

**CHILD RIGHTS IN THE REPUBLIC OF AZERBAIJAN:**

**COMPARATIVE ANALYSIS OF THE DOMESTIC  
LEGISLATION AND ITS COMPATIBILITY WITH  
INTERNATIONAL CHILDREN'S RIGHTS LEGAL  
FRAMEWORK**

**RESEARCH PAPER**

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LAW SOCIETY  
OF AZERBAIJAN



**MAX PLANCK FOUNDATION**  
for International Peace and  
the Rule of Law

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**Baku, 2022**

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## Disclaimer:

Views expressed in the paper are solely those of the authors and do not necessarily reflect the views of the Max Planck Foundation for International Peace and the Rule of Law and the German Federal Foreign Office.

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## 1. INTRODUCTION

Children's rights are a specific field of human rights law that has been developed during the last 50 years. Although there were Declarations back in 1924<sup>1</sup> and 1959,<sup>2</sup> the first binding international document was adopted only in 1989. The United Nations' Convention on the Rights of the Child is unique (hereinafter referred to as 'the UNCRC') and was a huge leap forward in the history of protection of children.<sup>3</sup> It was followed by three protocols that strengthened the safeguards. It enshrined not only civil and political rights, but also economic, social and cultural rights of children. Having the ultimate aim of providing a better future for children where their rights are respected, protected and fulfilled, it is the first human rights instrument being the most ratified convention.<sup>4</sup> At the regional level, there were developments following it. Within the African system, the African Charter on the Rights and Welfare of the Child was accepted in 1990 and came into force in 1999.<sup>5</sup> The Member States of the Council of Europe also agreed upon the Convention on the Exercise of the Children's Rights in 1996.<sup>6</sup> It also paved the way for the development of national legal framework in the area.

Azerbaijan was also one of the countries who decided to follow the path to democratisation after the collapse of the USSR and gaining its independence in 1991. It started to join international organisations and ratify the human rights treaties.<sup>7</sup> In fact, the UNCRC was one the first three conventions which it ratified.<sup>8</sup> At the domestic level, several laws were adopted, some of which were general but has an impact and relevance for children's rights starting from the Constitution, Family Code and Criminal Code, while others were directly related to them, such the Law on the Rights of the Child, Law on the Social Protection of the Children who Lost Their Parents and Deprived of Parental Care.

In general, it needs to be stressed that Azerbaijani legislative acts take more protective approach to children rather than seeing them fully rights entitled autonomous subjects of law. Article 17 of the Constitution of the Republic of Azerbaijan as an initial and basic legal norm is enough to see this approach. In its paragraph Article, which is called "Family, children and the state", emphasizes that family as a core unit of the society is under the special protection of the state.<sup>9</sup> Remaining 5 paragraphs of the

<sup>1</sup> Geneva Declaration of the Rights of the Child (adopted 26 September, 1924) League of Nations available at <http://www.un-documents.net/gdrc1924.htm>

<sup>2</sup> Declaration on the Rights of the Child, UNGA Resolution 1386 (XIV) (20 November 1959) <https://cpd.org.rs/wp-content/uploads/2017/11/1959-Declaration-of-the-Rights-of-the-Child.pdf>

<sup>3</sup> The Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (UNCRC)

<sup>4</sup> UNICEF, Convention on the Rights of the Child available at <https://www.unicef.org/child-rights-convention>

<sup>5</sup> African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) CAB/LEG/24.9/49

<sup>6</sup> European Convention on the Exercise of Children's Rights (adopted 25 January 1996, entered into force 1 July 2000) ETS 160

<sup>7</sup> OHCHR, UN Treaty Body Database, Ratification status for Azerbaijan, available at [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=11&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=11&Lang=EN)

<sup>8</sup> Others being International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights

<sup>9</sup> Constitution of the Republic of Azerbaijan (1995) (AZE) Article 17 para 1

Article is specifically dedicated to children. While the Constitution puts an obligation on the parents for the care upbringing of children in first place, for those who are deprived of parental care states acknowledges its duty to take care of them.<sup>10</sup> The next two paragraphs are dedicated to the protection of children. It is commendable that legislator explicitly prohibited involvement of children in activities that may threaten their lives, health, or morality<sup>11</sup> and employment of children below 15 years of age<sup>12</sup>. Finally, the state takes an obligation to monitor the implementation of the rights of children.<sup>13</sup> Article 34 on the Right to marriage also touches upon some child rights issues. While it states that childhood is under the state protection, it goes on adding that the state shall support families with several children.<sup>14</sup> As it can be seen children are quite visible and protected in the highest law of the country.

The Law on the Rights of the Child is the main law adopted by the national parliament and deals specifically with the child rights. In its preamble the Law refers to the Constitution, Declaration on the Rights of the Child, UNCRC and other relevant international norms as a main source of confirmability.<sup>15</sup> As a very good point from child rights' perspective, the Law establishes that norms of other normative legal acts may not restrict the rights and freedoms of children established by this Law.<sup>16</sup> This means that in case of collusion between the domestic legal acts, the Law shall prevail giving it high legal power in the hierarchy of the legislative acts.

Additionally, Azerbaijan made a good work incorporating international standards, such as establishing the age limit of 18 for the notion of children,<sup>17</sup> having essential points on the matters concerning children in conflict with law,<sup>18</sup> and others which will be analysed below.

Current research will see the compatibility of those legislative acts with the UNCRC and other international child rights legal framework using comparative and critical analytical methods. Because of its legal character, desk based approach was the main method of the research. Additional statistical information provided during the research was obtained from the website of the State Statistical Committee.

It will try to see how children's rights are visible in the legislation, and also if those rights are implemented in practice and to what extent (so touching upon procedural element as well).

As the field is quite broad, research team decided to focus on some specific areas that needs improvement. The respective areas shall be General Principles of the Child Rights as they lay the foundation of the system, Right to Life and Health because of its ultimate importance, Right to Protection that is especially essential in the context of the country like Azerbaijan where children are seen not fully entitled members of the family and can be the victim of physical and mental abuse, Right to Education which

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<sup>10</sup> Constitution Article 17 para 2-3

<sup>11</sup> Constitution Article 17 para 4

<sup>12</sup> Constitution Article 17 para 5

<sup>13</sup> Constitution Article 17 para 6

<sup>14</sup> Constitution Article 34 para 3

<sup>15</sup> Law of the Republic of Azerbaijan on the Rights of Child (1998) (AZE) Preamble

<sup>16</sup> Law on the Rights of Child Article 2

<sup>17</sup> Law on the Rights of Child Article 1

<sup>18</sup> Criminal Code of the Republic of Azerbaijan (1999) (AZE) Chapter V

is important for the development of children and Juvenile Justice, an area very problematic in Azerbaijan as there is no specific law regulating it, scattered around among various criminal legislation and has no special body designed to deal with the children in conflict with the law. In the end of each chapter dedicated to those specific areas, recommendations shall be provided following the analysis.

## 2. GENERAL PRINCIPLES

As a document, UNCRC combines various rights of children, such as freedom of expression, freedom of assembly, right to preserve identity and many others. However, as the United Nations' Committee on the Rights of the Child (hereinafter referred to as "the Committee") stressed, there are four main principles that lays the ground for the understanding and interpreting the whole UNCRC and other rights. These general principles should also been seen interconnected with each other, as the Committee stressed in its several General Comments.<sup>19</sup> They are Non-discrimination, Best interest of the child, the Right to survival and development and Right to be heard.<sup>20</sup> While each of the principles deserves separate attention and research, for making the current paper more comprehensive the general overview under this sub-chapter shall be provided and analysis of the domestic legislation shall be conducted to see if the legislative acts of the Republic of Azerbaijan covers those principles and to what extent.

