

## — Azerbaijan and the European Social Charter —

### Signatures, ratifications and accepted provisions

Azerbaijan ratified the Revised European Social Charter on 02/09/2004 and has accepted 47 of the 98 paragraphs.

It has not signed the Additional Protocol Providing for a System of Collective Complaints.

### The Charter in domestic law

Automatic incorporation into domestic law.

### 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							Grey = Accepted provisions				

### Reports on non-accepted provisions

The European Committee of Social Rights ("the Committee") examines the situation of non-accepted provisions of the Revised Charter every 5 years after the ratification. It adopted [reports concerning Azerbaijan](#) in 2009 and in 2014. The Committee considers that acceptance of Article 19 ("the right of migrant workers and their families to protection and assistance") seems possible.

Further information on the reports on non-accepted provisions is available on the [relevant webpage](#).

# Monitoring the implementation of the European Social Charter <sup>1</sup>

## I. Reporting system <sup>2</sup>

### Reports submitted by Azerbaijan

Between 2007 and 2019, Azerbaijan has submitted 11 reports on the application of the Revised Charter.

The [11<sup>th</sup> report](#), submitted on 03/04/2018, covers the accepted provisions of the Revised Social Charter relating to thematic group 3 "Labour rights" (Articles 2, 4, 5, 6, 21, 22, 26, 28, 29).

Conclusions with respect to these provisions have been published in March 2019.

The 12<sup>th</sup> report, which was to be submitted by 31/10/2018, should concern the accepted provisions relating to Thematic group 4 "Children, families, migrants", namely:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (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 opportunities and equal treatment (Article 27),
- the right to housing (Article 31).

Conclusions with respect to these provisions will be published in January 2020.

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<sup>1</sup> The Committee monitors compliance with the Charter under two procedures, the reporting system and the collective complaints procedure, according to Rule 2 of the Committee's rules: « 1. The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. 2. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure ».

Further information on the [procedures](#) may be found on the [HUDOC database](#) and in the [Digest of the case law of the Committee](#).

<sup>2</sup> Following a [decision taken by the Committee of Ministers in 2006](#), the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

Following a [decision taken by the Committee of Ministers in April 2014](#), States having accepted the collective complaints procedure are required, in alternation with the abovementioned report, to provide a simplified report on the measures taken to implement the decisions of the Committee adopted in collective complaints concerning their country. The alternation of reports is rotated periodically to ensure coverage of the four thematic groups.

Detailed information on the Reporting System is available on the [relevant webpage](#). The reports submitted by States Parties may be consulted in the [relevant section](#).

## Situations of non-conformity <sup>3</sup>

### Thematic Group 1 « Employment, training and equal opportunities » - Conclusions 2016

► *Article 152 - Right to work- Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

- It has not been established that it is required for employers to make reasonable accommodation for persons with disabilities;
- Legislation does not provide for a shift in the burden of proof in discrimination cases;
- Nationals of the other States Parties to the Charter do not have access to civil service posts.

► *Article 153 - Right to work - Free placement services*

Public employment services do not operate in an efficient manner.

► *Article 154 - Right to work - Vocational guidance, training and rehabilitation*

- It has not been established that the right to vocational guidance is guaranteed;
- It has not been established that the right to vocational guidance within the labour market is guaranteed to persons with disabilities;
- There is no legislation explicitly protecting persons with disabilities from discrimination in training.

► *Article 9 - Right to vocational guidance*

- It has not been established that the right to vocational guidance is guaranteed;
- It has not been established that the right to vocational guidance within the labour market is guaranteed to persons with disabilities.

► *Article 20 – Right to equal opportunities and equal treatment in matters of employment and occupation without sex discrimination*

- Legislation does not provide for a shift in the burden of proof in gender discrimination cases;
- women are not permitted to work in all professions which constitutes discrimination based on sex;
- The unadjusted gender pay gap is manifestly too high.

### Thematic Group 2 « Health, social security and social protection » - Conclusions 2017

► *Article 1151 – Right to protection of health – removal of causes of ill-health*

- The measures taken to reduce infant and maternal mortality have been insufficient;
- Public healthcare expenditure is too low.

► *Article 1153 – Right to protection of health – prevention of diseases and accidents*

- Legislation does not prohibit the sale and use of asbestos;
- It has not been established that adequate measures were taken to prevent accidents.

► *Article 1451 – Right to benefit from social services - Promotion or provision of social services*

Access to social services by nationals of other States Parties is subject to an excessive length of residence requirement.

### Thematic Group 3 « Labour rights » - Conclusions 2018

► *Article 451 – Right to a fair remuneration– Decent remuneration*

The monthly minimum wage does not ensure a decent standard of living.

► *Article 453 – Right to a fair remuneration – Non-discrimination between women and men with respect to remuneration*

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<sup>3</sup> Further information on the situations of non-conformity is available on the [HUDOC database](#).

The enforcement of the right to equal pay is not effective, as demonstrated by the persistently high gender pay gap.

