



March 2020

# **EUROPEAN SOCIAL CHARTER**

European Committee of Social Rights

Conclusions 2019

**AZERBAIJAN**

*This text may be subject to editorial revision.*



The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts conclusions; in respect of collective complaints, it adopts "decisions".

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.<sup>1</sup>

The European Social Charter (revised) was ratified by Azerbaijan on 2 September 2004. The time limit for submitting the 12th report on the application of this treaty to the Council of Europe was 31 October 2018 and Azerbaijan submitted it on 18 April 2019.

This report concerned the accepted provisions of the following articles belonging to the thematic group "Children, families and migrants":

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

Azerbaijan has accepted all provisions from the above-mentioned group except Articles 17, 19 and 31.

The reference period was 1 January 2014 to 31 December 2017.

The present chapter on Azerbaijan concerns 19 situations and contains:

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

In respect of the other 4 situations concerning Articles 7§2, 7§4, 7§6 and 27§1, the Committee needs further information in order to assess the situation.

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Azerbaijan under the Revised Charter. The Government consequently has an obligation to provide this information in the next report from Azerbaijan on the articles in question.

The next report from Azerbaijan deals with the accepted provisions of the following articles belonging to the thematic group "Employment, training and equal opportunities":

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

The deadline for the report was 31 December 2019.

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<sup>1</sup> The conclusions as well as state reports can be consulted on the Council of Europe's Internet site ([www.coe.int/socialcharter](http://www.coe.int/socialcharter)).

**Article 7 - Right of children and young persons to protection**  
*Paragraph 1 - Prohibition of employment under the age of 15*

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

The Committee noted previously (Conclusions 2011) that according to Article 17§5) of the Constitution, children under the age of 15 cannot be employed. It further noted that according to the Labour Code, any labour contract concluded with children under the age of 15 shall be null and void, and the employer who concluded such contract is subject to administrative liability (Conclusions 2015).

The Committee previously noted (Conclusions 2015) that the provisions of the Labour Code allowing light work for children who have reached the age of 14 were repealed. It further noted that the labour law was being amended in order to identify types of light work activities permitted to children between 15 and 16 years of age and asked the next report to provide information on any new developments in this regard. The Committee notes that the current report does not provide any information in this respect. It notes from another source (Direct Request (CEACR) – adopted 2017, published 107<sup>th</sup> ILC session (2018), minimum Age Convention, 1973 (No. 138), Azerbaijan) that “there appears to be no more provisions in the national legislation to authorise light work for children below the age of 16 years, under certain circumstances”. The Committee asks the next report to confirm its understanding that children under the age of 15 are not allowed to perform any work, not even light work.

In its previous conclusion (Conclusions 2015), the Committee noted that the report did not address the Committee’s question on how work done at home was monitored in practice and asked the next report to indicate whether the States authorities monitor work done at home by children under the age of 15 and which are their findings in this respect. The Committee underlined that should the next report not provide the information requested, there would be nothing to establish that the situation is in conformity with Article 7§1 of the Charter.

In this respect, the current report indicates that the provisions of the Labour Code also apply to individuals performing their work duties in their own house using the material and production means provided by the employer. According to the report, at present in the country, there is an experience of fulfilling the work functions at home under the terms of an employment contract in accordance with the Labour Code. The report provides an example of carpet-weavers working from home under the terms of their employment contracts. The report indicates that the involvement of children in these activities is not excluded. However, according to the report, children’s home-based work is currently not monitored.

The Committee recalls that States Parties are required to monitor the conditions under which work done at home by children is performed in practice (Conclusions 2006, General Introduction on Article 7§1) and considers that the situation in Azerbaijan is not in conformity with the Charter in this respect.

In its previous conclusion (Conclusions 2015), the Committee noted that the prohibition on employing children under the age of 15, as prescribed by the Labour Code, applies only to work performed in the framework of an employment agreement and not to self-employment or work performed in the informal economy. Therefore, it asked the next report to indicate what are the measures taken by the authorities to detect cases of children under the age of 15 working on their own account or in the informal economy, outside the scope of an employment contract.

The current report indicates that measures have been taken to prevent and detect the informal employment. Among the measures taken, the Committee notes, in particular, the adoption of the “Action Plan on the Prevention of Informal Employment in the Republic of Azerbaijan”, approved by the Decree of the President No. 3287 of 9 October 2017, which aims at the prevention of informal employment, including the stimulation of employers and the establishment of a supplementary system to formalise workers’ labour relations. In this perspective, the report indicates that a joint conference with the International Labour

Organisation (ILO) with the participation of social partners on “International experience in the field of the improvement of labour legislation to prevent informal labour relations” was held in Baku on May 30-31 2018. However, the description of these measures in the report is brief, and no study has been made to assess their impact.

The report further indicates that there is an electronic system of employment contracts registration functioning in Azerbaijan where the employment contracts of children aged 15-18 are also registered. The report indicates that the State Committee for Family, Women and Children Affairs of the Republic of Azerbaijan in 2016 made repeated trips to the regions where cases of child labour were registered. According to the report, a total of 34 children were detected working during the visits.

As regards the sanctions imposed, the Committee notes from the information provided in the report that according to Article 192.8 of the Code of Administrative Offences of the Republic of Azerbaijan, officials shall be fined of 1000-1500 AZN (EUR 488,079 – EUR 732,119) and legal entities shall be fined of 3000-5000 AZN (EUR 1.464,24 – EUR 2.440,40) for hiring an individual under the age of 15. According to the report, during the years 2016, 2017 and the first half of the year 2018, the State Labour Inspectorate Service imposed fines of up to 4000 AZN (EUR 1.952,32) on the employers who violated labour law by hiring individuals under the age of 15.

The Committee previously noted (Conclusions 2015) from another source (Observation (CEACR) – adopted 2014, published 104<sup>th</sup> ILC session (2015, Minimum Age Convention, 1973 (No. 138), Azerbaijan) that as of January 2011, 20.000 children were working in agriculture, out of which 5.000 were self-employed. The same source pointed out the significant number of children involved in informal work in the agricultural sectors of tea, tobacco and cotton, including in hazardous situations. The Committee further notes that in 2017 the CEACR urged the Government of Azerbaijan to take measures to strengthen the capacity and expand the reach of the labour inspectorate services to better monitor children working in the informal economy, particularly on cotton, tobacco and tea plantations (Observation (CACR) – adopted 2017, published 107<sup>th</sup> ILC session (2018), Minimum Age Convention, 1973 (No. 138), Azerbaijan).

The Committee notes that there have been no surveys since 2005 to establish how many children actually work and determine whether the measures taken since have had any impact in terms of reducing child labour. In 2005, the survey on child labour conducted by the State Statistical Committee in cooperation with ILO-IPEC revealed that there were some 6.1% of children aged from 5 to 17 engaged in child labour.