### 2.1 Non-discrimination

One of the main principles of international human rights law and child rights is non-discrimination. It is enshrined in International Covenant on Civil and Political Rights,<sup>21</sup> International Covenant on Economic, Social and Cultural Rights,<sup>22</sup> and the European Convention on Human Rights<sup>23</sup>. According to Article 2 of the UNCRC, the rights of the child should be respected and protected on "no discrimination" basis, including the status of only his/hers, but also parents and legal guardians.<sup>24</sup> The Committee sees right to non-discrimination not as a passive obligation, but a duty put on states to take some actions in order to make full realisation of the right possible.<sup>25</sup> It also stressed the special attention to be given to vulnerable and marginalised children.<sup>26</sup> The question here arises regarding the age element, but as the text of the Article 2 says

<sup>19</sup>Committee on the Rights of the Child, General comment № 14 (29 May 2013) CRC/C/GC/14, Article 3 , para 1; Committee on the Rights of the Child, General comment № 12 (1 July 2009) CRC/C/GC/12

<sup>20</sup>UNICEF, Four principles of the Convention on the Rights of the Child available at <https://www.unicef.org/armenia/en/stories/four-principles-convention-rights-child>

<sup>21</sup> International Covenant on Civil and Political Rights, (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

<sup>22</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR)

<sup>23</sup>The Convention for the Protection of Human Rights and Fundamental Freedoms, (European Convention on Human Rights, as amended) (3 September 1953)

<sup>24</sup> UNCRC Article 2

<sup>25</sup> GC 14 B.1

<sup>26</sup> GC 12 para 75

“without discrimination of any kind” and then provides an exemplary list of some components,<sup>27</sup> with Article 5 touching upon the “evolving capacities of the child”.<sup>28</sup> Additionally, Article 12 requests states to give due weight to the views of the child in accordance with the age and the Committee clarified that there should be no age limit.<sup>29</sup> Therefore, the discrimination based on age is also prohibited.

As mentioned above, non-discrimination is a general principle of law, and consequently, the legislative acts of the Republic of Azerbaijan also have the clauses on right to non-discrimination. The highest law in the hierarchy of the legislative system, the Constitution of the Republic of Azerbaijan provides that all persons are equal before the law and court, and people shall not be discriminated on any grounds, such as race, sex, religion, membership of social group, etc.<sup>30</sup> Despite the fact that it specifically mentions the equality of men and women,<sup>31</sup> it does not give age as a prohibited ground for discrimination, nor it mentions the child. Therefore, the right to non-discrimination of children is not clearly laid down in the Constitution resulting in non-visibility of children.

The Law on the Rights of the Child on its turn compensates this lack. Article 6 of the Law states that all children have equal rights and cannot be discriminated against on the grounds which are enshrined in the UNCRC.<sup>32</sup> Performing its obligation to make legislative amendments to the legislation, Azerbaijan has also made a good addition to the non-discrimination principle, where it prohibited discrimination against children born out of wedlock. The legislator should have added the clause bearing in mind that there are many children born out of wedlock in the country each year.<sup>33</sup>

While the laws provide more or less visibility element, procedural elements should also be taken into consideration. Unfortunately, children are not even involved in the decision-making process because of their age. Even in the court procedures involving the interests of the child, there is an age limitation, as for example the Family Code states that court or respective bodies should take into consideration only views of children above 10 years old, and may consider views of children above 7.<sup>34</sup>

One of the most serious problems concerning discrimination in Azerbaijan is related to gender inequality. There is growing evidence that parents prefer boys.<sup>35</sup> It can be seen in the highly disproportionate sex ratio at birth: for every 100 girls there are 117 boys born in Azerbaijan,<sup>36</sup> while the global average is typically between 103 and 106 boys born for every 100 girls. These numbers show that sex-selective abortion is very

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<sup>27</sup> UNCRC Article 2

<sup>28</sup> UNCRC Article 5

<sup>29</sup> GC 12 para 21

<sup>30</sup> Constitution Article 25 para I

<sup>31</sup> Constitution Article 25 para II

<sup>32</sup> Law on Child Rights Article 6

<sup>33</sup> See The Statistical Committee of the Republic of Azerbaijan, Demographic indicators, available at <https://www.stat.gov.az/source/demography/au/>

In 2019, children born alive out of wedlock consisted 15.2% of total number of children born alive.

<sup>34</sup> Family Code of the Republic of Azerbaijan (1999) (AZE) Article 52

<sup>35</sup> UNICEF, The rights of children and why they matter- The work of UNICEF in Azerbaijan, (2016) p 19, available at <https://www.unicef.org/azerbaijan/media/661/file/Children-why-they-matter-ENG.pdf%20.pdf>

<sup>36</sup> Figures were presented by the Ministry of Labour and Social Protection at a national conference on demographic trends of Azerbaijan held on 15 December 2015. Sources: <http://az.trend.az/azerbaijan/society/2469629.html> <http://m.apa.az/az/news/408491> <http://transparency.az/cnews/usaqlarin-cins-nisb%C9%99ti-hokum%C9%99tproqrami-hazirlanib/>

common. Additionally, concerning the education of girls it needs to be stressed adolescent girls are far more likely to drop out of school, often at an age as early as 15. Although the number of officially registered child marriages decreases, this tradition remains hidden. This harmful practice affects over 3,000 girls every year.<sup>37</sup> Prejudices and attitudes that promote traditional roles of women and girls in society are one of the main causes of gender inequalities.

Therefore, while the legislation is in place, the practice lags behind and all state bodies, be it judicial or administrative, should involve children of all age into decision-making process without discrimination, break social stereotypes about children being vulnerable and not autonomous. Moreover, the government needs to take serious steps in order to combat gender-based discrimination, as the situation gets worse.

## 2.2 Best Interest of the Child

The most famous and one of the general principles of children's rights is the best interest of the child. Throughout the last decades it has been the main point of discussion and centre of the decisions concerning children at international, regional and domestic level. Under the Principle 2 of the 1959 Declaration, it was stated that for the protection and development of children special laws should be adopted and enacted and during this whole process the best interests of the child shall be "paramount consideration".<sup>38</sup> UNCRC used the principle and developed it further. According to Article 3, not only for the protection and development, but in all cases concerning children, be it public, private or social welfare issue, the best interests of the child shall be a primary consideration.<sup>39</sup> As it can be seen the UNCRC used the wording "a primary consideration" rather than "paramount" unlike the 1959 Declaration, which can be considered a step backwards. It can be argued that it was the result of diversity and broadness of the encapsulated fields where the best interest should be considered. Additionally, the UNCRC makes the best interest of the child a basic concern for both of the parents.<sup>40</sup> The principle is very important, and not depending of the legal system is self-executing, meaning it can be directly raised before courts.<sup>41</sup> In its General Comment N 14, the Committee stated that there are three types of obligation put on states: 1) appropriate integration and consistent application in all public action; 2) ensure all judicial and administrative decisions consider it; 3) assessment and consideration in private sector's actions.<sup>42</sup> It is also important to remember that when the drafters of the UNCRC used "children", they

<sup>37</sup> The number of births to mothers aged 15-17 years is used as a proxy to estimate the number of child marriages. Source: The State Statistical Committee of the Republic of Azerbaijan (2015). Population / Statistical yearbook / Children in Azerbaijan [Live births by age of mother in 1990-2014] Retrieved from [http://www.stat.gov.az/source/demography/en/003\\_2en.xls](http://www.stat.gov.az/source/demography/en/003_2en.xls)

<sup>38</sup> 1959 Declaration Principle 2

<sup>39</sup> UNCRC Article 3

<sup>40</sup> UNCRC Article 19

<sup>41</sup> GC 14 Intro A

<sup>42</sup> GC 14 III

meant not only individual children, but also children as a group,<sup>43</sup> which means that upon budgetary considerations, children's best interest generally should be born in mind. Elements to be taken into account upon considering child's best interests are child's identity, views, preservation of family environment, care, protection, right to health and education and vulnerability.<sup>44</sup> Procedural guarantees for safeguarding the best interests are right to express views, legal representation, legal reasoning in the decisions, existence of qualified professionals, mechanisms to review decisions.<sup>45</sup> Regarding the incorporation of this core principle in the national legislation, the Constitution does not mention best interest principle, although it has a protective approach towards children. However, the Law on the Rights of the Child in its first chapter on General Provisions touches upon the best interest of the child. Article 5 rules that all state bodies, physical and legal persons should prioritize the interests of children in their activities and normative legal acts and decisions of relevant bodies shall not contradict the interests of children and their implementation shall not harm the life, development and upbringing of children.<sup>46</sup> This is very comprehensive provision and provides a very good example of incorporation of the clause of the UNCRC. Additionally, the Law is very praiseworthy as it lays down that any agreement (civil contract) limiting the rights and interest of the child is void.<sup>47</sup> It needs to be stressed that the Law puts an obligation of protection of the rights and *interests of the child* on parents as a main duty.<sup>48</sup>

In its other Articles, the Law also mentions the interests of the child in various contexts, however, not specifically naming it "best interest". For example, in Article 29 it is stated that social monetary assistance to children shall be spent in accordance with the interests of the child.<sup>49</sup> In another case, Article 32 rules that adoption is allowed in accordance with the legislation and for the interests of the child.<sup>50</sup>

The Family Code is also important legislative act touching upon the best interest of the child in several of its Articles. First and foremost, the Code takes the protection of the interests of the child and provision of happy life for him/her as one of its objectives.<sup>51</sup> The Code sees the protection of the interests of the children as one of the few main rights of children in the family context.<sup>52</sup> It also takes a firm stand especially for the protection of the interests of the child in matters of property. Article 22.2 states that if the post-nuptial agreement contradicts the interests of the child then the court can decide the division of the property so that those interests are protected.<sup>53</sup> The issue is also raised in Article 37.2, according to which the court is entitled to divide the property unequally between the spouses bearing in mind the interests of the child.

