



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

October 2014

**SECOND REPORT
ON THE NON-ACCEPTED PROVISIONS OF THE 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 in December 2002 decided 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 Social Charter (and every five years thereafter), the European Committee of Social Rights reviews the non-accepted provisions with the countries concerned, with a view to securing a higher level of acceptance. Past experience had shown that states tended to forget that selective acceptance of Charter provisions was meant to be a temporary phenomenon. The aim of the new procedure was therefore to require them to review the situation after five years and encourage them to accept more provisions.

As Azerbaijan ratified the Revised Charter on 2 September 2004 accepting 47 of the 98 paragraphs, the European Committee of Social Rights held a first meeting on non-accepted provisions with representatives of Azerbaijan on 23 – 24 June 2009.

The issue of non-accepted provisions was also touched upon 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.

Following the 2nd meeting held in Baku on 25 June 2014, the European Committee of Social Rights delegation considered that acceptance seemed possible in respect of Article 19 on the right of migrant workers and their families to protection and assistance.

The European Committee of Social Rights remains at the disposal of the authorities of Azerbaijan and encourages them to study the collective complaints procedure with a view to its acceptance at a later stage.

The next examination of the provisions not accepted by Azerbaijan will take place in 2019.

II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS

A Meeting on non-accepted provisions

The programme of the meeting appears in appendix 2.

The meeting was opened by Mr. Matin Karimli, Deputy Minister of Labour and Social Protection of Population.

a Provisions relating to employment, training and equal opportunities

- The right of persons with disabilities to independence, social integration and participation in the life of the community (Art. 15)

Situation in Azerbaijan

- Art. 15: In this regard, the Republic of Azerbaijan took a number of measures including:
- expansion of the legal and regulatory framework on social protection of persons with disabilities;
- current situation and activities carried out to bring evaluation of disability into compliance with international standards;
- Rehabilitation centers for the people with disabilities, Occupational rehabilitation center, Prosthetic and orthopedic rehab center, rehabilitation means, etc.
- quota system in the employment of persons with disabilities; in order to ensure their social integration, adjustments are made in designing of residential and public buildings, state agencies, transport. Special adjustments are also made to make the existing buildings accessible for the people with disabilities.

Opinion of the European Committee of Social Rights

It was noted that Azerbaijan had ratified the UN Convention on the Rights of Persons with Disabilities, which was considered as a good basis for the future ratification of Article 15 of the European Social Charter. However, the UN Committee on the Rights of Persons with Disabilities had made on 12 May 2014 a number of critical observations on the situation in Azerbaijan in its Concluding Observations on the first report of Azerbaijan. The UN Committee recommended a number of measures to be taken in law and practice, which concurred to a great extent with the assessment of the European Committee of Social Rights with respect to Article 15 of the European Social Charter.

In summary, it was felt that Azerbaijan had made an important step forward by ratifying the UN Convention on the Rights of Persons with Disabilities. However, the observations made by the UN Committee demonstrated that considerable efforts had still to be made before Azerbaijan could

accept the provision on 'The right of persons with disabilities to independence, social integration and participation in the life of the community (Art. 15)'.

b Provisions relating to health, social security and social protection

- The right to protection against poverty and social exclusion (Art. 30)

Situation in Azerbaijan

- Art. 30: The implementation of the issues set forth in the Article 30 of the Charter is provided under the State Program on Poverty Reduction and Sustainable Development in the Republic of Azerbaijan for 2008-2015, "Azerbaijan 2020: Look into the future" Concept of Development and in other documents. These issues are regulated by the Laws of the Republic of Azerbaijan on "Prevention of disabilities and children with disabilities, rehabilitation and social protection of disabled and children with disabilities", on "Rights of the children", on "Prevention of Juvenile negligence and delinquency", on "Fight against human trafficking", on "Social benefits", on "Social adaptation of persons released from penal institutions", on "Social service".
- The legislation of the Republic of Azerbaijan complies with Art. 30 of the European Social Charter.

