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Abstract

In the article the European Social Charter, the core of the European social model is studied from the perspective of its potential implementation challenges in the Republic of Azerbaijan. Azerbaijan’s efforts for due fulfillment of the Charter obligations are analyzed in light of its legislation and legal practice, as well as in the context of the government’s relevant national reports that have been submitted to the Council of Europe up to day. Further, theoretical and practical problems impeding the treaty’s full implementation in the country are identified. The article also deals with issues relating to the Charter’s international and domestic legal status with regard to its implementation in the territories of State Parties.

Introduction

Since its accession to the Council of Europe on 25 January 2001, the Republic of Azerbaijan has become a party to 56 international agreements amongst those 213 included in the list of the treaties of this regional organization. Eight more treaties have been signed, but not yet ratified1 by Milli Majlis2 of the Republic of Azerbaijan.

Until the end of the last century, public legal opinion was concentrated mainly on civil and political human rights because of the country’s political and social context. Therefore the interest to learn social rights was kept in the background. Nevertheless, the objectives of the social-economic programs carried out by the state nowadays, as well as, the achievements of Azerbaijani government’s internal policy that is mainly directed at improving social welfare of the population have led the state to attach more attention to the problems of social human rights. In this regard, the legal nature of the European Social Charter and the human rights guaranteed by this instrument have also been the subject-matter of various researches.

2 “Milli Majlis” means “National Assembly” (or Parliament), which is the legislative branch of government in Azerbaijan.
By setting out social and economic human rights in the spheres of housing, healthcare, education, employment, legal and social protections, movement of persons, and non-discrimination, the European Social Charter is actually the natural complement to the European Convention on Human Rights, which protects civil and political rights. One of the four charters\(^3\) of the Council of Europe and aiming to promote the integrated protection of a wide range of social rights, the European Social Charter, opened for signature on 18\(^{th}\) October, 1961 and entered into force on 26\(^{th}\) February, 1965. Although during the last decade of the past century, three amending Protocols to the Charter were adopted in order to increase the number of rights protected by it (1988 Additional Protocol No.1), reform the control mechanism based on reports (1991 Turin Protocol No.2), and provide the collective complaints procedure (1995 Protocol No.3), it was completely revised in 1996 through the adoption of a new European treaty – the Revised European Social Charter (ETS No. 163\(^4\)). Many scholars and experts consider that through the adoption of the revised Charter, as well as, the entry into force of the Additional Protocols providing for a system of collective complaints in 1998, the European Social Charter has been fundamentally re-launched since the mid 1990s. The 1996 European Social Charter (revised) is gradually replacing its “predecessor”, the initial 1961 Social Charter. The revised Charter combines, in a single instrument, the rights guaranteed by the 1961 Charter with a certain number of amendments, plus the rights guaranteed by the Additional Protocol of 1988 and new rights.

According to Gerard Quinn, Professor of Law and former Vice President of the European Committee of Social Rights, the European Social Charter “comprises a ‘productive factor’ in our market economies and helps to advance social cohesion. Just as important, it constitutes a ‘civilizing factor’ in our democratic cultures by avoiding severe social dislocation that can afford breathing space for political extremes”\(^5\)

### Azerbaijan’s accession to the European Social Charter: General issues and associated questions about the Charter

As pointed out by Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe\(^\text{6}\), the Charter, in its first incarnation, was the proverbial “sleeping beauty”, having little impact on the law and practice of the States Parties and even less visibility for the public at large. It was only after 1989 following the revolutions in Eastern Europe that a political consensus to elevate the status of social rights finally

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\(^3\) Other three charters of the Council of Europe are: 1985 European Charter of Local Self-Government (ETC No. 122), 1992 European Charter for Regional or Minority Languages (ETC 148), and 1996 European Social Charter (revised).