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<sup>43</sup> GC 14 IV A 1 (c)

<sup>44</sup> GC 14 V A 1

<sup>45</sup> GC 14 V B

<sup>46</sup> The Law on the Rights of the Child Article 5

<sup>47</sup> The Law on the Rights of the Child Article 5

<sup>48</sup> Law on the Rights of the Child Article 19

<sup>49</sup> Law on the Rights of the Child Article 29

<sup>50</sup> Law on the Rights of the Child Article 32

<sup>51</sup> Family Code Article 3.0.4

<sup>52</sup> Family Code Article 51

<sup>53</sup> Family Code Article 22.2

(despite the general rule of equal division of property between husband and wife).<sup>54</sup> In its other Articles the Code also sees the protection of the interests of the child as a main duty on parents.<sup>55</sup> Interestingly, the Code explicitly prohibits the realization of the rights of the parents in case it contradicts the interest of the child.<sup>56</sup> Following the Law, the Code also mentions the interests of the child as the main issue in cases of adoption. For example, the Code prohibits the adoption of siblings by different persons unless it is in accordance with the interests of the child.<sup>57</sup>

Other domestic laws such as the Law on Protection of Children from Harmful Information,<sup>58</sup> the Law on Prevention of Negligence of Juveniles and Juvenile Delinquency<sup>59</sup> also mentions the protection of interests of the child as one of its main duties and principles.

However, there is a problem concerning implementation of this ground principle. For example, from the procedural perspective there is a gap in state budget allocation. Upon the adoption of the state budget program, the main direction for the expenses does not describe explicitly how the child rights and best interests of the children are taken into consideration. Although there are points like education and public health,<sup>60</sup> the protection and provision of child rights should have been separated and shown how children's best interests were considered during the discussion and adoption of the budget program.

## 2.3 Right to survival and development

Although the UNCRC sees right to life, survival and development together, combining it under Article 6, in the paper right to life and health are treated differently and under the separate chapter as a specific right, while survival and development is analysed as one of the ground principles.

Development is mentioned very briefly and in the general context of care and employment in the 1959 Declaration.<sup>61</sup> The UNCRC makes the survival and development as one of the obligations of states before children.<sup>62</sup> The development element is also mentioned in the context of right to adequate standard of living, but in comprehensive way of physical, mental, spiritual, moral and social development.<sup>63</sup> Repetition of these elements in Article 32 on protection of children from exploitation<sup>64</sup> also means that drafters sees the development as a multiple-sided issue. It can also be seen in the approach of the Committee in its General Comment №15.<sup>65</sup>

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<sup>54</sup> Family Code Article 37.2

<sup>55</sup> Family Code Article 59

<sup>56</sup> Family Code Article 60

<sup>57</sup> Family Code 117.4

<sup>58</sup> Law of the Republic of Azerbaijan on Protection of Children from Harmful Information (2018) (AZE) Article 3.0.1

<sup>59</sup> Law of the Republic of Azerbaijan on Prevention of Negligence of Juveniles and Juvenile Delinquency (2005) (AZE) Article 3.0.2

<sup>60</sup> Law of the Republic of Azerbaijan on State Budget (2020) (AZE)

<sup>61</sup> 1959 Declaration Principle 6 and 9

<sup>62</sup> UNCRC Article 6

<sup>63</sup> UNCRC Article 27

<sup>64</sup> UNCRC Article 32

<sup>65</sup> Committee on the Rights of the Child, General comment № 15 (17 April 2013) CRC/C/GC/15, Part II D

Additionally, the Committee sees survival and development in the holistic way. It stated that “the right to survival and development can only be implemented through the enforcement of all the other provisions of the Convention, including rights to health, adequate nutrition, social security, an adequate standard of living, a healthy and safe environment, education and play (arts. 24, 27, 28, 29 and 31), as well as through respect for

the responsibilities of parents and the provision of assistance and quality services (arts. 5 and 18).<sup>66</sup> It also emphasized that violence is a hindrance for survival and development of children,<sup>67</sup> and as the UNCRC sees upbringing and development of children as a primary responsibility on parents,<sup>68</sup> having violence-free family is a basic right of each child in this context too.

Regarding the incorporation of the principle in the domestic legislation, first of all the Law needs to be mentioned as a main and specific source of children’s rights. Article 8 rules that each child has a right to physical, mental and moral development in a normal condition and states that the state undertakes to take economic, socio-legal and other measures to ensure these conditions and to create a healthy and safe environment.<sup>69</sup> There is no other specific provision in other legal acts concerning children. Although some of them mention development of children in the context of education<sup>70</sup> and protection,<sup>71</sup> unfortunately, there are no ways shown what measures needs to be taken in order to satisfy conditions for the survival and development of children. Especially for early child deaths (for new-borns, 11 per 1000 and for children below 5, 15 per 1000), despite the improvements in the field, some steps, such training of health professionals and fair allocation of doctors in the regions need to be taken.<sup>72</sup>

## 2.4 Right to be heard

One of the key principles of child rights is the right to be heard. The inclusion of the right in the UNCRC can be seen as a huge milestone in the protection of the rights of children. It emphasizes not only the importance of child’s right to express his/her views, but also strengthens the position of the child as a subject of the law and enforcement of children’s views as they concern life and best interest of the child. Here it needs to be stressed that these two principles are closely interconnected: If best interest of the child is taken as a substantive right, then the right to be heard can be seen the procedural one enabling its fulfilment.

<sup>66</sup> Committee on the Rights of the Child, General comment № 7 (20 September 2006) CRC/C/GC/7, para 10

<sup>67</sup> Committee on the Rights of the Child, General comment № 13 (18 April 2011) CRC/C/GC/13, para 15

<sup>68</sup> UNCRC Article 18

<sup>69</sup> The Law on the Rights of the Child Article 8

<sup>70</sup> Law of the Republic of Azerbaijan on the Education of Disabled Persons (Special Education) (2001) (AZE)

<sup>71</sup> Law of the Republic of Azerbaijan on Ratification of the Convention of the Council of Europe on Protection of Children from Sexual Exploitation and Sexual Violence (2019) (AZE)

<sup>72</sup> The Statistical Committee of the Republic of Azerbaijan, Demography, Death available at <https://www.stat.gov.az/source/demography/>

The right to be heard has never been mentioned in other international documents, but for the first time the UNCRC laid down that “a child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child” and be “given due weight in accordance with the age and maturity of the child”.<sup>73</sup> Importantly, the UNCRC recognizes the role of the child in the court proceedings affecting his interests whereas placing an obligation on states parties to provide children opportunity to be heard.<sup>74</sup> As stressed by the Committee, there is also a maturity test, and therefore, there can be no age limit established in order to limit the child’s right to be heard.<sup>75</sup> In cases where the age of the child is low, if the child is able to form and express his/her views in a reasonable and independent manner, then based on maturity the views should be given due weight.<sup>76</sup> Regarding the procedural aspect of the right, the Committee highlighted the need to create child-friendly atmosphere with a trained staff, clothing and design of the room where administrative and judicial proceedings will take place with the participation of a child.<sup>77</sup> The child should be heard not only in criminal proceedings, but also in civil ones (divorce, foster care, etc.) where his/her rights are affected.<sup>78</sup>

The following non-exhaustive list of steps should be implemented in order to fully avail the child with the right to be heard:

- 1) *The child is informed about his right, the procedure, the outcome of his/her expression of the views;*
- 2) *The hearing should be child-friendly, in a format of more confidentiality, rather than open, and in a way of talk instead of one-sided examination;*
- 3) *Assessment of the child’s capacities should be carried out on a case-by-case basis;*
- 4) *Provision of remedies and appeal procedure must be established by the domestic legislation.*<sup>79</sup>

The children’s right to be heard can be understood not only in individual manner, but also in a collective way.<sup>80</sup> While the individual one can be seen in a context of separate civil and criminal cases, the group’s right to be heard is more related to the views they express in assemblies and how those view are taken into consideration by authorities (be it at a small management of school or parliamentary level). Last but not least, bearing in mind state reports and practices in its General Comment, the Committee emphasized that states must “avoid tokenistic approaches, which limit children’s expression of views, or which allow children to be heard, but fail to give their views due weight”.<sup>81</sup>

Regarding the application of one of the most essential principles of child’s rights in the Azerbaijani domestic legislation, it should be underlined that there is no such right

<sup>73</sup> UNCRC Article 12.1

<sup>74</sup> UNCRC Article 12.2

<sup>75</sup> GC 12 para 21

<sup>76</sup> GC 12 para 29-30

<sup>77</sup> GC 12 para 34

<sup>78</sup> GC 12 Part 3 (b)

<sup>79</sup> GC 12 para 40-46

<sup>80</sup> GC 12 para 9

<sup>81</sup> GC 12 para 132

enshrined in the main two documents, neither in the Constitution, but most importantly nor in the Law on the Rights of the Child. As the Law prevails in case of collusion with other legislative acts, non-existence of the clause on right to be heard is saddening. The Law should be amended, and the norm compatible with international standards laying down the right itself and protection for it must be included therein.