The Committee recalls that the prohibition of the employment of children under the age of 15 applies to all economic sectors, including agriculture, and all places of work, including work within family enterprises and in private households (Conclusions I (1969), Statement of Interpretation on Article 7§1). It recalls that the prohibition also extends to all forms of economic activity, irrespective of the status of the worker (employee, self-employed, unpaid family helper or other). The Committee further recalls that the effective protection of the rights guaranteed by Article 7§1 cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised. The Labour Inspectorate has a decisive role to play in this respect.

The Committee asks that the next report provide information on the number of children actually engaged in professional activity, either from existing statistics on this issue or from surveys to be conducted to obtain such information. It also asks for information on findings and measures taken by the Labour Inspectorate and social services to detect child labour in all areas, including the number of inspections conducted, the number of violations identified, and the sanctions imposed in practice.

The Committee refers to its General question on Article 7§1 in the General Introduction.

Pending receipt of the information requested, the Committee concludes that the situation in Azerbaijan is not in conformity with Article 7§1 of the Charter on the ground it has not been established that the prohibition of employment of children under the age of 15 is effectively guaranteed in practice.

#### *Conclusion*

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

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

## **Article 7 - Right of children and young persons to protection**

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

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

The Committee noted previously (Conclusions 2015) that Article 250 of the Labour Code prohibits the employment of workers younger than 18 years old in difficult and hazardous work conditions, in underground tunnels, mines and other types of underground work, in places such as night clubs, bars, and casinos which could be detrimental to their development, as well as in places where alcoholic beverages, narcotic components and toxic material are kept or sold.

The Committee further noted (Conclusions 2015) that a list of dangerous or unhealthy types of work which are prohibited for young workers under 18 was approved by Decision No. 58 of 24 March 2000 of the Cabinet of the Ministers. The Committee noted that the employment of persons under 18 is prohibited in occupations with harmful and hard labour conditions in the sectors of mining, construction of subway, tunnels and underground installations, geological exploration, topography-geodesy, metal production, production and transmission of electricity and heating, energy industry. However, it noted that the report did not provide the list of dangerous and unhealthy activities prohibited by the above-mentioned decision and asked the next report to provide the relevant information. The Committee notes that the current report does not provide the information requested and requests the next report to provide the text of the abovementioned decision.

In its previous conclusion (Conclusions 2015), the Committee noted that the Committee on the Rights of the Child, in its concluding observations of 2012, expressed its concern at the significant numbers of children involved in informal work in the agricultural sectors of tea, tobacco and cotton, including in hazardous situations and asked the next report to indicate how the State authorities monitor children under the age of 18 working in hazardous conditions in the informal economy, particularly in the above mentioned sectors and what concrete measures have been taken by the authorities to improve the supervision.

The current report does not provide any information in this respect. The Committee therefore reiterates its question and underlines that should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 7§2 of the Charter.

In its previous conclusion (Conclusions 2015), the Committee recalled that the situation in practice should be regularly monitored and asked for information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of employment under the age of 18 for dangerous or unhealthy activities.

The current report indicates that according to Article 192.9 of the Code of Administrative Offences of the Republic of Azerbaijan, officials shall be fined in the amount of 3.000 AZN (€1.590,91) to 4.000 AZN (€2.121,21) and legal entities shall be fined in the amount of 10.000 AZN (€5.303,04) to 13.000 AZN (€6.893,95) for involving children in works which may threaten their lives, health or morality. According to the report, during the years 2016, 2017 and the first half of the year 2018 no administrative fines were imposed by the State Labour Inspectorate Service under the Ministry of Labour and Social Protection of Population for the violation of labour legislation with regard to the involvement of children into works which may threaten their lives, health and morality.

The Committee recalls that the situation in practice should be regularly monitored asks the next report to indicate the activities and findings of the State Labour Inspectorate Service, including in particular the number of inspections conducted, the number of violations detected and the sanctions imposed in practice with regard to the prohibition of employment under the age of 18 for dangerous or unhealthy activities. The Committee points out that should the next

report not provide the information requested, there will be nothing to establish that the situation in Azerbaijan is in conformity with Article 7§2 of the Charter.

*Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

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

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

The Committee noted previously that according to Article 250 of the Labour Code, the employment of young persons under the age of 18 who are subject to compulsory general secondary education, in work depriving them from full education is prohibited (Conclusions 2011).

The Committee previously noted (Conclusions 2015) from another source (Observation (CEACR) – adopted 2014, published 104<sup>th</sup> ILC session (2015, Minimum Age Convention, 1973 (No. 138), Azerbaijan) that as of January 2011, 20.000 children were working in agriculture, out of which 5.000 were self-employed. In order to assess the conformity of the situation with the requirements of the Charter, the Committee requested to be provided with data on the situation in practice and up-to-date statistical information on children carrying out an economic activity in the informal economy. The Committee notes that the current report does not provide any information in this respect and refers to its conclusion on Article 7§1.

As regards work during school holidays, the Committee previously asked (Conclusions 2015) whether the rest period free of work had a duration of at least two consecutive weeks during the summer holiday and what are the rest periods during the other school holidays. Considering that the report did not provide the information requested, the Committee concluded that the situation was not in conformity with Article 7§3 of the Charter as it has not been established that children who are still subject to compulsory education are guaranteed the benefit of an uninterrupted rest period of at least two consecutive weeks during the summer holiday.

In application to the reporting system adopted by the Committee of ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015. In this framework, the Committee noted (Conclusions 2017) from the national report that the employment of children in compulsory education is prohibited even during their school holiday times, as it is contrary to the law. However, given the number of children working in the informal economy according to data at the disposal of the Committee, in order to assess the conformity of the situation with the requirements of the Charter, the Committee requested to be provided with data on the situation in practice as regards employment of children subject to compulsory education. It also asked information on children carrying out an economic activity in the informal economy during school holidays. In the meantime, it deferred its conclusion.

The current report reiterates that there is no practice of schoolchildren working during the summer holidays in Azerbaijan. Children can be employed only after the age of 15, as long as they do not continue their education at the next level. According to Article 119 of the Labour Code, those children shall be eligible for at least 42 calendar days of vacation per year.

The Committee previously asked (Conclusions 2015) what are the specific measures taken by the authorities to ensure that children who are still subject to compulsory education do not actually perform work which could deprive them from the full benefit of education. It also asked what sanctions are imposed in practice in situations of non-compliance and information on the violations detected by the Labour Inspectorate.

As regards sanctions imposed, the Committee refers to its conclusion on Article 7§1 where it noted that according to the report, during the years 2016, 2017 and the first half of the year 2018, the State Labour Inspectorate Service imposed fines in the amount of up to 4000 AZN (€1.952,32) on the employers who violated labour law by hiring individuals under the age of 15.

The Committee notes that the current report does not provide any data or information on the situation in practice as regards the employment of children subject to compulsory education. The Committee asks that the next report provide information on the number of children subject to compulsory education actually engaged in a professional activity, either from existing statistics on this issue or from surveys to be conducted to obtain such information. It also asks information on findings and measures taken by the Labour Inspectorate and social services to detect child labour in all areas, including the number of inspections conducted the number of violations detected and the sanctions imposed in practice.

#### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 4 - Working time*

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

The Committee previously noted (Conclusions 2011) that according to Article 91 of the Labour Code young persons up to the age of 16 can be employed up to 24 hours a week and young persons aged from 16 to 18 may be employed up to 36 hours per week.

As regards monitoring activities, in its previous conclusion (Conclusions 2015), the Committee recalled that the situation in practice should be regularly monitored and asked the next report to provide information on the number and nature of violations detected by the Labour Inspectorate as well as on sanctions imposed on employers in practice for breach of the rules concerning the reduced working time for young persons who are not subject to compulsory education.

The current report indicates that according to Article 198.0.5 of the Code of Administrative Offences of the Republic of Azerbaijan a fine in the amount of 1000 AZN (€530,304) up to 2000 AZN (€1,060.61) is set for breaching the rules for normal working and leisure time. According to the report, during the years 2016, 2017 and the first half of the year 2018 the State Labour Inspectorate Service imposed 2,800 administrative fines for failure to comply with the work and leisure time norms set in the labour legislation.

The Committee asks the next report to provide specific information on the number of inspections conducted by the State Labour Inspectorate Service, the number of violations detected and the sanctions imposed in practice for violation of the legislation concerning the reduced working time for young persons who are not subject to compulsory education.

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 5 - Fair pay*

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

The Committee recalls that in application of Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentices to appropriate allowances. This right may result from statutory law, collective agreements or other means. The “fair” or “appropriate” character of the wage is assessed by comparing young workers’ remuneration with the starting wage or minimum wage paid to adults (aged eighteen or above). In accordance with the methodology adopted under Article 4§1, wages taken into consideration are those after deduction of taxes and social security contributions

The Committee in its previous conclusions (2011, 2015) decided that the situation in Azerbaijan was in breach of Article 7§5 of the Charter on the ground that the minimum wage of young workers was not fair.

### **Young workers**

The report states that according to Article 253 of the Labour Code young workers under 18, who work for a reduced working time, are paid the same wage for the same kind of work as adults. The work of young workers under 18 who are engaged in piecework is paid on the basis of the piece-rate pay determined for adults. Young workers under 18 are given additional payment according to rates for the time difference between the reduced working time and the daily working time for adults.

With regard to the minimum wage of adult workers, in its Conclusions 2016 on Article 4§1 the Committee notes from the report that from 2014 to 2016 the net monthly minimum wage amounted to AZN 99.8 (€ 95.81 in 2014, € 95.88 in 2015 and € 58.67 in 2016). In 2014 the net average wage amounted to AZN 377.5 (€ 632.70), in 2015 to AZN 396.5 (€ 356.92) and in 2016 to AZN 423.9 (€ 249.23). The report indicates that the ratio of the net minimum wage to the net average wage amounted to 26.4% in 2014, to 25.2% in 2015 and to 23.5% in 2016. In 2014 the net average wage amounted to AZN 377.5 (€ 632.70), in 2015 to AZN 396.5 (€ 356.92) and in 2016 to AZN 423.9 (€ 249.23). The report indicates that the ratio of the net minimum wage to the net average wage amounted to 26.4% in 2014, to 25.2% in 2015 and to 23.5% in 2016. The Committee found the situation in Azerbaijan not to be in conformity with Article 4§1 of the Charter on the ground that the monthly minimum wage does not ensure a decent standard of living.

The Committee recalls that the young worker’s wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly. For 15-16 year-olds, a wage of 30% lower than the adult starting wage is acceptable. For 16-18 year-olds, the difference may not exceed 20%. The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker’s wage which respects these percentage differentials is not considered fair.

According to the report the minimum monthly wage in the Republic of Azerbaijan from January 1, 2017 was 116 AZN and from 1 January 2018 this amount was increased by 12.1% to 130 AZN. Average monthly wage for January-April, 2018 was 532.4 manats. Although attempts are being made to increase monthly minimum wage such in the Presidential Decree No. 3545 dated 25 December, 2017, the adult reference wage is too low and does not comply with Article 4§1 of the Charter. Therefore, young workers’ wages are not fair.

### **Apprentices**

The report indicates that the terms, procedures and duration of training and the parties’ obligation are governed by the respective agreement for training concluded upon mutual consent between the employer and the employee.

The report does not provide information on the allowances paid to apprentices. The Committee reiterates its request that the next report provide examples of allowances paid to apprentices.

*Conclusion*

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

**Article 7 - Right of children and young persons to protection**

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

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

The report indicates that under Article 253 of the Labour Code the labour of the piece-rate workers under the age of 18 is remunerated at the same piece-rates fixed for adult workers with extra pay at the tariff rate for the time by which their hours of work are reduced under Article 91 of this Code and the daily working hours of adult employees.

Based on the above, it is noted that time spent by the employees under 18 in vocational training is included in their work time and their working time is not increased at the account of this time.

The Committee in its previous conclusions asked for information to be provided on the monitoring activity and findings (violations detected and sanctions applied) of the Labour Inspectorate in relation to the inclusion of time spent on vocational training in the normal working time. However, no such statistical data has been provided and it is again asked that Azerbaijan provides the necessary information in the next report. If no such data is provided in the next report there is no reason why Azerbaijan will be in conformity with Article 7§6

*Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 7 - Paid annual holidays*

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

The report indicates that according to Article 133 of the Labour Code, young employees under 18 may be granted leave at a time convenient for them. The report indicates that the postponement of holidays as provided in the order of preference schedule from one month of the current year to the next or from the current to the next year of employment or next calendar year is allowed. The Committee notes from another source that according to Article 134 of the Labour Code, the holidays may be postponed at the employee's initiative in case of a temporary disability (Labour Code of 1 February 1999).

The report indicates that according to Article 135 of the Labour Code, employers are prohibited from refusing to grant leave to the employees. However, According to part 2 of Article 135 of the Labour Code, if an employee does not use his/her annual paid leave for any reason during the current work year, he/she shall be paid a compensation for the unused period of leave for that work year (or years). The Committee considers as it did in its 2015 Conclusions that the option of giving-up the annual holiday for financial compensation is not in conformity with Article 7§7 of the Charter.

The Committee in its previous Conclusion (2015) asked for the number and nature of violations detected as well as on sanctions imposed by the monitoring bodies for breach of the regulations regarding paid annual holidays of young workers under the age of 18.

According to the information provided in the report, Article 192.5 of the Code of Administrative Offences public specifies that officials shall be fined in the amount of one thousand five hundred up to two thousand manats (802.614 up to 1,070.15 EUR) for the violation of the rights of employees to annual paid leave and for not providing annual paid leave to an employee, as well as for not paying the compensation determined for unused leave time.

During the years of 2016-2017 and 6 months of 2018 employers were fined in the amount of up to 31500 manats (16,824 EUR) by the State Labour Inspectorate Service for the violation of labour legislation and violation of employee rights to annual paid leave by either not granting leave time or providing compensation for the unused leave period.