Opinion of the European Committee of Social Rights

Reference was made to the new Statement of Interpretation on Article 30 of the European Social Charter which stressed a close link between the right recognised by Article 30 of the European Social Charter and the enjoyment of the rights recognized by other provisions of the Charter such as Article 1, 11, 12, 13, 14, 15, 16, 17, 20, 23, 31 and E. However, Azerbaijan had not ratified yet Articles 12, 13, 15, 17, 23 and 31.

While in the past the European Committee of Social Rights focused on the existence of an overall and co-ordinated approach to prevent and reduce poverty and to remove obstacles to access fundamental social rights, the new statement of interpretation broadened the material scope of Article 30 by emphasising the link between Article 30 and the fundamental rights as recognised by other Articles of the European Social Charter.

In summary, given that Azerbaijan had not accepted obligations under many of the Charter's core provisions, it appeared very unlikely that could accept the provision on 'The right to protection against poverty and social exclusion (Art. 30)'.

c Provisions relating to children, families and migrants

- The right of children and young persons to social, legal and economic protection (Art. 17)
- The right of migrant workers and their families to protection and assistance (Art. 19)

Situation in Azerbaijan

- Art. 17. There was no specific information provided as to the possible compliance of Azerbaijan with Art. 17 of the European Social Charter.

- Art. 19. The right of migrant workers and their families to protection and assistance
- Migration Code of the Republic of Azerbaijan effective since August 1st of 2013 eliminated some gaps in the legislation. The relevant national legislation is basically in line with the provisions of the Article 19 of the Social Charter.
- 19§1 – relevant state agencies in the Republic of Azerbaijan including the Ministry of Labour and Social Protection of Population offer necessary information and free consultations to migrant workers and potential migrants.
- 19§2 – according to the national legislation, migrant workers have the right to terminate the labour contract in accordance with the defined procedure and leave the country at any time. According to the Articles 45.0.5 and 45.0.8 of the Migration Code of the Republic of Azerbaijan migrant workers and their family members are issued permits for temporary residence in the Republic of Azerbaijan that enables them to leave and return to the country without obtaining additional visa.
- 19§4 – according to the Article 75.1 of the Migration Code of the Republic of Azerbaijan, migrant workers enjoy equal treatment with the nationals of the Republic of Azerbaijan in terms of labour conditions and remuneration. The same applies to the membership of such workers in the trade unions.
- 19§5 – no other regulations or restrictions are intended by legislation for migrant workers on taxes, dues or contributions mentioned in this paragraph, and the same regime defined for citizens of the Republic of Azerbaijan is applied.
- 19§6 – there is no restriction by the legislation for the migrant workers to reunion with their families, and as mentioned above according to the Article 45.0.5 of the Migration Code of the Republic of Azerbaijan migrant workers and their families are issued permits for temporary residence in the Republic of Azerbaijan allowing them to leave and return to the country using this document.
- 19§7 – no different regulation is defined by the national legislation for migrant workers to apply to the court for any reason.

Opinion of the European Committee of Social Rights

It was felt that Azerbaijan could accept the provision on ‘The right of migrant workers and their families to protection and assistance (Art. 19)’.

III. EXCHANGE OF VIEWS ON THE COLLECTIVE COMPLAINTS PROCEDURE

The representatives of Azerbaijan were presented the collective complaints procedure. It came into force in 1998 under an Additional Protocol to the European Social Charter. The collective complaints procedure entitled national trade unions and employers' organisations as well as certain international NGOs to lodge complaints of violations of the European Social Charter.

Opinion of the European Committee of Social Rights

The decision to accept the collective complaints procedure was the responsibility of the authorities of Azerbaijan alone.

Situation in Azerbaijan

The Azerbaijani authorities pointed out that they were currently not in the position to accept the collective complaints procedure.

APPENDIX 1

— Azerbaijan and the European Social Charter —

Ratifications

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.