The “right to express his/her views” is enshrined in Family Code. Nevertheless, there are major shortcomings in the Family Code too. Article 52 using almost the same language as the UNCRC lays down that child has a right to express his/her views concerning them *in the family*, and to be heard in judicial and administrative procedure.<sup>82</sup> Firstly, legislative body created a wrong impression when it included the wording “family” in the text of the Article. It can be interpreted that children can express the views and be heard in the procedures only if they are related to family matters, which is not in accordance with international standards. It is understandable that the Code regulates family matters, however, as it is the first legal document where the right is mentioned, it should have been stated in more broad terms rather than limiting it to family context.

Going further, interestingly the legislator decided to put an age limit on the right. Article states that the views of children above the age of 10 should definitely be taken into account, and judicial and guardianship and trusteeship bodies cannot make a decision without a consent of the child above 10, and may decide to hear and take into consideration of the views of the child above 7.<sup>83</sup> While establishing an obligation to definitely hear and decide based on the views of children above 10 the legislator created an explicit and strong norm, with such age limits it made a flagrant violation of international standards and recommendation of the Committee. Giving a discretionary power to state bodies for hearing children above 7 is also shortcoming of Article. The parliament, as a legislative body, needs to immediately amend the Family Code and bring the whole Article into terms with UNCRC and General Comment.

In other laws there is no proper rule on right to be heard either. For example, in the Law on Education of Disabled Persons, for the exchange of student from one type of an educational facility to another one, the consent of the parents is required without providing a child with a right to express the views.<sup>84</sup> Again there, children are involved neither in the decision-making process regarding the placement of him/her in a special educational facility,<sup>85</sup> nor in challenging the decision of the body<sup>86</sup>. In the Law on Compulsory Dispanserization of the Children there is no consent or right to be heard element either. It states that only via the consent of the parents medical dispanserization can take place, without providing a child with any possibility or procedure to express his/her views in relation to it.<sup>87</sup>

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<sup>82</sup> Family Code Article 52

<sup>83</sup> Family Code Article 52

<sup>84</sup> Law on Education of Disabled Persons Article 17.1

<sup>85</sup> Law on Education of Disabled Persons Article 21.4; Only the psychological-medical-pedagogical expert commission decides on the matter

<sup>86</sup> Law on Education of Disabled Persons Article 21.5; Only parent s can appeal from the decision of the expert commission

<sup>87</sup> Law of the Republic of Azerbaijan on Compulsory Dispanserization of the Children (2013) (AZE) Article 7.7

General analysis of domestic legislation shows there are major problems concerning child's right to be heard. These can be related to the culture and approach of the society towards children as secondary and non-independent members of the family, not mature enough to have proper views. In that context, not only there is no norm in the major legislative acts, but also in other ones those norms are in breach of international child rights. Consequently, all of the above-mentioned cultural issues and legal points need to be changed and amended, respectively. This is an obligation of states parties to the UNCRC.

### 3. RIGHT TO LIFE AND HEALTH

#### 3.1 Right to life

Right to life is one of the most important human rights written down in all major international human rights documents. Without its provision other rights would become meaningless and useless. Interestingly, the 1959 Declaration did not mention or make a reference to the right to life. The UNCRC, being a comprehensive child rights treaty, mentioned the right directly as "states parties recognize that every child has the inherent right to life".<sup>88</sup> The Committee sees it as a part of ground principles too together with survival and development. The right to life places both negative (refrain from killing) and positive (take measures for the provision of the right, such as duty to protect) obligations on states.<sup>89</sup> It is a non-derogable (although not absolute) right. So far, the Committee has not issued any General Comment in relation to right to life specifically.<sup>90</sup> However, there are other General Comments and international documents which can be used by states. The Committee has stated in General Comment №7 on implementing child rights in early childhood that "Article 6 refers to the child's inherent right to life and States parties' obligation to ensure, to the maximum extent possible... States parties are urged to take all possible measures to improve perinatal care for mothers and babies, reduce infant and child mortality, and create conditions that promote the well-being of all young children during this critical phase of their lives. Malnutrition and preventable diseases continue to be major obstacles to realizing rights in early childhood."<sup>91</sup> This reminds states that child mortality is major obstacle in the realization of child's right to life and development. The European Court of Human Rights analysed the right against different backgrounds, like creating a system of norms and adequate control for reducing the risk to a reasonable minimum<sup>92</sup>

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<sup>88</sup> UNCRC Article 6

<sup>89</sup> For further information please see Human Rights Committee, General Comment № 36 (30 October 2018) CCPR/C/GC/36, especially paras 23 and 60 where the children are paid special attention.

<sup>90</sup> Probably as there is a comprehensive one by the Human Rights Committee, the Committee decided not to do so. However, bearing in mind the specific characteristics of children, it would be better to have specific one guiding party states for the better implementation of the right to life in case of children.

<sup>91</sup> GC 7 para 10

<sup>92</sup> *Binişan v Romania* App no 39438/05 (ECtHR, 13 October 2014), para 126

to safeguard lives of people from environmental disasters; finding the cause of individual's death who was under the oversight of medical staff and their liability<sup>93</sup> for deaths happening during surgical or medical procedure<sup>94</sup>. Now there are attempts to interlink economic, social and cultural rights with civil and political rights in the context of positive and negative obligations on the basis of interconnectedness and indivisibility of the rights. In case of right to life, it can be related to several rights. For instance, the basic illustration would be the connection to the right to adequate standard of living. Where states do not provide with the housing, water and food essential for survival or take steps in this regard for people within its jurisdiction under Article 11 of International Covenant on Economic, Social and Cultural Rights ("ICESCR"),<sup>95</sup> then allegedly it can be strongly argued that the state does not fulfill its positive obligations under Article 6 of the International Covenant on Civil and Political Rights. The same can be applied also in the context of right to life of children under Article 6 of the UNCRC.<sup>96</sup> This kind of interconnection can be seen more strongly between right to life and right to health. That's why researchers decided to discuss these two rights in a separate subchapter.

Concerning the implementation of the right to life of children, analysis of the national legislation shows there are quite a lot of norms protecting the right to life. First and foremost, the Constitution lays down the right to life as one of the fundamental human rights under Article 27.<sup>97</sup> The Law on the Rights of the Child also protects child's right to life.<sup>98</sup> Currently the major problems in the protection of the right to life of children are selective abortion<sup>99</sup> and early child deaths<sup>100</sup>. As mentioned in subchapter 2.1 and 2.3, the state needs to take serious steps against these societal problems which are in breach of child's right to life.