► *Article 4§4 – Right to a fair remuneration – Reasonable notice of termination of employment*

The notice period is not reasonable in the following cases:

- termination of employment on account of being called up for military service or long-term illness or disability, beyond ten years of service;
- termination of employment on grounds stipulated in the employment contract, beyond three years of service;
- dismissal during the probationary period;

No notice period is provided for in the following cases:

- dismissal for professional incompetence or lack of qualifications without further justification;
- termination of employment in the event of a change of ownership of the undertaking or the reinstatement of a former worker following a judicial decision or after military service;

► *Article 4§5 – Right to a fair remuneration – Limits to wage deductions*

- Following all authorised deductions, the wages of workers with the lowest earnings do not enable them to provide for themselves or their dependants;
- Guarantees in place to prevent workers from waiving their right to limitation of deduction from wages are insufficient.

► *Article 5 – Right to organise*

- The right to form and join trade unions is not ensured in practice in multinational companies;
- All members of the police force are denied the right to organize

► *Article 6§1 – Right to bargain collectively - Joint consultation*

It has not been established that the promotion of joint consultation between workers and employers on most matters of mutual interest covered by Article 6§1 is ensured.

► *Article 6§2 – Right to bargain collectively - Negotiation procedures*

There is not adequate promotion of voluntary negotiations between the social partners.

► *Article 6§4 – Right to bargain collectively - Collective action*

- Restrictions on the right to strike for employees in essential services are too extensive and go beyond the limits permitted by Article G of the Charter;
- The prohibition on the right to strike for public servants does not comply with the conditions established by Article G of the Charter.

► *Article 22 – Right of workers to take part in the determination and improvement of working conditions and working environment*

- The right to participate in the decision-making process within undertakings with regard to working conditions, work organization and working environment, is not effectively guaranteed;
- Legal remedies are not available to workers in the event of infringements of their right to take part in the determination and improvement of working conditions and the working environment.

► *Article 26§1 – Right to dignity in the workplace - Sexual harassment*

- It has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against sexual harassment in relation to work;
- No shift in the burden of proof applies in sexual harassment cases under the Labour Code.

► *Article 26§2 – Right to dignity in the workplace - Moral harassment*

- It has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against moral (psychological) harassment in the workplace or in relation to work;
- No shift in the burden of proof applies in moral (psychological) harassment cases under the Labour Code;

- It has not been established that appropriate and effective redress (compensation and reinstatement) is guaranteed in cases of moral (psychological) harassment.

▶ *Article 28 – Right of workers' representatives to protection in the undertaking and facilities to be accorded to them*

- Protection against dismissal granted to workers' representatives is not extended for a reasonable period after the end of their mandate,
- It has not been established that protection afforded to workers' representatives against prejudicial acts short of dismissal is adequate.

▶ *Article 29 - Right to information and consultation in procedures of collective redundancy*

It has not been established that there are measures that would prevent redundancies from being put into effect before the obligation to inform and consult has been fulfilled.

**Thematic Group 4 « Children, families, migrants » - Conclusions 2015**

▶ *Article 7§5 – Right of children and young persons to protection – Fair pay*

The young workers' wages are not fair.

▶ *Article 7§7 – Right of children and young persons to protection – Paid annual holidays*

Young workers have the option of giving-up their annual holiday for financial compensation.

▶ *Article 7§10 – Right of children and young persons to protection – Special protection against physical and moral dangers*

- Children over 16 but under the age of 18 may be held criminally liable for prostitution;
- All forms of corporal punishment are not prohibited in the home and in institutions.

▶ *Article 8§1 – Right of employed women to protection of maternity – Maternity leave*

Interruptions in the employment record are not taken into account in the assessment of the qualifying period required for entitlement to maternity benefits.

▶ *Article 16 – Right of the family to social, legal and economic protection*

Equal treatment of nationals of States Parties regarding the payment of family benefits is not ensured because the length of residence requirement is excessive.

▶ *Article 27§2 – Right of workers with family responsibilities to equal opportunity and treatment - Parental leave*

The level of social leave benefit is inadequate.

**The Committee has been unable to assess compliance with the following provisions and has invited the Azerbaijani Government to provide more information in the next report:**

**Thematic Group 1 « Employment, training and equal opportunities »**

- ▶ Article 1§1 - Conclusions 2016

**Thematic Group 2 « Health, social security and social protection »**

- ▶ Article 11§2 - Conclusions 2017
- ▶ Article 14§2 - Conclusions 2017

**Thematic Group 3 « Labour rights »**

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**Thematic Group 4 « Children, families, migrants »**

- ▶ Article 7§3 - Conclusions 2017
- ▶ Article 8§2 - Conclusions 2015
- ▶ Article 27§1 - Conclusions 2017

## **II. Examples of progress achieved in the implementation of rights under the Charter (*non-exhaustive list*)**

### **Thematic Group 1 « Employment, training and equal opportunities »**

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### **Thematic Group 2 « Health, social security and social protection »**

► An agreement was signed in February 2010 by the Government, the Azerbaijan Trade Union Confederation (ATUC) and the Azerbaijan Confederation of Entrepreneurs (ACE) for the period 2010-2011. This agreement states that the population's income levels should gradually be brought to levels compatible with the requirements of the Revised Charter and a gradual approach should also be taken for calculating the minimum wage, basic pension and for the criteria of "need" used to decide on social assistance.

### **Thematic Group 3 « Labour rights »**

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### **Thematic Group 4 « Children, families, migrants »**

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