\(^4\) Conventions and agreements of the Council of Europe opened for signature between 1949 and 2003 were published in the “European Treaty Series” (ETS Nos. 001 to 193 included). From 2004, these series are continued by the “Council of Europe Treaty Series” (CETS No. 194 and following).

emerged…” From the late 90th of the past century, member states of the Council of Europe were invited to learn the European Social Charter so that they were prepared to ratify it, as well as, pursue an internal course of policy action according to the principles embedded in the said treaty. Yet, before it, in the mid 90th of the last century the Parliamentary Assembly of the Council of Europe was intending at the ratification of the European Social Charter and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment as the main conditions for the membership to the organization, along with the Convention for the Protection of Human Rights and Fundamental Freedoms. Since that time, the Charter has come to be considered one of the constituent documents of the Council of Europe.7 In 1997, a summit of state and government leaders of the member states of Council of Europe held in Strasbourg set an obligation to implement the social standards as they were prescribed in the European Social Charter and other documents of the organization.8 These processes logically resulted in the current situation where precise terms are in place for a state accepted as a member to the Council of Europe to sign and ratify the Charter.

In its Opinion No. 222 (2000) on “Azerbaijan’s application for membership of the Council of Europe”, the Parliamentary Assembly of the Council of Europe noted that Azerbaijan undertook, inter alia, “to sign the European Social Charter within two years of its accession and ratify it within three years of its accession, and to strive forthwith to implement a policy consistent with the principles contained in the Charter.”9 So, in January 2001, upon joining the Council of Europe, Azerbaijan undertook a commitment to ratify the Charter no later than the January of 2004.10

The Revised European Social Charter (revised) was signed on behalf of the Republic of Azerbaijan on October 18, 2001 on the 10th anniversary day of the re-independence of the Republic of Azerbaijan.11 It was ratified by Milli Majlis on 6th

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6 Welcome address by Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe in the Seminar held in Helsinki, Finland, on the Reform of the European Social Charter, 8 February 2011;


8 “State Program on the implementation of the norms provided for by the European Social Charter” approved by the Presidential Order of the Republic of Azerbaijan dated 2003, April No. 1193.

9 Opinion of PA of the CoE on “Azerbaijan’s application for membership of the Council of Europe” No 222, dated June 28, 2000, paragraph 14, and subparagraph “h”.

10 “State Program on the implementation of the norms provided for by the European Social Charter” approved by the Presidential Order of the Republic of Azerbaijan dated April 7, 2003, No. 1193, preamble.

11 Democratic Republic of Azerbaijan, the first democratic republic of the East, was declared independent on May 28, 1918. But that republic survived only 23 months until the Russian Bolsheviks military invasion.
January, 2004 with two declarations. One of these declarations had already been made upon signing the revised Charter, according to which the Republic of Azerbaijan “would be unable to guarantee the application of the provisions of the Charter in the territories occupied by the Republic of Armenia until these territories are liberated from that occupation”.\(^\text{12}\) As it is up to the State Parties, in conformity with Part III, Article A, of the revised Charter, the Republic of Azerbaijan, in the second declaration considered itself bound by the following Articles of Part II of the Charter: Articles 1 (right to work), 4 (right to a fair remuneration), 5 (right to organize), 6 (right to bargain collectively), 7 (right of children and young persons to protection), 8 (right of employed women to protection of maternity), 9 (right to vocational guidance), 11 (right to protection of health), 14 (right to benefit from social welfare services), 16 (right of the family to social, legal and economic protection), 20 (The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex), 21 (right to information and consultation), 22 (right to take part in the determination and improvement of the working conditions and working environment), 24 (right to protection in cases of termination of employment), 26 (right to dignity at work), 27 (right of workers with family responsibilities to equal opportunities and equal treatment), 28 (right of workers’ representatives to protection in the undertaking and facilities to be accorded to them) and 29 (right to information and consultation in collective redundancy procedures).\(^\text{13}\)

The relevant instrument of ratification was deposited with the Secretary General of the Council of Europe on September 2, 2004. According to Article K of the revised European Social Charter, it enters into force on the first day of the month following the expiration of a period of one month after the date of the deposit of the instrument of ratification, acceptance or approval.\(^\text{14}\) Accordingly, the European Social Charter has been an integral part of the legislative system of Azerbaijan since November 1, 2004.\(^\text{15}\)

Although the Constitution of the Republic of Azerbaijan envisages the method of incorporation for the domestic implementation of international legal norms\(^\text{16}\) implying that international treaties ratified by the parliament become, where relevant, automatically part of the Azerbaijani legal system, the European Social Charter, because of its specific character, can hardly be directly implemented in the territory of

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\(^\text{12}\) Declaration of the Republic of Azerbaijan contained in the instrument of ratification of the European Social Charter deposited on 2 September 2004 (Original is in English.)