### 3.2 Right to health

UNCRC is a unique document and differs from other international treaties preceding it in a way that it has not only civil and political rights enshrined, but also economic, social and cultural rights. The 1959 Declaration mentioned right to health of a child and his/her mother in general terms under Principle 4. The right was seen as a part of benefits of social security.<sup>101</sup> Right to health, as a social right written down in Article 12 of the ICESCR, is also encapsulated by the UNCRC as each child having the right

<sup>93</sup> *Powell v the UK* App no 45305/99 (ECtHR, 4 May 2000), Law para 1

<sup>94</sup> Tony McGleenan, 'Investigating Deaths in Hospitals in Northern Ireland, Does the System Comply with European Convention on Human Rights' (2004) Northern Ireland Human Rights Commission 13

<sup>95</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) Article 11

<sup>96</sup> Manfred Nowak, *A Commentary on the United Nations Convention on the Rights of the Child, Article 6: The Right to Life, Survival and Development* (Martinus Nijhoff 2005)

<sup>97</sup> Constitution Article 27

<sup>98</sup> The Law on RC Article 8

<sup>99</sup> BBC News (Azerbaijani), "Azerbaijan, Georgia and Armenia are "leaders" in selective abortions" (2019) available at <https://www.bbc.com/azeri/azerbaijan-47988840>

<sup>100</sup> Parviz Ahmadov, "Addressing High Infant Mortality Rate in Azerbaijan" (2018) Baku Research Institute available at <https://bakuresearchinstitute.org/en/addressing-high-infant-mortality-rate-in-azerbaijan/>

<sup>101</sup> 1959 Declaration Principle 4

to “enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health”.<sup>102</sup> Following the comprehensive approach of the World Health Organization, the Committee stated that health is a “state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”.<sup>103</sup> Additionally, the Committee stressed in its General Comment №15, “the realization of the right to health is essential for the enjoyment of other rights in the Convention”.<sup>104</sup> Article goes on further giving a list of some actions that need to be taken in order to fulfil the obligation of the provision of the right to health such as development of primary health care system, combating child mortality, informing the society about child nutrition, hygiene and sanitation, pre- and postnatal care for mothers, etc.<sup>105</sup> In General Comment №7, the Committee once again in more clear terms touched upon the importance of provision of these health services for children who are in early childhood stage. On that background, two main obligations were highlighted: 1) Responsibility to ensure access to clean drinking water, adequate sanitation, appropriate immunization, good nutrition and medical services; 2) Provision of appropriate prenatal and post-natal health care for mothers and infants.<sup>106</sup>

The content of the right was more clarified via the General Comment №14 on the “Right to the highest attainable standard of health” of the Committee on the Economic, Social and Cultural Rights. It defined the right to health not just as a right to be healthy, but also as creating an obligation of states to provide access to essential health care goods in sufficient quantity and both physically and economically available, therefore, without discrimination.<sup>107</sup> One of the major problems concerning the right to health is its alleged weak enforceability. As the ICESCR allows states parties under Article 2 “progressive realisation” which means they can implement the right in line with the sources available to them,<sup>108</sup> it can be alleged that states are under no obligation to fulfil the obligation immediately. However, it should be born in mind that states have an obligation to eliminate the barriers to children’s access to health services, including financial, institutional and cultural barriers and to make all essential medicines on the World Health Organization Model Lists of Essential Medicines, available, accessible and affordable<sup>109</sup> for children, especially if they are lifesaving, then provide those medicines immediately and without discrimination.

Besides requiring states to take immediate action to implement these obligations as a matter of priority, the Committee emphasized that they should adopt legislative and policy measures, make health services available, accessible, acceptable, with quality and without discrimination for all children as these are the action cycle for the fulfilment of the right to health.<sup>110</sup> It needs to be mentioned that non-state actors also play a vital

<sup>102</sup> UNCRC Article 24.1

<sup>103</sup> GC 15 Part I

<sup>104</sup> GC 15 Part II A

<sup>105</sup> UNCRC Article 24.2

<sup>106</sup> GC 7 para 27

<sup>107</sup> The Committee on the Economic, Social and Cultural Rights, the General Comment №14 (11 August 2000) UN Doc. E/C.12/2000/4 para 8-12

<sup>108</sup> ICESCR Article 2

<sup>109</sup> GC 15 Part III

<sup>110</sup> GC 15 Part VI

role in the implementation of right to health as in some situations they are the ones providing medical services, and in those instances while these actors participate in the fulfilment of the right, states should monitor them for better protection of the right.<sup>111</sup>

The Committee has also got into the connection between right to be heard and right to health. It stressed that children should be involved and their views should be sought in the development of health policies and services. Important issue is giving medical consent which belongs separately to children besides their parents and the Committee welcomes the introduction of fixed age at which right to consent absolutely passes from parents to children. Another point is about the right to counselling. It should be available to children without discrimination based on age.<sup>112</sup>

Right to health is one of the basic human rights written down in the Constitution of Azerbaijan too. Article 41 states that everyone has the right to health protection and medical aid.<sup>113</sup> Although children are not specifically mentioned, they are protected under this umbrella clause.. Employment of children for the jobs dangerous to their health is also prohibited by the Constitution.<sup>114</sup>

The Law on the Rights of the Child also touches upon the child's right to health. Besides recognizing every child's right to protection of health, it requires the state to ensure the protection of children's healthy development, create conditions that guarantee environmental safety, take appropriate measures to provide them with quality food and clean drinking water, avail children to receive medical care in sanatorium-resort conditions, to receive complete and objective information on the results of medical examination.<sup>115</sup> Recently a new clause has been added to the Law which prohibited sale of alcohol and energy drinks, tobacco products to children, employment with difficult working conditions, as well as in underground tunnels, mines and other underground works.<sup>116</sup> Although right to information regarding their health and medical consent are important part of the right to health, the Law does not mention any clause concerning these issues, which is a serious backlash on children's rights. the Law on Nutrition of Infants and Young Children ("Law on Nutrition") is another legislative act that regulates different aspect of children's right to health, according to which the state tries to protect infant's right to health and implement its obligation to provide adequate information on health care. The Law on Nutrition promotes breastfeeding, establishment of state programmes in this sphere, creates requirements for production and advertisements of artificial baby foods.<sup>117</sup>

There is also a specific law regulating the available measures for the protection child's right to health. The aim of the Law on Compulsory Dispenserization of Children is implementation of measures for protecting and strengthening children's health, reducing morbidity, disability and mortality among children, and protecting children from disease.<sup>118</sup> It encapsulates a variety of measures such as basic screening,

<sup>111</sup> GC 15 Part IV B. Also see GC 7 para 32

<sup>112</sup> GC 12 para 98-104

<sup>113</sup> Constitution Article 41.1

<sup>114</sup> Constitution Article 17.4

<sup>115</sup> The Law on RC Article 9

<sup>116</sup> The Law on RC Article 9

<sup>117</sup> The Law of the Republic of Azerbaijan on Nutrition of Infants and Young Children (2003) (AZE)

<sup>118</sup> The Law on Dispenserization Article 3

medical observation, preventive and medical-healing measures.<sup>119</sup> The Law on Dispanserization is non-discriminative as it embraces not only children holding Azerbaijani nationality, but also all of them (foreign citizens or stateless persons).<sup>120</sup> The state took all the costs occurring in relation to the provision of the health services on itself.<sup>121</sup> Abiding by the recommendation of the Committee, the Law on Dispanserization also puts an obligation on the state to disseminate the information among the general public on health services.<sup>122</sup> However, the principal problem of the said Law is that it does not mention anything regarding child's right to express his/her views and give those views due weight. Therefore, it must be changed and follow the international and domestic legal standards providing children with better visibility and voice regarding their health.

### **3.3 Protection of children as a vulnerable group from selective abortion based on sex**

In general, the codification of international law in children's rights also has features specific to other areas of human rights. Initially, declarations are adopted in the relevant field, which are considered soft rights, and then the conventions, which are binding on the states regulating the field, enter into force. In the field of children's rights, the most developed text, many of which have already become jus cogens, is the 1989 Convention on the Rights of the Child, adopted by the United Nations. The path to children's rights began with international soft law, such as the Geneva Declaration of the Rights of the Child, adopted by the League of Nations, the predecessor of the United Nations, in 1924, and the Declaration of the Rights of the Child, adopted by the United Nations in 1959.

Azerbaijan also ratified the Convention on the Rights of the Child in 1992, a relatively early date. In addition, in 2002 it became a party to two optional protocols to the Convention - the Protocol on the Sale of Children, Child Prostitution and Child Pornography and Protocol on the Rights of the Child on the involvement of children in armed conflict.

In this context, it should be noted that although the Convention on the Rights of the Child has three optional protocols, Azerbaijan has not ratified the latter - the Optional Protocol, which regulates the procedure for appealing to the Committee on the Rights of the Child in the event of a violation of the rights provided for in the Convention and the two Optional Protocols.

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<sup>119</sup> The Law on Dispanserization Article 1

<sup>120</sup> The Law on Dispanserization Article 8.2

<sup>121</sup> The Law on Dispanserization Article 10

<sup>122</sup> The Law on Dispanserization Article 12

As already noted, the Convention on the Rights of the Child, as in other UN human rights conventions, established a Human Rights Committee, which monitors the implementation of the Convention by the State Parties, interprets certain provisions of the Convention under the name the General Comment, and examines individual appeals. Although Azerbaijan has already submitted its 6th report on the Rights of the Child at the time of writing this review, the Committee has not yet prepared a final report on this report. In chronological order, the Committee prepared its first report on Azerbaijan in 1997, its second report in 2006, and its third and fourth reports in 2012. The Committee is expected to prepare the 5th and 6th reports on Azerbaijan again in 2022. Therefore, the last report prepared by the Committee about children's rights in Azerbaijan dates to 2012.