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	

The Charter in domestic law

Automatic incorporation into domestic law.

Reports *

Between 2007 and 2013 Azerbaijan submitted 7 reports on the application of the Revised Charter.

The [6th report](#) submitted on 19/09/2013 covers the accepted provisions related to Thematic Group 2 "Health Social security and Social protection" (Articles 3, 11, 12, 13, 14 and 30). Conclusions in respect of these provisions were published in January 2014.

The [7th report](#) submitted on 04/02/2014 covers the accepted provisions related to Thematic Group 3 "Labour rights", i.e.:

- The right to just conditions of work (Article 2)
- The right to a fair remuneration (Article 4)
- The right to organise (Article 5)
- The right to bargain collectively (Article 6)
- The right to information and consultation (Article 21)
- The right to take part in the determination and improvement of the working conditions and working environment (Article 22)
- The right to dignity at work (Article 26)
- The right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28)
- The right to information and consultation in collective redundancy procedures (Article 29)

Conclusions in respect of these provisions will be adopted in December 2014.

* [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. As from 2014 State Parties having accepted the complaints procedure have to provide a national report every two years only.

Situation of Azerbaijan with respect to the application of the Revised Charter

Examples of progress achieved in the implementation of social rights under the Social Charter¹

► 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.

Cases of non-conformity

Thematic Group 1 "Employment, training and equal opportunities"

► *Article 1§2 - Right to work- Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

1. There is no shift in the burden of proof in discrimination cases, and
2. The prohibition on foreign nationals being employed in the civil service goes beyond that permitted by the Charter

[\(Conclusions 2012\)](#)

► *Article 1§4 - Right to work - Vocational guidance, training and rehabilitation*

It has not been established that the right to vocational guidance is guaranteed.

[\(Conclusions 2012\)](#)

► *Article 9 - Right to vocational guidance*

It has not been established that the right to vocational guidance is guaranteed.

[\(Conclusions 2012\)](#)

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

1. There is no shift in the burden of proof in gender discrimination cases
2. Legislation prohibits the employment of women in underground mining and other "labour intensive jobs".

[\(Conclusions 2012\)](#)

Thematic Group 2 "Health, social security and social protection"

► *Article 11§1 – Right to protection of health – removal of causes of ill-health*

- the measures taken to reduce infant and maternal mortality rates have been insufficient;
- public healthcare expenditure, in absolute terms and as a share of GDP, is too low.

[\(Conclusions 2013\)](#)

► *Article 11§3 – Right to protection of health – prevention of diseases and accidents*

Legislation does not prohibit the sale and use of asbestos.

[\(Conclusions 2013\)](#)

► *Article 14§1 – 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.

[\(Conclusions 2013\)](#)

Thematic Group 3 "Labour rights"

¹ « 1. The [European Committee of Social Rights] 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 » (Article 2 of the Rules of the Committee).

► *Article 4§1 – Right to a fair remuneration – decent remuneration*

The minimum wage is manifestly unfair.

([Conclusions 2010](#))

► *Article 5 – Right to a organise*

It has not been established that, in practice, the free exercise of the right to form trade unions is ensured in multinational companies.

([Conclusions 2010](#))

Thematic Group 4 “Children, families, migrants”

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

The minimum wage of young workers is unfair.

([Conclusions 2011](#))

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

Unemployment periods are not included in the calculation of the qualifying period for maternity benefits.

([Conclusions 2011](#))

The European Committee of Social Rights 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”

(Report to be submitted before 31 October 2015)

► Article 1§3 Conclusions 2012.