### *Conclusion*

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 7§7 of the Charter on the ground that young workers have the option of giving-up their annual holiday for financial compensation.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 8 - Prohibition of night work*

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

The Committee noted previously that according to the Article 254 of the Labour Code, young workers under the age of 18 are not permitted to work at night. For young workers under the age of 18, night time is considered between 8 p.m. and 7 a.m. (Conclusions 2011, 2015).

The report indicates that the prohibition of night work for young workers under the age of 18 applies to all enterprises, establishments, organisations as well as workplaces where an employment agreement exists without the establishment of an entity. It applies also to employees performing jobs in their homes using their employer's materials.

The Committee in its previous conclusion asked for information to be provided in the next report on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of night work for young workers under the age of 18.

The report indicates that according to Article 198.0.5 of the Code of Administrative Offences fine in the amount of one to two thousand manats has been established for failure to comply with normal work and rest regime. During the years of 2016-2017 and 6 months of 2018, 2800 manats were imposed by the State Labour Inspectorate Service for the breach of labour legislation and failure to comply with normal work and rest regime.

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 9 - Regular medical examination*

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

The report provides under Article 252 of the Labour Code, persons under 18 may be employed only after undergoing a medical examination, and until they reach 18 they should undergo an annual medical check-up, to be paid for by the employer.

According to Part 5 of Article 48 of the Labour Code for purposes of public health and safety employees shall provide medical reference on the state of health when they are admitted to employment in the workplace which is hard, hazardous and detrimental to health, as well as in food industry, catering, healthcare, trade and similar workplaces.

In its previous Conclusion (2015) the Committee asked the next report to specify which occupations require a medical control on recruitment and annual check ups thereafter. In addition, the Committee requested information on the number and nature of violations detected by the monitoring bodies (eg the Labour Inspectorate, health services) as well as on sanctions imposed on employers in practice for breach of the rules concerning the medical examination of young persons under 18 years of age.

The report included a list of occupations (jobs) that are considered hazardous as well as the number of those workplaces, with the list being approved by Decision № 1, dated January 3, 2000 of the Cabinet of Ministers of the Republic of Azerbaijan. <http://www.e-ganun.az/framework/309>

The report did not contain any information on the nature and number of violations detected by monitoring bodies as well as the sanctions imposed employers in practice for breach of the rules concerning the medical examination of young persons under 18 years of age. It is asked that this information is contained in the next report.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Azerbaijan is in conformity with Article 7§9 of the Charter.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 10 - Special protection against physical and moral dangers*

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

#### ***Protection against sexual exploitation***

In its previous conclusion (Conclusions 2015), the Committee asked whether the legislation criminalises all acts of sexual exploitation of children under age of 18. The report confirms that all forms of sexual exploitation of persons under 18 years of age are criminalised under the Criminal Code including prostitution and pornography.

The Committee also notes from the report that the Code of Administrative Offences qualifies prostitution as an administrative offence punishable by a fine. The Committee seeks confirmation that this means that children engaged in prostitution cannot be prosecuted, however they may be fined.

The Committee recalls that in order to guarantee the right provided by Article 7§10, States Parties must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular children's involvement in the sex industry. This prohibition must be accompanied by an adequate supervisory mechanism and sanctions.

The Committee emphasizes that the minimum obligations of Parties in this regard include the adoption of a national action plan to combat the sexual exploitation of children.

It therefore requests that the next report provide information on the functioning of a monitoring mechanism on the sexual exploitation of children, mechanisms for collecting statistical data on the sexual exploitation of children, a description of a national action plan to combat the sexual exploitation of children, as well as measures to ensure that child victims of sexual exploitation are not punished.

#### ***Protection against the misuse of information technologies***

The Committee notes from the report, that according to Article 13-2 of the Law of the Republic of Azerbaijan "On information, computerisation and protection of information", the inclusion of information about pornography, including information about child pornography in the Internet resources by the owner of the domain name is prohibited. Also, Article 388-1 of the Code of Administrative Offences and Article 15 of the Law "On the rights of the children", protect children against the misuse of information technologies. A draft law "On protection from information harmful to children's health and development" has been submitted to the Parliament.

A "Parent-Internet Security and Control" programme to protect children on the Internet and inform parents of the electronic pages visited and the requests made by their children is under development.

The Committee notes these positive developments. It requests that the next report provide information on the implementation of the new legislation on the protection of children against the misuse of information technology and the "Parent-Internet Security and Control" programme.

#### ***Protection from other forms of exploitation***

The Committee recalls that Parties must prohibit the use of children in other forms of exploitation such as, domestic/labour exploitation, including trafficking for the purposes of labour exploitation, begging, or the removal of organs.

States Parties must also take measures to prevent and assist children in a street situation.

In all these cases, States Parties must ensure not only that they have the necessary legislation to prevent exploitation and protect children and young persons, but also that this legislation is effective in practice.

In its previous conclusion (Conclusions 2015) the Committee requested information on any progress made in improving the identification of victims of trafficking and the detection of victims of trafficking among children and irregular migrants, in particular by strengthening the involvement of specialised NGOs and other actors in victim identification, and improvement the detection of victims of trafficking among children and irregular migrants following the Recommendation CP(2014)10 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Azerbaijan.

The report refers to Article 141-1.1 of the Criminal Code, but the information provided is not sufficient for the Committee to assess developments.

The Committee notes from the Group of Experts on Trafficking in Human Beings (GRETA) report of 13 July 2018 that the 2014-2018 National Action Plan against trafficking in human beings foresees several measures related to the prevention of trafficking in children. However, GRETA's report notes that no specific referral mechanism for child victims of trafficking has been set up and there are no standard operating procedures concerning child victims' identification and referral to assistance. The Committee asks the State's next report to comment on these findings.

The Committee notes GRETA's concerns regarding the worst forms of child labour in Azerbaijan, including hazardous street labour and the exploitation of children through begging. It notes that there is a lack of research on trafficking for the purpose of labour exploitation and trafficking in children. In 2016 law enforcement agencies reportedly identified more than 500 children engaged in street work, such as washing cars, vending and begging, but they were not referred to social services and returned to street work almost immediately.

The Committee refers to the General Comment No. 21 of the UN Committee on the Rights of the Child which provides authoritative guidance to States on developing comprehensive, long-term national strategies on children in street situations using a holistic, child rights approach and addressing both prevention and response .

The Committee requests to be informed on the measures taken to protect and assist children in vulnerable situations, with particular attention to children in street situations and children at risk of child labour, including those in rural areas.

Meanwhile it reserves its position on the conformity of the situation.

### ***Corporal Punishment***

The Committee recalls that under the Charter, the prohibition of all forms of corporal punishment of children is a measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable form of corporal punishment and what is not (General Introduction to Conclusions XV-2(2001)). The Committee has clearly stated that all forms of corporal punishment must be prohibited in the home, in schools and in institutions and this prohibition must have an explicit legislative basis. The sanctions available must be adequate, dissuasive and proportionate (Complaint No. 18/2003, World Organisation against Torture (OMCT) v. Ireland, Decision on the merits of 7 December 2004).