The Committee's periodic report for 2012 notes that, according to the Azerbaijani Constitution, the international conventions have superior legal force over domestic laws, and the legal system allows for direct application of the Convention. However, courts and other administrative bodies do not directly apply the Convention's provisions.<sup>123</sup> Accordingly, the Committee recommends that the Azerbaijani side conduct a comprehensive analysis of all domestic legislation to ensure compliance with the Convention.<sup>124</sup> Therefore, as the Committee rightly points out, the analysis of local legislation in the context of international standards is vital to improving the situation of children's rights in a particular country.

In addition, it should be noted that to prepare the 5th and 6th joint report, one of the thematic issues raised by the Committee on child rights in Azerbaijan in **2021** is the issue of **selective abortions based on sex**.<sup>125</sup> Therefore, the purpose of this analysis is to examine the legal situation in which children as vulnerable groups are more likely to be exposed to selective sex-based abortions.

In general, our behavior is determined/limited by four factors. These are law, market, social norms, and architecture. For example, if we consider our smoking habit, it includes the prohibition of smoking indoors (law), the increase in cigarette prices (market), not smoking around elders (social norms) or the amount of nicotine in cigarettes (architecture) may have effect our habits. It would not be wrong to say that four factors also affect the increase in abortions of girls. For example, medical technological innovations that determine the sex of children may have influenced the number of such abortions (architecture). Or mental thinking and habits (social norms) or changing economic attitudes (markets) among the population may have stimulated the abortion of girls. Finally, certain gaps in the country's existing legislation or legal norms that create gender discrimination may also affect the number of abortions of girls (law). It should be noted that these factors interact with each other. For example, a provision of the law that puts women at a disadvantage in working life may indirectly

<sup>123</sup> Committee on the Rights of the Child, *Concluding observations: Azerbaijan*, CRC/C/SR.1697, Geneva, 2012, para. 9

<sup>124</sup> *ibid.* para.10

<sup>125</sup> Committee on the Rights of the Child, *List of issues in relation to the combined fifth and sixth reports of Azerbaijan*, CRC/C/AZE/Q/5-6, Geneva, 2021, para. 4

lead to girls becoming unwanted children because they do not help to reduce the economic burden on the family (market). Here, only examples of legislation that can have a direct and indirect effect on abortions of girls have been analyzed.

### **Legislation on abortion and prenatal sex determination**

The sex ratio refers to the ratio of women to men in the population and is usually expressed as the number of men per 100 women. The sex ratio at birth means the proportion of live-born boys per 100 live-born girls. In many countries, the normal sex ratio is between 102 and 106 men per 100 women. However, sometimes this normal ratio can be artificially high, even in the number of 130 men per 100 women.<sup>126</sup> Unfortunately, recent statistics on Azerbaijan show that the sex balance at birth is also changed in our country. Thus, according to the analysis, the ratio of girls to boys was 100 girls and 105-106 boys in the early 1980s, but in 1998 this figure reached 100 girls and 118 boys. In recent years, there has been a slight decline in this ratio, with 117 boys being born for 100 girls.<sup>127</sup>

In Azerbaijan, as in all former Soviet countries, abortion has been a key tool for controlling fertility for many years. Artificial abortion was first legalized in the Soviet Union in 1920, but was banned in 1936 as part of a policy to stimulate birth. This decision was repealed in 1955 and re-permitted abortions for non-medical reasons in the former Soviet Union. As in Eastern and Central Europe, as well as in other countries of the former Soviet Union, abortion legislation in modern Azerbaijan is among the most liberal in the world.<sup>128</sup> Provisions related to abortion in Azerbaijan are mainly regulated by the Law on Protection of Public Health. While this law mainly defines the possible time limits of abortion and the grounds for artificial termination, the Criminal Code of the Republic of Azerbaijan defines the concept of “illegal abortion” and establishes sanctions for such abortions.

### **Law on Protection of Public Health**

In general, this Law regulates the relations between citizens and state bodies, as well as subjects of state and non-state health care systems in the field of public health protection.

According to Article 30 of the Law, entitled "artificial termination of pregnancy", every woman has the right to decide the issue of motherhood on her own. Artificial

<sup>126</sup> World Health Organization (WHO), *Preventing gender-biased sex selection an interagency statement* OHCHR, UNFPA, UNICEF, UN Women and WHO, Geneva, 2011, p.V

<sup>127</sup> UNFPA Azerbaijan, *Mechanisms Behind the Skewed Sex Ratios at Birth: qualitative and quantitative analysis*, Baku, 2014, p. 29

<sup>128</sup> Center for Public Health and Reforms (CPHR), *Demography and Health Survey 2011, Final Report*, Baku, 2013, p. 85. Original in Azerbaijani (İctimai Səhiyyə və İslahatlar Mərkəzi (İSİM), *Demoqrafiya və Sağlamlıq Sorğusu 2011, Yekun Hesabat*, Baki, 2013, s. 85.)

termination of pregnancy is carried out at the request of the woman up to 12 weeks of pregnancy. According to social guidelines, artificial termination can be carried out up to 22 weeks of pregnancy. Artificial termination is performed by qualified doctors in state and non-state medical institutions. Artificial termination of pregnancy by a doctor outside hospitals or other medical institutions is prohibited.

Thus, in the first 12 weeks of pregnancy, in other words, until the 12th week when the sex of the fetus is known, a woman can terminate the pregnancy as she wishes without any social or medical instructions. Abortions after the 12th week can be divided into two types. Of these, abortion with a medical prescription from the first 12 weeks to the end of pregnancy, ie up to 41 weeks. The second is socially directed abortions from 12 to 24 weeks.

Social guidelines for artificial termination of pregnancy have been identified by the Cabinet of Ministers as *numerus clauses*. These are as follows:

1. Husband belongs to 1-2 groups of disabilities
2. Husband's death during pregnancy
3. Court decision on deprivation or restriction of parental rights
4. Declaring a woman or her husband unemployed based on established rules
5. Detention of a woman or her husband in places of deprivation of liberty
6. Ectopic pregnancy
7. Dissolution of marriage during pregnancy.
8. Pregnancy because of rape
9. Multiple children (5 and more children)
10. Having a disabled child in the family
11. The woman has refugee or IDP status
12. Lack of housing, dormitory, private house, rent <sup>129</sup>

There are two weaknesses in this regulation that will increase abortions in favor of boys. First, the law stipulates that abortion can be performed in any medical institution, and only one doctor's decision, rather than any consultation, is sufficient. Thus, medical abortions are open to abuse. Because only with the decision of a gynecologist can a medical basis for abortion be created.

On the other hand, although the Cabinet of Ministers considers social guidelines for abortion to be *numerus clauses*, the guidelines create enough space for abuse. For example, a woman can legally terminate her pregnancy at 22 weeks, that is, after determining the sex of the fetus, on the grounds that she is living in a rented house.

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<sup>129</sup> Approved by the Resolution No. 5 of the Cabinet of Ministers of the Republic of Azerbaijan dated January 12, 1999

## ***Illegal Abortion under the Criminal Code***

According to Article 141 of the Criminal Code, under title of illegal abortion, a doctor's abortion outside medical institutions is punishable by a fine of 500 to 1,000 manat or correctional labor for up to six months. In addition, abortion by a person without special higher medical education is punishable by a fine of 1,000 to 1,500 manat, or community service for three hundred sixty to four hundred hours, or correctional labor for up to one year. According to the Criminal Code, because of the above-mentioned acts, if a person's health is seriously damaged by negligence or the death of a victim is caused by negligence, a heavier penalty is imposed.

As can be seen, the Criminal Code classifies two types of acts related to abortion as crimes: 1) abortion outside medical institutions and 2) abortion by a person without special higher medical education. In other words, abortion after the 12th week is not considered illegal under the Criminal Code in the absence of medical and social instructions. It should even be noted that abortion after the 12th week is not considered an administrative offense in the absence of medical or social indications. As a result, there is no administrative or criminal liability for a doctor who aborts a woman in the absence of any medical or social guidance.