Thematic Group 2 “Health, social security and social protection”

(Report to be submitted before 31 October 2016)

► Article 11§2 Conclusions 2013

Thematic Group 3 “Labour rights”

(Report to be submitted before 31 October 2013)

► Article 4§2 Conclusions 2010

► Article 4§4 Conclusions 2010

► Article 4§5 Conclusions 2010

► Article 6§1 Conclusions 2010

► Article 6§2 Conclusions 2010

► Article 6§4 Conclusions 2010

► Article 21 Conclusions 2010

► Article 22 Conclusions 2010

► Article 26§1 Conclusions 2010

► Article 26§2 Conclusions 2010

► Article 28 Conclusions 2010

► Article 29 Conclusions 2010

Thematic Group 4 “Children, families, migrants”

(Report to be submitted before 31 October 2014)

► Article 7§1 Conclusions 2011

► Article 7§2 Conclusions 2011

► Article 7§3 Conclusions 2011

► Article 7§7 Conclusions 2011

► Article 7§9 Conclusions 2011

► Article 7§10 Conclusions 2011

- ▶ Article 8§5 Conclusions 2011
- ▶ Article 16 Conclusions 2011
- ▶ Article 27§1 Conclusions 2011
- ▶ Article 27§3 Conclusions 2011

APPENDIX 2



European
Social
Charter

Charte
Sociale
Européenne



MEETING ON THE NON ACCEPTED PROVISIONS OF THE EUROPEAN SOCIAL CHARTER

organised by

the Department of the European Social Charter
Directorate General of Human Rights
Council of Europe

and

the Ministry of Labour and Social Protection
of the Population of Azerbaijan

Baku, 25 June 2014

DRAFT PROGRAMME

Venue: Ministry of Labour and Social Protection of the Population,
85, Salatyn Askarova str.,
Baku, AZ 1009

Working languages: Azeri and English

The meeting is organised in the framework of the procedure provided for by Article 22 of the 1961 Charter on “non-accepted provisions”. It will consist of an exchange of views and information on the provisions not accepted by Azerbaijan. The overall objective is to ensure the effectiveness of fundamental social rights in Azerbaijan.

10.00 am

Opening of the meeting

A representative of the Ministry of Labour and Social Protection of the Population

Mr Ramon PRIETO SUAREZ, Lawyer, Department of the European Social Charter, Council of Europe

10.10 am

Exchange of views on the provisions of the European Social Charter not yet accepted by Azerbaijan

Provisions relating to employment, training and equal opportunities

- The right of persons with disabilities to independence, social integration and participation in the life of the community (Art. 15)

Mr Lauri LEPPIK, Member of the European Committee of Social Rights **[Art. 15]**

Legal and factual position in Azerbaijan – presentation by the representative(s) of the Azerbaijan authorities

Discussion

11.00 am

Provisions relating to health, social security and social protection

- The right to protection against poverty and social exclusion (Art. 30)

Mr Lauri LEPPIK, Member of the European Committee of Social Rights **[Art. 30]**

Legal and factual position in Azerbaijan – presentation by the representative(s) of the Azerbaijan authorities

Discussion

11.45 am

Provisions relating to children, families and migrants

- The right of children and young persons to social, legal and economic protection (Art. 17)
- The right of migrant workers and their families to protection and assistance (Art. 19)

Mr Ramon PRIETO SUAREZ, Lawyer, Department of the European Social Charter, Council of Europe **[Art. 17 and Art. 19]**

Legal and factual position in Azerbaijan – presentation by the representative(s) of the Azerbaijan authorities

Discussion

1 pm

lunch break

2.30 pm

The exchange of views on the collective complaints procedure

Under an Additional Protocol to the Charter, which came into force in 1998, national trade unions and employers' organisations as well as certain European trade unions and employers' organisations, and certain international NGOs are entitled to lodge complaints of violations of the Charter. This exchange of views aims to encourage Azerbaijan to accept the collective complaints procedure in order to ensure a wider application of the Charter in the country.

Mr Rüçhan ISIK, Member of the European Committee of Social Rights

Legal and factual position in Azerbaijan – presentation by the representative(s) of the Azerbaijan authorities

Discussion

3.30 pm

Concluding remarks

3.45 pm

Closing of the meeting

APPENDIX 3

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;

Emphasising 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. Recognises 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.