The Committee recalls that the Charter was conceived as a whole and in some cases its provisions complement each other, as well as overlap in part (Mental Disability Advocacy Center (MDAC) v. Bulgaria; Complaint No. 41/2007; decision on admissibility of 26 June 2007, §8). This is the case with the protection of children from ill-treatment and abuse. The Committee considers that the fact that the right of children and young persons to social, legal and economic protection is guaranteed under Article 17 of the Charter does not exclude the examination of certain relevant issues relating to the protection of children under Article 7§10. In this connection, the Committee recalls having held the scope of the said two provisions to

overlap to a large extent (Conclusions XV-2 (2001), Statement of interpretation on Article 7§10).

Therefore, since Azerbaijan has not accepted Article 17§1 of the Charter, the Committee will examine the issue relating to corporal punishment under this provision.

In its previous conclusion (Conclusions 2015) the Committee recalled that under the Charter all forms of corporal punishment must be prohibited in the home, in schools and in institutions and this prohibition must have an explicit legislative basis. It notes from the national report that the Labour Code and the Criminal Code of the Republic of Azerbaijan do not contain provisions on the application of corporal punishment to children.

The Committee reiterates its position that the situation is not in conformity with the Charter because all forms of corporal punishment are not prohibited in the home and in institutions

#### *Conclusion*

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

**Article 8 - Right of employed women to protection of maternity**  
*Paragraph 1 - Maternity leave*

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

***Right to maternity leave***

The report states that the legal framework regarding maternity leave has not changed during the reference period: Article 125 of the Labour Code, which applies both to the private and the public sectors, provides for a 70-day paid leave before childbirth (pregnancy leave) and 56 days after (maternity leave), which can be extended to 70 days in case of multiple births or other complications.

In its previous conclusions (Conclusions 2015 and 2011), the Committee asked whether there was a period of compulsory postnatal leave and whether part of the leave could be relinquished at the employee's request. It also asked whether part of the pregnancy leave could be postponed until after the birth.

As the report does not provide any clarification in this respect, the Committee reiterates these questions and considers that the situation is not in conformity with Article 8§1 on the ground that it has not been established that the right to compulsory maternity leave is guaranteed.

The Committee further requests that the next report should provide any relevant statistical data on the average length of maternity leave actually taken.

***Right to maternity benefits***

In its previous conclusion (Conclusions 2015), the Committee found that the situation was not in conformity with Article 8§1 of the Charter on the grounds that interruptions in the employment record were not taken into account in the assessment of the qualifying period required for entitlement to maternity benefits, and asked how this period of six months was calculated.

In reply, the report states that under the "Regulations on the calculation and payment of social insurance benefits and temporary disability benefits paid at the expense of an insurance fund", female workers are entitled to maternity benefits if they have paid social security contributions for at least 6 months. When assessing this six-month period, interruptions in a woman's employment record, such as periods when she receives pension or unemployment benefits, periods of paid engagement in Civil Service or periods of lawful employment abroad, are included in the woman's general employment record and therefore are taken into account in the assessment of the qualifying period for maternity benefits. The Committee notes that the situation is now in conformity with Article 8§1 of the Charter in this respect.

The Committee requests that the next report should provide information regarding the right to any kind of benefits for employed women who do not qualify for maternity benefit during maternity leave.

The Committee notes from the report that, in both the public and private sectors, the amount of maternity benefit may not be less than the minimum wage and that, in any case, maternity benefit is paid in the amount of 100% of the average daily wage taken into account in the calculation of temporary disability benefits, without any time-limit for applications (Article 72 of the Regulations). The benefit is paid over the whole duration of the maternity leave.

In its previous conclusion, the Committee asked whether the minimum amount of maternity benefits corresponded to at least 50% of the median equivalised income.

The Committee recalls that, under Article 8§1, the level of income-replacement benefits should be fixed so as to stand in reasonable proportion to the previous salary (these shall be equal to the previous salary or close to its value, and not be less than 70% of the previous wage) and it should never fall below 50% of the median equivalised income (Statement of

Interpretation on Article 8§1, Conclusions 2015). If the benefit in question stands between 40% and 50% of the median equivalised income, other benefits, including social assistance and housing, will be taken into account. On the other hand, if the level of the benefit is below 40% of the median equivalised income, it is manifestly inadequate and its combination with other benefits cannot bring the situation into conformity with Article 8§1.

In the absence of the Eurostat median equivalised income indicator, the Committee notes from official statistics that the median equivalised income was AZN 165.7 in 2017 (€80.9 at the exchange rate on 31 December 2017). In other words, 50% of the median equivalised income amounted to AZN 82.85 (€40.44). The Committee will refer to these thresholds when assessing the adequacy of maternity benefit. According to the official figures for 2017, the minimum statutory wage was AZN 115 (€56.6) in Azerbaijan. On this basis the Committee considers the situation to be in conformity with Article 8§1 on this point.

### *Conclusion*

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 8§1 of the Charter on the ground that it has not been established that the right to compulsory maternity leave is guaranteed.

**Article 8 - Right of employed women to protection of maternity**  
*Paragraph 2 - Illegality of dismissal during maternity leave*

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

***Prohibition of dismissal***

The report states that Article 79 of the Labour Code prohibits employers from terminating the employment contracts of pregnant women, women with children under the age of three, fathers raising children under the age of three and workers whose only source of income is the company for which they work with children of school age.

***Redress in case of unlawful dismissal***

In reply to the Committee's question, the report confirms that Article 299 of the Labour Code imposes no limit on the amount of a claim or its collection in an individual labour dispute and that under Article 300, employees unlawfully dismissed under Article 79 can claim, in addition to reinstatement, compensation for damage taking into account loss of salary during the period of unemployment, legal and other expenses occurred and non-pecuniary damage.

In its previous conclusions (Conclusions 2011 and 2015), the Committee asked what the level of compensation was. It also asked for relevant examples of case law showing how these provisions were implemented when employees were dismissed unlawfully during their maternity leave. The report does not answer these questions, so the Committee repeats them.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Azerbaijan is in conformity with Article 8§2 of the Charter.

**Article 8 - Right of employed women to protection of maternity**

*Paragraph 3 - Time off for nursing mothers*

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§3 of the Charter. Since the situation remains unchanged, it confirms its previous finding of conformity.

The Committee asks what rules apply to women working part-time.

*Conclusion*

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

**Article 8 - Right of employed women to protection of maternity**  
*Paragraph 4 - Regulation of night work*

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

In its previous conclusion (Conclusions 2015), the Committee found the situation to be in conformity with Article 8§4 of the Charter. It noted that night work was prohibited for women who were pregnant or had children under the age of three (in the public sector and the private sector) and asked whether there were any exceptions to this rule. The Committee understands from the report that there are no exceptions and asks the next report to confirm this statement.

In its previous conclusion, the Committee also asked whether the employed women concerned were transferred to daytime work until their child was three years old and what rules applied if such transfer was not possible.