## **Discriminatory laws, or the laws which enforcement can create discrimination**

Equality of men and women in the Republic of Azerbaijan is ensured by the Constitution, the basic law of the country adopted in 1995. Article 25 of the Constitution establishes equal rights and freedoms for men and women and prohibits restricting human and citizens' rights and freedoms based on sexuality. Furthermore, equality of rights and freedoms between men and women and the prohibition of discrimination based on sex is reflected in the Labor Code, the Family Code, the Criminal Code, and other legal acts. The 2006 Law on Ensuring Gender Equality aimed to eliminate all forms of discrimination based on sex, create equal opportunities for men and women in the political, economic, social, cultural, and other spheres of public life, and promote and ensure gender equality. In October 2010, the Milli Majlis of the Republic of Azerbaijan adopted the Law of the Republic of Azerbaijan on Prevention of Domestic Violence (Law on Domestic Violence).

In principle, equality between women and men has been formally established at the legislative level in Azerbaijan. However, it is possible to say that there are certain problems in the laws, especially in the fight against social problems such as domestic violence.

## ***The status of "victim" in the Code of Criminal Procedure***

Investigation of crimes related to domestic violence must be conducted in accordance with the Code of Criminal Procedure of the Republic of Azerbaijan. However, the Code of Criminal Procedure does not provide any special procedure for crimes related to domestic violence. Therefore, "domestic violence" is not an independent criterion for

special proceedings. Thus, according to Article 5, paragraph 1, of the Law on Domestic Violence, if a complaint about domestic violence is related to a crime that has occurred or is being prepared, then the complaint is considered "in the manner prescribed by criminal procedure legislation." However, the Code of Criminal Procedure does not provide any provision on the unique situation, needs, or rights of children who have been victims of domestic violence.<sup>130</sup>

### ***Domestic violence in the Criminal Code***

The Criminal Code of the Republic of Azerbaijan does not envisage domestic violence as a separate criminal act or as an aggravating circumstance in another criminal act. More precisely, the law provides for the punishment of perpetrators of domestic violence following the crimes provided for in the Criminal Code. The psychological and economical type of domestic violence is considered an administrative offense in Azerbaijani legislation. Thus, according to Article 158 of the Code of Administrative Offenses of the Republic of Azerbaijan, the exposure of a person to illegal restrictions of an economic nature (sanction AZN 100-300) and psychological violence at home (sanction AZN 300-500) is considered an administrative offense.

## **Draft Law on Reproductive Health and Family Planning**

### ***General Information***

As far as we can tell, the bill was discussed in parliament in 2008<sup>131</sup>, but its adoption has been delayed for two main reasons.<sup>132</sup> First, one of the main issues of dissatisfaction with the project is the use of donations for in vitro fertilization. The Caucasus Muslim Board is protesting this norm. The second is the protest of the Ministry of Finance. The Ministry of Finance claims that serious funding is needed to implement the measures envisaged in the project.<sup>133</sup>

### ***Innovation About Abortion in draft law***

The draft law does not provide for any changes to the provisions of the Law on Public Health related to abortion, except for one instance. The only innovation in the draft law regarding abortion is that it provides for the artificial termination of pregnancy by a consultative decision when there is already a medical prescription. Thus, according to

<sup>130</sup> OSCE Office in Baku, *Domestic Violence Cases in the Justice System of Azerbaijan*, Baku, 2013, p.18

<sup>131</sup> APA, Azərbaycanda "Reproduktiv sağlamlıq və ailə planlaşdırılması haqqında" qanun qəbul olunmalıdır mı?, 2008, <https://goo.gl/21CCa9> (access: 10.09. 2021) (Original in Azerbaijani)

<sup>132</sup> Buradakı qiymətləndirmə Qanun layihəsinin Milli Məclisin AB twinning səhifəsində olan 2011 versiyasına əsasən aparılmışdır. Bax: <http://eu.mecelis.gov.az/?/az/law/191/2> (access: 10. 09. 2021) (Original in Azerbaijani)

<sup>133</sup> Aynur Osmanqızı, Deputat: "Reproduktiv sağlamlıq haqqında" qanun layihəsinin önəmini Maliyyə Nazirliyinə sübut etməliyik", Report.az, <https://goo.gl/qJjVBu> (access: 10. 09. 2021) (Original in Azerbaijani)

Article 9 of the draft law, in a life-threatening situation for a pregnant woman, the decision on medical intervention is made by a council of doctors or a treating physician following the list of medical guidelines approved by the relevant executive authority. However, as can be seen, since the law says "or", this decision does not have to be made by a consultative decision. The treating physician may also decide on his/her own. Therefore, this innovation has virtually no meaning.

#### 4. RIGHT TO EDUCATION

One of the first rights that comes to mind while discussing children is right to education. For the comprehensive development as a personality each child needs to receive quality education. Unlike other social rights it is one of those that can be found in other documents which mainly consists civil and political rights<sup>134</sup> making its immediate implementation "a must" on states. The importance of education for children was mentioned in 1959 Declaration which was stated as entitlement to free and compulsory elementary education.<sup>135</sup> Seen more in a broad way of moral, personality and responsibility improvement, according to Principle 7 education should be in accordance with child's best interest.<sup>136</sup> Being a short declarative document, 1959 Declaration did not provide much insight about the later stages of the education, its aims.

The UNCRC tried to answer all these shortcomings and devoted two separate articles to the issues related to education. First of all, the UNCRC sees education not as an entitlement, but as a right of a child.<sup>137</sup> Besides emphasizing the free and compulsory primary education, it invited the states to make secondary and vocational education accessible and if possible free for every child, and in case of need assist them financially.<sup>138</sup> Article 28 even goes further and requests states parties to make higher education accessible to all, although based on the capacity of the person.<sup>139</sup> The drafters of the UNCRC also touched upon the school discipline measures as in some countries corporal punishment was practiced as a form of discipline method.<sup>140</sup> Bearing these cases in mind, the UNCRC stressed that school discipline should be conducted in a manner consistent with the child's human dignity.<sup>141</sup> As rightly stated by the Committee, children do not lose their rights when they pass through the gates of the school.<sup>142</sup> However, there is also a minor points which makes Article 28 not so perfect. Inclusion of the wording "achieving this right progressively" is a step back,

<sup>134</sup> See for example ECHR Article 2 Protocol 1

<sup>135</sup> 1959 Declaration Principle 7

<sup>136</sup> 1959 Declaration Principle 7

<sup>137</sup> UNCRC Article 28 para 1

<sup>138</sup> UNCRC Article 28.1 (a) & (b)

<sup>139</sup> UNCRC Article 28.1 (c)

<sup>140</sup> See for example *Tyrer v UK* App no5856/72 (ECtHR 25 April 1978)

<sup>141</sup> UNCRC Article 28.2

<sup>142</sup> Committee on the Rights of the Child, General comment № 1 (17 April 2001) CRC/C/GC/1 para 8

although the right is a social and such wording is understandable. Article already makes only primary education free and compulsory, and conditioning even this on resources creates a big room for manoeuvre for states and avoid implementation of the right.

Additionally, with Article 29 the UNCRC provides aims of the education. Besides writing down development and responsibility before the society, Article specifically shows that education should aim to develop respect for environment, cultural identity and human rights.<sup>143</sup> Importantly, Article 29 describes ethical framework within which children's rights are attached to and functions in the context of.<sup>144</sup> In its General Comment №1, the Committee highlighted the importance of inclusive education, where disabled people's equal right to education is ensured, and peace and tolerance oriented.<sup>145</sup>

The Committee also stressed that the right to education can be better realized if children are involved in the process. Ground principle of the right to be heard is vital in the fulfilment of the right.<sup>146</sup> Participation of children in decision-making processes during the education should be accomplished via class and student councils and student representation on school boards and committees and should be established in the legislation, not left to the "goodwill of the authorities".<sup>147</sup>

Right to education is also seen as one of the fundamental rights enshrined in the Constitution. Article 42 states that every citizen has a right to education.<sup>148</sup> Such wording is very restrictive since it does not recognize the right to education of foreign citizen and stateless persons. Additionally, the Constitution rules that state guarantees the right to free compulsory secondary education which is in accordance with the UNCRC.<sup>149</sup> The whole educational system is controlled by the state<sup>150</sup> and it determines the minimum standards,<sup>151</sup> which means it has the ultimate authority over the field and the sole responsible in case of breaches of the right. Moreover, abiding by the UNCRC on assisting the children financially for the continuation of the education, regardless of material conditions, the state guarantees talented and merited persons to continue their education.<sup>152</sup> The Law on the Rights of the Child talks very briefly about the right to education. Without mentioning aims, it just provides that every child<sup>153</sup> has a right to education, state educational system should create environment for the development of personality, knowledge and skills of a child and prohibits deprivation of children from compulsory secondary education.<sup>154</sup> The Azerbaijani state takes a responsibility to support education of children who have innate talent too.<sup>155</sup> It is interesting as there is no definition of "innate talent" in either

