the size of the dwelling must be suitable in light of the number of persons and the composition of the household in residence; 3) with secure tenure supported by the law. To ensure that the housing stock is adequate, public authorities shall take appropriate measure, such as conduct an inventory of the housing stock; apply injunctions against owners who disregard obligations; adopt urban development rules and maintenance obligations for landlords; and take safeguards against the interruption of essential services such as water, electricity and telephone. Public authorities shall also promote access to housing for different groups of vulnerable persons, such as low-income persons, unemployed persons, single parent households, young persons, persons with disabilities, including those with mental health problems. Hence, beyond legal provisions effective implementation is necessary.

Article 31§2 addresses the issue of prevention and reduction of homelessness. States must take action to prevent groups of vulnerable people from becoming homeless, in particular by ensuring access to social housing and setting up procedures to limit the risk of eviction.

Evictions should be governed by rules of procedure, which are sufficiently protective of the rights of the persons concerned. There shall be legal protection of persons threatened by eviction, including an obligation to consult the parties affected to find alternative solutions to eviction, and an obligation to fix a reasonable notice period before eviction. Evictions, if they could not be avoided, must be carried out under conditions which respect the dignity of the persons concerned. Evictions carried out at night or during the winter period shall be prohibited by law and authorities must adopt measures to re-house or financially assist the persons concerned. To prevent homelessness, there shall be access to emergency measures, such as shelter, accompanied with procedures to find more permanent housing. The conditions in temporary shelters shall enable living in keeping with human dignity.

Article 31§3 addresses the affordability of housing, in particular for persons with limited resources. Social housing should target the most disadvantaged. Waiting periods for the allocation of housing must not be excessive, and legal and non-legal remedies must be available when waiting periods are long. Housing benefits shall be available at least for low-income and disadvantaged groups.

Finally, the rights to housing must be guaranteed without discrimination, in particular in respect of Roma or travellers.

Given the information provided, the Committee wishes to encourage authorities to continue taking necessary measures in law and in practice, which will bring the situation into conformity with Article 31§§1–3 of the Charter, and thus allowing the acceptance of this provision.

APPENDIX I

Situation of Azerbaijan with respect to the European Social Charter

Signatures and ratifications

Azerbaijan ratified the Revised European Social Charter on 2 September 2004 accepting 47 of the 98 numbered paragraphs.

Table of Accepted Provisions

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7
3.1	3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5	6.1
6.2	6.3	6.4	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8
7.9	7.10	8.1	8.2	8.3	8.4	8.5	9	10.1	10.2	10.3
10.4	10.5	11.1	11.2	11.3	12.1	12.2	12.3	12.4	13.1	13.2
13.3	13.4	14.1	14.2	15.1	15.2	15.3	16	17.1	17.2	18.1
18.2	18.3	18.4	19.1	19.2	19.3	19.4	19.5	19.6	19.7	19.8
19.9	19.10	19.11	19.12	20	21	22	23	24	25	26.1
26.2	27.1	27.2	27.3	28	29	30	31.1	31.2	31.3	

APPENDIX II

Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter

(Adopted by the Committee of Ministers on 12 October 2011 at the 1123rd meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe,

Considering the European Social Charter opened for signature in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996 (“the Charter”);

Reaffirming that all human rights are universal, indivisible and interdependent and interrelated;

Stressing its attachment to human dignity and the protection of all human rights;

Emphasizing that human rights must be enjoyed without discrimination;

Reiterating its determination to build cohesive societies by ensuring fair access to social rights, fighting exclusion and protecting vulnerable groups;

Underlining the particular relevance of social rights and their guarantee in times of economic difficulties, in particular for individuals belonging to vulnerable groups;

On the occasion of the 50th anniversary of the Charter,

1. Solemnly reaffirms the paramount role of the Charter in guaranteeing and promoting social rights on our continent;
2. Welcomes the great number of ratifications since the Second Summit of Heads of States and Governments where it was decided to promote and make full use of the Charter, and calls on all those member states that have not yet ratified the Revised European Social Charter to consider doing so;
3. Recognizes the contribution of the collective complaints mechanism in furthering the implementation of social rights, and calls on those members states not having done so to consider accepting the system of collective complaints;
4. Expresses its resolve to secure the effectiveness of the Social Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure;
5. Welcomes the numerous examples of measures taken by States Parties to implement and respect the Charter, and calls on governments to take account, in an appropriate manner, of all the various observations made in the conclusions of the European Committee of Social Rights and in the reports of the Governmental Committee;

6. Affirms its determination to support States Parties in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the European Committee of Social Rights;

7. Invites member states and the relevant bodies of the Council of Europe to increase their effort to raise awareness of the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.