\(^\text{14}\) The Revised European Social Charter, 1996, Article K, paragraph 3.


\(^\text{16}\) See: The Constitution of the Republic of Azerbaijan, Article 148 (II)
Azerbaijan. In my view, except for a few exclusions encountered in the practice of some State Parties\textsuperscript{17}, the Charter should be considered a non-self-executing treaty\textsuperscript{18} and therefore requires ‘implementing legislation’ — a change in the domestic law of a State Party to direct or enable it to fulfill treaty obligations.

So, upon ratification of the Charter, a new State Party undertakes several commitments, including:

1. To eliminate disparities between commitments on Charter and domestic normative legal acts, as well as, the internal administrative practice;
2. To work out the first report and following circular reports on the implementation of Charter in time;
3. To participate in meetings of the Governmental Committee as a full member.\textsuperscript{19}

During the preparation stage to ratify the Charter, a complete analysis of the current legislation and practice associated with the rights protected by the Charter is carried out by Member States of the Council of Europe. The exemplary consequence of this process in Azerbaijan was the adoption and fulfillment of the “State Program on the implementation of the norms provided for by the European Social Charter” approved by the Presidential Order No. 1193 of the Republic of Azerbaijan dated 7 April, 2003.

During the period between the Charter’s entering into force and presenting first report, there is an opportunity to eliminate the inconsistencies between the legal provisions, as well as, administrative practice of the State concerned and its commitments arising from the Charter. Azerbaijan’s first step on this way was taken even before the Charter got into effect within its territory, when amendments were made to four articles of the Labor Code of the Republic of Azerbaijan on September 1, 2004 which entered into force on September 14 of the same year.\textsuperscript{20} Amended articles of the mentioned Code by the relevant law, whose adoption is connected with the implementation of the Law “On the Ratification of the European Social Charter”, are the following:

1) Article 31 (Collective agreements) — two new provisions were added to the list of

\textsuperscript{17} In a 1984 decision, German Federal Labour Court affirmed that national courts were bound by the obligations contained in the Charter whenever they had to interpret the lacuna in the law on industrial disputes. Direct applicability of Article 6(4) on the right to strike has been acknowledged by the Dutch Supreme Court in its decision No. NJ 1986/668 dated 30 May 1986. Besides, in 1995, Belgian State Council based on Article 6 of the Charter in annulling one of its internal administrative act – thereby acknowledging it as a source of law.


the obligations of a collective agreement’s parties with regard to the rights specified in the revised Charter’s Article 26 (the right to dignity at work).

2) Article 77 (Workers’ guarantees in case of the termination of employment contract) – a provision added, according to the Article 24 (the right to protection in cases of termination of employment) of the revised Charter, specifies that in case of the employment termination as a result of the changing of the owner of an enterprise, employer should pay a worker a compensation at least in the amount of his/her three monthly salary.

3) Article 247 (Right of persons under 18 years to work and its features) – with a view to bringing the mentioned article to the conformity with the revised Charter’s Article 7 (the right of children and young persons to protection) a new sentence was added increasing the effective exercise of the right of young persons to protection. Arising from the requirement of the 6th paragraph of the said article of the Charter, it underlines that the time spent by persons under 18 years in vocational training during the working hours shall be considered as part of the working day with the consent of employer.

4) Article 250 (Prohibited occupations for the employment of persons under 18 years) – like the previous one, amendment to this article was made due to Article 7 of the revised Charter. Resulting from the purposes of paragraph 3 of the mentioned article of the Charter, a new provision was added to the Article 250 of the Labor Code prohibiting the employment of persons to whom the legislation on compulsory education applies for such jobs since such jobs would deprive them of the full benefits of their compulsory education.