The Committee notes that the report does not answer these questions. Therefore, it reiterates them. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Azerbaijan is in conformity with Article 8§4 of the Charter in this respect.

The Committee refers to its Statement of Interpretation on Articles 8§4 and 8§5 (Conclusions 2019) and asks the next report to confirm that no loss of pay results from the changes in the working conditions or reassignment to a different post and that in case of exemption from work related to pregnancy and maternity, the woman concerned is entitled to paid leave; it furthermore asks the next report to confirm that the women concerned retain the right to return to their previous employment at the end of the protected period.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Azerbaijan is in conformity with Article 8§4 of the Charter.

**Article 8 - Right of employed women to protection of maternity**  
*Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

In its previous conclusion (Conclusions 2017), the Committee concluded that there were adequate regulations on dangerous, unhealthy and arduous work in respect of pregnant women, women who have recently given birth or who are nursing their infant. It asked whether specific protection measures were provided for pregnant or nursing women who might be exposed to specific risks in a different context, such as the provision of medical services, which might, for example, involve exposure to viral agents or ionising radiation.

In response, the report notes that Article 241 of the Labour Code prohibits women from being employed in arduous and dangerous activities. Decision No. 170 adopted by the Cabinet of Ministers in 1999 establishes the list of activities that are prohibited to them. The report also refers to draft legislation, in particular, Article 241 of the Labour Code; but this draft legislation has yet to be approved. The Committee asks the next report to provide updated information on this draft legislation. The Committee notes, however, that the report does not answer its question on specific protection measures. Therefore, it reiterates it and points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Azerbaijan is in conformity with Article 8§5 of the Charter in this respect.

In its previous conclusions (Conclusions 2017 and 2015), the Committee asked whether the women concerned were entitled to paid leave if it was impossible to transfer them to lighter duties. It also asked whether, at the end of the protected period, the women transferred were reinstated in their previous posts. It also stated that if the requested information was not provided in the next report, there would be nothing to establish that the situation is in conformity with Article 8§5 of the Charter (Conclusions 2015). In response, the report indicates that the draft legislation provides for the possibility of reinstatement to the previous posts. However, the report does not contain all the information requested. Therefore, the Committee finds that the situation is not in conformity with Article 8§5 of the Charter on the ground that it has not been established that pregnant women, women who have recently given birth and women who are breastfeeding are entitled to paid leave if it is impossible to transfer them to lighter duties. It further observes that the situation is not in conformity with Article 8§5 of the Charter on the ground that in case of reassignment to a different post, the law does not guarantee the right of the women concerned to return to their previous posts at the end of the maternity/breastfeeding period.

The Committee points out that Article 8 of the Charter provides specific rights protecting employed women during pregnancy and maternity (Statement of Interpretation on Articles 8§4 and 8§5, Conclusions 2019). Since pregnancy and maternity are gender-specific, any less favourable treatment due to pregnancy or maternity is to be considered as direct gender discrimination. Consequently, the non-provision of specific rights aimed at protecting the health and safety of a mother and a child during pregnancy and maternity, or the erosion of their rights due to special protection during such a period are also direct gender discrimination. It follows that, in order to ensure non-discrimination on the grounds of gender, employed women during the protected period may not be placed in a less advantageous situation, also with regard to their income, if an adjustment of their working conditions is necessary in order to ensure the required level of the protection of health. It follows that, in the case a woman cannot be employed in her workplace due to health and safety concerns and as a result, she is transferred to another post or, should such transfer not be possible, she is granted leave instead, States must ensure that during the protected period, she is entitled to her average previous pay or provided with a social security benefit corresponding to 100% of her previous average pay. Further, she should have the right to return to her previous post.

*Conclusion*

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 8§5 of the Charter on the grounds that:

- it has not been established that pregnant women, women who have recently given birth and women who are breastfeeding are entitled to paid leave if it is impossible to transfer them to lighter duties;
- in case of reassignment to a different post, the law does not guarantee the right of the women concerned to return to their previous post at the end of the maternity/breastfeeding period.

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

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

### ***Legal protection of families***

#### ***Rights and obligations, dispute settlement***

With regard to the **rights and obligations of spouses**, the Committee previously noted (Conclusions 2011) that husbands and wives have equal rights and both parents are responsible for the care and upbringing of their children. The report confirms that this also applies in respect of private and property rights in family relations (Article 29 of the Family Code). According to the information available from the Azerbaijan gender information centre, the Family Code (Law No-781-IQ of 28 December 1999, as amended by Law No-374-IIQD of 22 October 2002) explicitly provides that the right to common property of spouses also belongs to the spouse who was engaged in housekeeping, taking care of children or for other valid reasons did not have separate income (Article 32).

According to the same source, as regards the **settlement of disputes**, the Family Code provides (Article 20) that the dissolution of marriage is executed juridically, if the court determines that further joint residence of the spouses and preservation of the family is impossible. If one of the spouses does not consent to divorce, the court can suspend it for a period of 3 months. The divorce is carried out if after this period there is no conciliation or if at least one of the spouses insist on a marriage breakup.

If the couple has minor children, the divorce must be pronounced by a court (except in some cases specified by the law). In that case, the spouses can submit an agreement determining whom their minor children will live with, the order for paying the maintenance allowance for children and (or) disabled indigent spouses, amount of these funds and division of common property. In case of failure to find an agreement or if the agreement violates children best interests, the court will determine these issues (Article 22 of the Family Code). The Committee takes note of the information provided in the report concerning the division of property, alimony and custody of children in case of divorce. It notes however that in case the couple has no minor children, the divorce can be pronounced through an administrative procedure which, according to the study "Barriers, remedies and good practices for women's access to justice in Azerbaijan", published by the Council of Europe in 2017, might not guarantee women the same level of protection than judicial proceedings, the more so since, according to this study, infertility is often seen as the woman's fault and is one of the main causes leading to divorce in Azerbaijan. According to the same study, if the couple has no children, the wife has a more restricted access to justice in case of disagreement on the alimony or refusal to pay it, as the law provides that the right to claim the payment belongs to disabled spouses, the wife from pregnancy until three years after the birth of a common child, the indigent spouse taking care of a disabled child. The Committee asks the next report to comment on this situation. It reserves in the meantime its position on this point.

The Committee points out that any restrictions or limitations of custodial rights of parents' should be based on adequate and reasonable criteria laid down in legislation and should not go beyond what is necessary for the protection and best interest of child and the rehabilitation of the family. Placement of children outside the home must be an exceptional measure, and is only justified when it is based on the needs of the child, namely if remaining in the family environment represents a danger for the child. On the other hand, the financial conditions or material circumstances of the family should not be the sole reason for placement. In all circumstances, appropriate alternatives to placement should first be explored, taking into account the views and wishes expressed by the child, his or her parents and other members of the family. When placement is necessary, it should be considered as a temporary solution, during which continuity of the relationship with the family should be maintained. The child's re-integration within the family should be aimed at, and contacts with the family during the

placement should be provided for, unless contrary to the best interest of the child. Whenever possible, placement in a foster family or in a family-type environment should have preference over placement in an institution. In the light of these criteria and taking into account that Azerbaijan has not accepted Article 17§1 of the Charter, the Committee asks the next report to clarify what rules apply in respect of **restrictions to parental rights and placement of children**.

The Committee refers to its previous conclusion (Conclusions 2015) for an overall description of **mediation services**.

### ***Domestic violence against women***

The Committee recalls that States Parties are required to ensure an adequate protection with respect to women, both in law and in practice, in the light of the principles laid down in Recommendation Rec(2002)5 of the Committee of Ministers of the Council of Europe to member States on the protection of women against violence and Parliamentary Assembly Recommendation 1681 (2004) on a campaign to combat domestic violence against women in Europe. It notes that these instruments have been superseded in 2011 by the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), which is legally binding for the States which have ratified it. It notes however that Azerbaijan has neither ratified nor signed it.

The Committee previously took note (Conclusions 2011 and 2015) of the adoption of a Law on Prevention of Domestic Violence on 22 June 2010. It takes note of the data provided in the report, concerning violence against women (2221 cases in 2016, 2145 in 2017). It notes however that the report does not provide any information on the further measures taken to ensure prevention of domestic violence against women (such as information and awareness-raising campaigns, training, particularly for police officers and other professionals who are in contact with victims, setting up of services to reduce the risk of violence etc.) or on the actual implementation of protection against domestic violence against women (for example, setting up of hotlines, shelters and care and support centres for victims of such violence, the adoption and actual implementation of provisions allowing the temporary eviction of perpetrators of violence from home, etc.). Furthermore, although the report mentions that 1036 and 963 persons were brought to court for domestic violence crimes in 2016 and 2017 respectively, it does not provide sufficient information on the prosecution of such crimes (number of convictions, measures taken to ensure the effective investigation of allegations of violence against women and to protect the rights of victims at all stages of judicial proceedings in order to avoid secondary victimisation). It furthermore does not provide indications on any integrated policies in this field, i.e. the involvement of all levels of government and all relevant agencies and institutions in the drafting and implementation of comprehensive and coordinated plans of action against domestic violence.

In addition, the Committee notes from the abovementioned study “Barriers, remedies and good practices for women’s access to justice in Azerbaijan” of 2017 a number of allegations of shortcomings in the relevant criminal legislation, such as the fact that domestic violence is not included as a specific crime or at least an aggravating circumstance to other crimes; the fact that the definition of rape is based on the use of force, rather than lack of consent; the fact that, although sex-selective forced abortion is widespread in Azerbaijan, there is no provision criminalising it (see on this point also the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) recommendations of 2015); the fact that there is no reversal of the burden of proof in cases of sexual harassment, violence or discrimination. As regards specifically the Law on Prevention of Domestic Violence of 2010, the abovementioned study highlights the lack of measures to address the needs and rights of women victims of domestic violence in the code of criminal procedure (see the study for details). The Committee further takes note of similar concerns raised in the Concluding observations adopted by the CEDAW in 2015 which also highlight the lack of a national implementation mechanism, the obstacles faced by women victims of domestic violence in accessing mechanisms of support

and protection, the inadequate number of state-funded shelters, the low number of cases reported and protection ordered issued.

The Committee asks the next report to provide comprehensive and updated information on all these points. In the light of all the information available, it considers in the meantime that it has not been established that women are ensured an adequate protection, in law and in practice, against domestic violence.

## ***Social and economic protection of families***

### ***Family counselling services***

In response to the Committee's question (Conclusions 2015) concerning family counselling services and their distribution across the country (geographical coverage), the report indicates that family counselling services are provided across the country by 11 Centres for Children and Family Support of the State Committee for Family, Women and Children Affairs set up between 2007 and 2011 in different regions and towns (Goranboy region, Khazar district of Baku city, Saatli, Sabirabad, Hajigabul, Aghdam, Zardab, Zagatala, Goygol, Gabala, Ismayilli). The report explains that these centres help vulnerable families, women and children to get access to social, medical, employment and educational services and provide active therapy exercises (for children with disabilities), logopedic services, psychological counseling and training, rehabilitation services etc.

### ***Childcare facilities***

The Committee previously examined the provision of childcare facilities in the context of Article 27§1 and noted (Conclusions 2011, Article 27§1) that education in pre-school institutions was free and that priority for admission was given to children of single parents working in the institutions, mothers in training, people with disabilities, veterans and war invalids, the unemployed, refugee and IDP families and large families. It also noted that pre-school teachers were retrained every five years to improve their skills. It repeatedly asked for information (Conclusions 2015 and 2017) regarding the numbers of places in kindergartens, by age group and by the number of applications turned down and whether services were affordable and of a high standard. It also requested information on the implementation of the State Strategy for the development of education (2015) and whether it had achieved its target to ensure the establishment of pre-school educational bodies to achieve 90% involvement of children in pre-school education. The report does not provide the information requested.

The Committee points out that States Parties are required to ensure that childcare facilities are available, affordable and of good quality (coverage with respect to the number of children aged 0-6, ratio of staff to children, staff training, suitable premises and cost of childcare to parents, etc.). As the report does not provide any relevant information on these points, it reiterates its questions (see above) and considers in the meantime that it has not been established that adequate childcare facilities are available.

### ***Family benefits***

#### ***Equal access to family benefits***

In its previous conclusion the Committee concluded that the situation was not in conformity with the Charter as equal treatment of nationals of States Parties regarding the payment of family benefits was not ensured because the length of residence requirement was excessive. The Committee notes from the report of the Governmental Committee (2016) that according to Article 52 of the Migration Code of the Republic of Azerbaijan, foreigners and stateless persons temporarily settled in the territory for at least 2 years on the basis of the relevant permit can apply for a permanent residence permit. Foreigners who have a permanent residence permit in Azerbaijan have equal rights with the nationals and have access to social

benefits. The Committee notes that there is no further information in the report in this regard. Therefore, it reiterates its previous finding of non-conformity.

### ***Level of family benefits***

In its previous conclusion (Conclusions 2015) the Committee noted from MISSCEO the information concerning the various amounts of the basic family benefits. However, in the absence of information on the median equivalised income, it asked the next report to provide more detailed information about the amount, coverage and the national poverty threshold.

The Committee now notes from the report that the Ministry of Labour and Social Protection of Population sets the income threshold below which families are eligible for benefits. This threshold was set at AZN 93 in 2013, at AZN 116 in 2017 and at AZN 130 in 2018. The Committee further notes that in the course of 2016-2017, AZN 5.101 million were allocated from the state budget to finance social protection and social security measures. The amount of social allowances paid to the family and the person stood AZN 148.5 and AZN 36.4 in 2017 and to AZN 157.2 and AZN 39.9 in 2018.