After the Charter had come into force in the territory of Azerbaijan, in order to bring the legislation into conformity with the Charter requirements, very few amendments were made to the legal acts, since the government considered that most of normative legal provisions, for example, amendments to the Law of the Republic of Azerbaijan “On Trade Unions” passed by Milli Majlis on October 10, 2006, were already in line with the commitments taken under the Charter. I can point to a few examples. One of these amendments made in the Preamble to the law specifically mentioned the European Social Charter, in accordance with which the State shall guarantee the protection of rights of trade unions, as well as social and economic rights and legal interests of their members\(^\text{21}\). Another addition made to Article 2 of the Law provided that the legislation of the Republic of Azerbaijan shall not restrict the trade unions’ rights laid down in the European Social Charter, as well as, in the international legal norms and in the conventions of International Labor Organization.

Before reviewing the national reports on the European Social Charter which have been submitted by the Republic of Azerbaijan to the Council of Europe, in order to observe the chronology of the events, it should be mentioned that for the purposes of the election of the members of the European Committee of Social Rights, Azerbaijan was included in Group II (three seats) (no seat vacant) together with Belgium, Bulgaria,

France, Luxembourg, Moldova, Netherlands, Romania and Turkey, according to the allocation order of the Council of Europe’s Member States.  

**National reports on the implementation of the Charter commitments and conclusions of the European Committee of Social Rights on them**

A critical stage for Azerbaijan, in the implementation process of the Charter’s provisions began with the preparation of the *first national report* on the European Social Charter (revised). The report was presented to the Council of Europe on December 4, 2007. It should be noted that the said report became the first of those national reports submitted under the new system for the submission of reports adopted by the decision of the Committee of Ministers of the Council of Europe of 3 May 2006. In the conclusion of the European Committee of Social Rights, it is noted that the deadline for submitting the 1st report on the application of the Revised Charter to the Council of Europe was 31 October 2007, and Azerbaijan submitted it on 4 December 2007. As it was mentioned above, this report was submitted under the new reporting system, where the provisions of the Charter are divided into four thematic groups so that each provision of the Charter is reported on once every four years. According to the division of the thematic groups, Azerbaijan’s first report was concerned with the accepted provisions of the articles belonging to the first thematic group titled “Employment, training and equal opportunities”. The report covered the situation of the Charter’s implementation with regard to Articles 1 (*the right to work*), 9 (*the right to vocational guidance*), 20 (*the right of men and women to equal opportunities*), 24 (*the right to protection in cases of termination of employment*) during the applicable reference period between 1 November 2004 and 31 December 2006. The Conclusion of the Committee of Social Rights on the report was concerned with 7 situations and contained 1 conclusion of conformity with regard to the application of Article 24, and 1 conclusion of non-conformity on the situation with regard to Article 20 of the Charter. As regards the only article on the basis of which the situation in Azerbaijan was estimated to be in line with the Charter requirements, the Committee’s decision was based on the grounds upon which an employment contract may be terminated at the employer’s initiative, prohibited dismissals may be allowed on certain situations, including remedies and sanctions

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22 Decisions 4.3 adopted by the Committee of Ministers at the 881st meeting of the Ministers’ Deputies (14 April 2004)


24 The function of the European Committee of Social Rights is to assess from the legal point of view the conformity of national law and practice with the European Social Charter and the Revised Charter. Examining national reports, the European Committee of Social Rights draws “conclusions”, where it decides whether the situations in the countries concerned are in conformity with the European Social Charter or not.
specified in the labor legislation of Azerbaijan. Yet, it was pointed out in the conclusion that further information was requested on the situation in question. In respect of Article 20, the Committee’s conclusion of non-conformity derived from the fact that Azerbaijani legislation, namely Article 241 of the Labor Code prohibited the employment of women in underground mining and all other labor-intensive jobs, which is considered to contradict the principle of equality enshrined in Article 20 of the Revised Charter.25

As regards other 5 situations concerning articles 1§1, 1§2, 1§3, 1§4 and 9, since the provided information was not detailed enough for the satisfactory assessment from the legal point of view, the Committee without deferring its conclusion stressed that it needed further information in respect of them. Therefore, the Committee requested the government of Azerbaijan to provide such information in the next report on articles in question.

Azerbaijan’s second report on the implementation of the Charter (revised) dealt with the accepted provisions, namely Articles 11 (the right to protection of health) and 14 (the right to benefit from social welfare services), both of which belong to the second thematic group – “health, social security and social protection” – under the new reporting system. In this case again just one situation – regarding Article 14§2 - out of 5 contained in the conclusion of the Committee was found to be in conformity with the Charter requirements. So, upon estimating the general legal framework, cultural and charity projects and events carried out by “Heydar Aliyev Foundation” in the sphere of the social services, the number and degree of involvement of non-profit organizations in providing social welfare services, as well as, in checking the quality of such services, the European Committee of Social Rights considered that the public participation in the establishment and maintenance of social welfare services – requirement of the paragraph 2 of Article 14 – is provided by Azerbaijani Government.26

As regards the non-conformity conclusions of the Committee on the second report, non-conformities were found in relation to paragraphs 1 and 3 of Article 11. With regard to paragraph 1, upon which State Parties undertake to take appropriate measures to remove, as far as possible, the causes of ill-health, the reason why such a conclusion was made about non-conformity was that the rate of infant and maternal

25 In its “Conclusions 2008 (Azerbaijan)” the European Committee of Social Rights analyzing the information provided by Azerbaijan on the implementation of the right to protection in cases of termination of employment protected by Article 20 of the Revised Charter, notes that whilst the 1961 Charter did prohibit the employment of women workers in underground mining, as well as in other dangerous, unhealthy or arduous work, this was modified in the Revised Charter, where the prohibition for women to carry out such jobs was limited to the case of maternity. Therefore, bearing in mind “social developments” which have operated since the drafting of the original Charter, the Committee considers there is no longer a justification for excluding women from all labour intensive jobs or from employment in underground mining.

mortality was manifestly higher\textsuperscript{27} in Azerbaijan than in other European countries\textsuperscript{28}. As regards paragraph 3 of Article 11 providing for an obligation to prevent diseases and accidents, the Committee stated that although Azerbaijan had ratified ILO Convention No. 162 on Asbestos and work was underway to prohibit the use of asbestos, Azerbaijan is not in conformity with Article 11§3 on the grounds that legislation does not prohibit the sale and use of the said mineral.

Azerbaijan submitted the third national report concerning the thematic group "labor rights" on November 11, 2009. Since Azerbaijan has accepted Articles 4, 5, 6, 21, 22, 26, 28 and 29 from this group, just one article – Article 2 (the right to just conditions of work) belonging to the “labor rights” group was not covered in the said report. The Committee’s assessment of the report resulted again in 1 conclusion of conformity in respect to Article 6§3 and 2 conclusions of non-conformity in respect to Articles 4§1 and 5. Of 15 situations contained in the relevant chapter of the Committees’ Conclusions 2010 (Azerbaijan), 12 situations were not assessed because of the lack of satisfactory information submitted on the implementation of the articles in question.

With regard to Article 4, paragraph 1 belonging to the State Parties’ commitments on decent remuneration, the Committee recalled that to be considered fair, a net minimum wage should amount to no less than 60% of a net average wage while this indicator was 32% in Azerbaijan for the reference period up to 31 December 2008. Therefore, the country’s situation in this respect was judged not to be in conformity with the above-mentioned article. Another conclusion of non-conformity on Azerbaijan’s third national report as declared by the Committee is related with Article 5 – the right to organize, where the Committee pointed out that in practice, the free exercise of the right to form trade unions in multinational companies had not been established.\textsuperscript{29}

As the Labor Code of Azerbaijan has detailed provisions concerning conciliation and

\textsuperscript{27} Analyzing the situation in respect with the Article 11 of the Charter, the European Committee of Social Rights referred to the figures stated by \textit{Ibidem} and the World Health Organization, which relevantly specified that in Azerbaijan, the infant mortality rate amounted to 73 deaths per 1 000 live births in 2006, and the maternal mortality rate amounted to 82 deaths per 100 000 live births in 2005.

\textsuperscript{28} In its Conclusions (2005) on Lithuania (pp. 336-338), the European Committee of Social Right had stressed out that to comply with Article 11§1, the main indicators of a country’s state of health must reflect an improvement and not be too significantly below the average for all European countries, or between urban and rural areas or between regions.