The Committee notes from MISSCEO that as regards child benefit, it is a means-tested benefit and is paid to the children belonging to families, who are the beneficiaries of the targeted social assistance. Child benefit is paid for the child until the age of one year. In addition, mothers who have more than five children receive AZN 33 per each child under 18 years of age. The Committee notes that in 2017 the income threshold below which families were eligible for child benefit was AZN 116 (€ 60). The Committee takes note of other benefits, such as birth and adoption grants, as well as special benefits for children of war and orphans. The Committee notes that the report does not provide information about the at-risk-of-poverty thresholds. Therefore, it asks the next report to provide information about the poverty threshold indicator.

The Committee observes that the child benefit is only paid to children until the age of one year and only to families whose income (per member) is below € 60. The Committee considers in this respect that the benefit in question does not cover a significant number of families and a significant number of children. Therefore, the Committee considers that the family benefit does not ensure economic protection of a significant number of families by appropriate means. Therefore, the situation is not in conformity with the Charter.

### ***Measures in favour of vulnerable families***

The report refers to the study regarding the rights of Roma children in Azerbaijan, which was conducted in cooperation with the UN Children's Fund in 2017, with a view to identifying the problems and taking measures to address them. The Committee notes that the report does not provide any information about specific measures taken to ensure the protection of vulnerable families, such as single-parent families and Roma families. The Committee asks the next report to provide this information.

### ***Housing for families***

In its previous conclusion (Conclusions 2011, 2015), the Committee asked for comprehensive information concerning access to adequate housing for families, including Roma families, in the light of the principles established in its case-law.

The current report states that the Constitution protects the inviolability of the home (Article 33) and the right not to be unlawfully deprived of one's home (Article 43). It further explains that according to Article 3 of the Housing Code of the Republic, the right to housing can be restricted for the purpose of the protection of morality, health, rights and duties of others, defence of the country and state security. No one shall be taken out of his/her residence except in cases established in this Code and other laws. The report stresses that the protection of the right to housing is carried out through judicial means and in accordance with the rules

established in the legislation. In addition, according to the Housing Code, state bodies and municipalities take measures for the implementation of housing rights within their authority, and for this purpose, promote the development of real-estate market and provide citizens with residential areas on the basis of social lease agreements.

The Committee highlights the gaps in the information provided in the report in relation to the specific requirements of Article 16 and the Committee's previous requests, in particular as regards the adequacy of dwellings, legal protection (available remedies) and protection against unlawful eviction. In view of the lack of relevant information on these points, it reiterates its questions and considers in the meantime that the situation is not in conformity with Article 16 on the ground that it has not been demonstrated that the right to adequate housing for families is effectively guaranteed.

### ***Participation of associations representing families***

The Committee understands from the report that the State Committee for Family, Women and Children Affairs is involved in the drafting of family policies. However, the report does not explain whether and to what extent associations representing families are also consulted. The Committee accordingly reiterates its question, it asks the next report to provide further information on the role of the State Committee for Family, Women and Children Affairs, its composition, tasks and interaction with associations representing families, and considers in the meantime that it has not been established that the situation is in conformity with Article 16 on this point.

### *Conclusion*

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

- it has not been established that women are ensured adequate protection, in law and in practice, against domestic violence;
- it has not been established that adequate childcare facilities are available;
- equal treatment of nationals of States Parties as regards family benefits is not ensured because of an excessive length of residence requirement of two years;
- the family benefit does not ensure economic protection of a significant number of families by appropriate means;
- it has not been established that the right to adequate housing for families is effectively guaranteed;
- it has not been established that associations representing families are consulted in the framing of family policies.

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

### *Paragraph 1 - Participation in working life*

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

### ***Employment, vocational guidance and training***

The Committee understands that the situation which it has previously found to be in conformity with the Charter (Conclusions 2015) did not change during the reference period, and so it reiterates its finding of conformity on this point.

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

### ***Conditions of employment, social security***

In its previous conclusion (Conclusions 2015), the Committee asked about working conditions foreseen in legislation that might facilitate the reconciliation of working and private life (such as part-time work, working from home or flexible working hours).

The report does not answer this question. The Committee notes, however, that, according to the information received through observation and the direct request raised by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2018 (107th ILC session) on the Workers with Family Responsibilities Convention No. 156 (1981), upon a worker's request, the employer has to provide an option of part-time daily or weekly work with pay which is based on their experience and seniority. In the case of pregnant women or women with a child under 14 years of age, or with a child with restrictive health conditions or with a sick family member, a medical certificate is required (Article 245(1) of the Labour Code). Under Article 246 of the Labour Code, these rules also apply to single fathers, foster parents or legal guardians, but only if they are raising the children on their own due to a particular reason (if the mother of the children has died, has been deprived of her maternal rights, has to undergo treatment in a medical facility or is held in a detention facility). The Committee also notes from the aforementioned source the various types of leave available to workers with family responsibilities.

The Committee asks the next report to describe working conditions that may facilitate a reconciliation of working and private life, such as working from home, family-friendly working hours, etc. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Azerbaijan is in conformity with Article 27§1 of the Charter in this respect.

The Committee had previously noted (Conclusions 2015) that the period during which the employee benefits from paid leave granted for caring for children is counted towards the employee's seniority in social insurance and are taken into account in the calculation of pension entitlement.

### ***Child day care services and other childcare arrangements***

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

### *Conclusion*

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

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

*Paragraph 2 - Parental leave*

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

In its previous conclusion (Conclusions 2017), the Committee deferred its conclusion as to whether legislation provided for an individual, non-transferable right to parental leave for each of the parents, and asked whether Article 127 of the Labour Code specifically referred to single parents or to one of the parents. In reply, the report states that, under Article 127§1 of the Labour Code, partially paid parental leave is granted to one of the parents or any other family member directly involved in caring for children under the age of three years. The Committee understands therefore that Article 127 makes no reference to single parents.

It also asked for confirmation, in the next report, that the right provided for in Article 127 was an individual right of both mothers and fathers (and not only of single parents) and asked whether at least some part of it was non-transferable. The report does not clearly answer this question, therefore, the Committee reiterates it and stresses that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Azerbaijan is in conformity with Article 27§2 of the Charter on this point.

In its previous conclusion (Conclusions 2015), the Committee found that the level of parental leave benefit was inadequate. The report states that starting from 1 March 2018 (outside the reference period), during partially paid parental leave, an monthly allowance is paid in the amount of AZN 44 per month (€21 at the rate on 1st March 2018) until the child reaches the age of 18 months, and thereafter AZN 28 (€13.5 at the rate on 1st March 2018) until the child's third birthday. The Committee considers that the level of parental leave benefit is too low and hence inadequate. The situation is therefore not in conformity with the Charter.

*Conclusion*

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 27§2 of the Charter on the ground that the level of parental leave benefit is inadequate.

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

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

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 27§3 of the Charter and asked for confirmation of its interpretation. It also asked for relevant examples of national case law.

In reply, the report confirms that the legislation does not place any upper limit on the overall amount of compensation which can be awarded in unlawful dismissal cases on the ground of family responsibilities. However, the Committee notes that the report does not provide any examples of case law on the subject, so it repeats its request.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Azerbaijan is in conformity with Article 27§3 of the Charter.