\textsuperscript{29} On the basis of the “International Trade Union Confederation (ITUC) 2007 Annual Survey of Violations of Trade Union Rights”, The European Committee of Social Rights stressed that the government of Azerbaijan can conclude agreements with multinational enterprises, which set aside labour laws. Such agreements must be ratified by the Parliament. It is alleged that the content of these agreements is known neither to trade unions nor to the labour inspectorate. It revealed that there were also allegations concerning the obstacles for creating and running trade unions, and for the workers to join trade unions in multinational companies operating in Azerbaijan.
arbitration, which are the subject matters of paragraph 3 of Article 6, the Committee’s only conclusion of conformity on the third report regarded this situation.30

Azerbaijan’s **forth and last national report, submitted up to day**, on the implementation of Articles 7, 8, 16 and 27 of Social Charter (revised) was registered by the Secretariat of the Council of Europe on 3rd December, 2010. In this report, according to the fourth thematic group "Children, families and migrants", the Government of Azerbaijan provided the Council of Europe with the information on the situation regarding the rights of children and young persons (Article 7), employed women (Article 8) to protection, the right of the family to social, legal and economic protection (Article 16), and the right of workers with family responsibilities to equal opportunities and treatment (Article 27). After the assessment of information contained in the mentioned report the Committee’s position that has been stated in its Conclusions 201131 and concerned 19 situations resulted 7 conclusions of conformity in respect to Articles 7§4, 7§6, 7§8, 8§2, 8§3, 8§4 and 27§2, and 2 conclusions of non-conformity in respect to Articles 7§5 and 8§1. As it is seen, the assessment on 10 situations has not been completed, the reason of which was pointed out by the Committee the lack of satisfactory information submitted on the implementation of the articles, namely Article 7§1, 7§2 and 7§3, 7§7, 7§9 7§10, 8§5, 16, as well as 27§1 and 27§3. As to the Committee, the incomplete and inadequate nature of the information contained in the report submitted by Azerbaijan has resulted in a large number of deferred conclusions. For example, regarding the Article 7§1 (Prohibition of employment under the age of 15) although the Committee notes the facts of conformity of the Labour Code to the Charter it stresses out that “the effective protection of the rights guaranteed by this article, cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised. So, states are required to monitor the conditions under which it is performed in practice”. The Committee asks how the situation in respect to the implementation of Article 7§1 regarding work done at home is monitored in practice. Another example regards the next paragraph of the same Article – the Article 7§2 (Prohibition of employment under the age of 18 for dangerous or unhealthy activities). The Committee has recalled that, however, if such work (employment under the age of 18 for dangerous or unhealthy activities) proves absolutely necessary for vocational training, workers may be permitted to perform it before the age of 18, but only under strict, expert supervision and only for the time necessary. That’s why it has also been left for the next report to specify whether there are exceptions regarding vocational training or for young workers who have completed training and what is the regulatory framework in such cases. The number of such examples can be increased. But we do not

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31 Since the European Committee of Social Rights in practice proclaims its conclusions on the national reports approximately a year after they are registered in the Secretary, this conclusions on the status of the implementation of the Charter provisions in Azerbaijan were completed in December of 2011 and publicly announced in January 2012.
see a necessity for this since it became clear that the Committee considers the report information incomplete when there is no information about how the legislative provisions is applied in practice and how their implementation is supervised over.

**Concluding remarks**

The glance at the development and implementation history of the European Social Charter, as well as, its current status and current approaches to the rights protected by it, it is evident that “despite its undoubted achievements, it has not succeeded in having quite the impact for which its proponents would have wished. Moreover, its place in the overall scheme of European human rights mechanisms in the twenty-first century remains somewhat uncertain.”

The following table based on the review of the effectiveness of the implementation of the European Social Charter in the example of the Azerbaijani reporting practice could support the above-said conclusion:

<table>
<thead>
<tr>
<th>National Reports (NR)</th>
<th>Number of situations contained in the NR</th>
<th>Number of situations on which the ECSR’s decision contains conclusion of conformity</th>
<th>contains conclusion of non-conformity</th>
<th>requires further information for the assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st NR</td>
<td>7</td>
<td>1</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>2nd NR</td>
<td>5</td>
<td>1</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>3rd NR</td>
<td>15</td>
<td>1</td>
<td>2</td>
<td>12</td>
</tr>
<tr>
<td>4th NR</td>
<td>19</td>
<td>7</td>
<td>2</td>
<td>10</td>
</tr>
</tbody>
</table>

As can be seen, although all the questions put in the report form have been replied by the Government of Azerbaijan, only less than 40 percent of the information provided thereby was considered to be fit for deciding whether the situations found were in conformity or contradiction with the Charter commitments. It proves that although an intensive preparation period is carried out for any new State Party, those preparations and/or propagations do not yield enough impact on the implementation of the Charter. In cases when the Committee needs further information for assessing situations, at least, 1 year before the examination process starts, it requires that a State Party provide additional information on the relevant question that is available to obtain, at best, 4 years after the Committee’s conclusions. So, when social rights of a group of individuals or a part of population are violated, for example in 2008, because of the lack of enough information on the situation in the report, the Council of Europe may have an opportunity to consider it in 2013. How effective its Committee’s conclusion of non-

conformity will be and when the violation of rights shall be eliminated after that conclusion are not known yet. That is why in order to make the Charter a social constitution of the Europe as it is claimed to be, time-consuming control mechanisms over its implementation should be replaced with a more effective supervision system.

In order to achieve such a system, regional trust to the political activity of the Council of Europe, as well as, the comprehensive approach to the rights protected by and the implementation mechanism foreseen in the Social Charter, international legal commitments of a State Party deriving from the Charter should be adequate with the opportunity of expressing a political will. As mentioned above, because of the occupation of 20 percent of its territories, Azerbaijan has declared that it will be unable to guarantee the application of the provisions of the Charter in the territories occupied by the Republic of Armenia until these territories are liberated from the occupation. This statement is not related to Azerbaijan’s commitments in respect of approximately one million refugees and internally displaced people (IDPs), since the European Social Charter does not contain such a provision with regard to its non-application in relation to this category of persons. However, given the fact that social rights of all these people are violated because of the fact of occupation, it should be pointed out that the effectiveness of the European Social Charter would never be attained in the entire territory of Europe unless decisive measures are taken against the culprits of such gross violations.

As concerns people currently residing in the occupied territories of Azerbaijan, one could, based on the case-law of the European Court of Human Rights, conclude that it is the State of Armenia under whose jurisdiction these territories fall, who should be held responsible for possible violations of the Social Charter vis-à-vis those people.

Another issue regarding the implementation of the Social Charter in the Member States is the fact that in its decisions, the European Committee of Social Rights does not sometimes take into account the mentality factors and their strong impact on a particular community’s daily and normal lifestyle. This issue emerges mainly in the assessment of situations regarding women’s rights to equal opportunities with men. The Committee underlines that “among the reasons for the low participation of women in social, political and public life of the country are the existing traditional stereotypes of the image of woman in society, whose role is limited by the boundaries of family. This situation demands a new approach to the national gender equality strategy.”

Although the government of Azerbaijan has been taking regular measures in order to comply with its international commitments to ensure a more active participation of women in social, economical and political life of the country, the point of view of the majority of Azerbaijani community about the participation of women in the country’s public and social life is different from the beliefs that exist in the West. Unlike in the Western countries, people’s views in Azerbaijan are mainly concentrated on the family

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life, which is the most significant factor for the healthy and strong society building. Taking such facts into consideration, it is to be noted that hasty decisions, including instigating a State Party to a completely new approach against its majority’s moral values, and dramatic changes in their minds could cause undesirable results in the life of the whole society (decrease in the birth rate, increase in the number of unmarried women, divorces, etc.). Indeed, rights and responsibilities of a woman are equal to those of man, but they are not identical either from physical or mental perspectives, as equality and sameness are two very different things and the basic right of a woman is to be respected for her mind and for being her own person.

To contribute to the building of a more social and inclusive Europe, the European Social Charter can have a considerable future ahead, provided its potential is fully realized and especially, the interpretation of this instrument by the European Committee on Social Rights takes all European nations’ moral peculiarities and thus its commentaries are better understood. Besides, the adequate implementation of domestic legal acts, and unless the political conflicts between State Parties that have strong impact on the realization of social rights are fairly solved in the region, the Charter is likely to be unable to overcome current obstacles to its full implementation.