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<sup>143</sup> UNCRC Article 29

<sup>144</sup> GC 1 Para 7

<sup>145</sup> GC 1 para 10 & 16

<sup>146</sup> GC 12 para 105

<sup>147</sup> GC 12 para 110

<sup>148</sup> Constitution Article 42.1

<sup>149</sup> Constitution Article 42.2

<sup>150</sup> Constitution Article 42.3

<sup>151</sup> Constitution Article 42.5

<sup>152</sup> Constitution Article 42.4

<sup>153</sup> Here compensating the norm of the Constitution on "every citizen"

<sup>154</sup> The Law on RC Article 22

<sup>155</sup> The Law on RC Article 23

of the legislative acts of Azerbaijan, nor who and how determines it. Therefore, from the perspective of legal certainty principle, the norm should be amended accordingly. Law on Education is another essential legislative act regulating the whole education cycle, activities of educational establishments. It does not go into the details of the right itself, but rather lays down how the various pillars of education and access to them functions, what are the forms of education, management of educational process, etc.<sup>156</sup> It provides the main aims and principles of the education too. While the aims of education are stated as the development of a person and a citizen with modern mindset, full of skills and knowledge respecting human rights,<sup>157</sup> the principles are humanity (respect for human rights, environment, tolerance), democracy, equality, secularity, liberalization, etc.<sup>158</sup> It means that the Law on Education is in accordance with the UNCRC and General Comments requirements.

Law on Education talks also about the right of education of stateless persons and foreigners which was forgotten in the Constitution. According to Article 44.1, education of foreigners and stateless persons is carried out in accordance with international agreements to which the Republic of Azerbaijan is a party, quota established by the state.<sup>159</sup> Additionally, “Rules for education of citizens of the Republic of Azerbaijan in foreign countries, foreigners and stateless persons in the Republic of Azerbaijan” approved by the Cabinet of Ministry states that the compulsory secondary education is free for foreigners.<sup>160</sup> Interestingly, stateless children are left behind if the norm is literally interpreted. Therefore, it should be amended and all children should be made avail to compulsory and free secondary education without any discrimination.

Family Code also talks about the right to education of children but in a family context and as an obligation on parents. Article 58.4 makes it an obligation on parents to make it available for their children to get secondary education.<sup>161</sup> The violation of this obligation by parents results in administrative fine.<sup>162</sup> Article goes on further in its 5<sup>th</sup> paragraph laying down that parents have the right to choose the educational institution and the form of education, taking into account children’s interests, until the completion of secondary education.<sup>163</sup> Despite the fact that norm states children’s interests are taken into account, Family Code does not give a right to a child to express his/her views in that specific case and makes parents the sole decision-makers. Therefore, the respective Article needs to be amended and participation of children must be raised.

There are other legislative acts that protect specifically the right to education of vulnerable groups. For example, the Law on Education of Disabled Persons (Special Education) regulates various aspects of the issue. It has good elements such as

<sup>156</sup> Law of the Republic of Azerbaijan on Education (2009) (AZE)

<sup>157</sup> Law on Education Article 4

<sup>158</sup> Law on Education Article 3

<sup>159</sup> Law on Education Article 44.1

<sup>160</sup> Rules for education of citizens of the Republic of Azerbaijan in foreign countries, foreigners and stateless persons in the Republic of Azerbaijan” approved by the Cabinet of Ministry (2015) (AZE) Article 4.4

<sup>161</sup> Family Code Article 58.4

<sup>162</sup> Code of the Republic of Azerbaijan on Administrative Offences (2015) (AZE) Article 181. Previously there was a separate norm prohibiting the diversion of a child from education by parents (Article 189.2), however, now it is incorporated in general terms as “Deprivation from education” under Article 181.

<sup>163</sup> Family Code Article 58.5

having integration as one of the aims,<sup>164</sup> newly included definition of inclusive education,<sup>165</sup> and right to psychological, medical and pedagogical assistance if needed.<sup>166</sup> However, the major shortcoming of this law is that it does not contain any provision for representation for disabled children. Only parents are given to raise the issue before the authorities which is nothing but a marginalization in the law which has already happened in the society. Another piece of legislation that touches upon the right of vulnerable group is the Law on the Social Protection of Orphans and Children Deprived of Parental Care. Article 5 on provisions for education of those children is a very good example of how a state should support those vulnerable groups. The state takes an obligation to give these children a monthly stipend, covers costs for transportation and even expenses for the conclusion of master degree and one time stipend after the end of the degree.<sup>167</sup> This approach is a very good and youth-embracing one since master degree education can continue until the age of 23-24. General analysis shows that while on main terms Azerbaijani laws follow the international standards on the right to education, there are some problems, especially from non-discrimination (nationality, sex and disability based) and participation perspective.

## 5. RIGHT TO PROTECTION

Following the adoption of the UNCRC, children started to be seen more autonomous subjects in the international and domestic law spheres, rather than persons needing protection without any voice. However, the fact that in some situations they are more vulnerable needing protection has not changed and states bearing this in mind this situation inserted some clauses to international documents that protected children in various circumstances. 1959 Declaration mentions protection in general terms first in the preamble that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate *legal protection*”, and then in Principle 2, 4 and 8 in relation with freedom and dignity, care and relief, respectively.<sup>168</sup> In this spirit and referring to 1959 Declaration with the same wording in the preamble, the UNCRC talks about right to protection of children in various contexts. Understanding that right to protection of a child can collide with the parent’s rights, in Article 3 drafters provided that states shall ensure protection to children but taking into account parent’s rights and duties in connection with it.<sup>169</sup> Nevertheless, it should not mean that states shall not protect children even against their parents when children

<sup>164</sup> Law on Education of Disabled Persons (Special Education) Article 3

<sup>165</sup> Law on Education of Disabled Persons (Special Education) Article 1.0.12

<sup>166</sup> Law on Education of Disabled Persons (Special Education) Article 5

<sup>167</sup> Law of the Republic of Azerbaijan on the Social Protection of Orphans and Children Deprived of Parental Care (1999) (AZE) Article 5

<sup>168</sup> 1959 Declaration Principle 2, 4 and 8

<sup>169</sup> UNCRC Article 3.2

are victims of violence or negligence by their parents. In fact, while Article 16 protects child's right to privacy, family, home or correspondence, protection against unlawful attacks on his or her honour and reputation individually,<sup>170</sup> Article 19 goes even further and talks about physical and mental violence against children from their caregivers.<sup>171</sup> UNCRC talks about the provision of protection to children in cases of harmful information,<sup>172</sup> placement of alternative care,<sup>173</sup> unaccompanied or accompanied refugee child<sup>174</sup> and armed conflict,<sup>175</sup> and in all these situations states as duty-bearers should interfere pro-actively and fulfil their positive obligations. As we talk here right to protection, states must not only avoid using violence on children, but also must take preventive measures to protect the children from third parties first through educative/informative ways with the help of mass media, then in cases of violation abiding by its procedural obligation must investigate those cases of violence.

There are other areas where the right to protection is applied and each of them are dedicated an Article in the UNCRC. Besides prohibiting all forms of exploitation in general terms,<sup>176</sup> it touches upon some main forms which are practiced and extremely harmful to children. Upon analysing the UNCRC, firstly we come across with the right to protection from economic exploitation. Article 32 prohibits involvement of children in hazardous work and requires states to set minimum age for admission to employment, regulate hours and conditions of work, and apply penalties in case of breaches.<sup>177</sup> Bearing in mind the circumstances under which children can be employed and exploited that can harm their physical and mental health and development, inclusion of such norm in the UNCRC is commendable. The UNCRC specifically speaks about protection of children from illicit drug abuse,<sup>178</sup> sexual exploitation,<sup>179</sup> abduction and sale and trafficking of children<sup>180</sup> as these are extremely harmful practices against children. What is required here from states in order to protect children is to criminalize these acts and punish the criminals in case of committal.

One of the particular areas where children need protection is torture, inhuman or degrading treatment that they can face not only in family environment, but also in cases of deprivation of liberty if detained, arrested or imprisoned. Like adults, children are also entitled to respect for their dignity, freedom from violence and contact with his/her family and lawyer.<sup>181</sup>

In its several General Comments the Committee brought up the right to protection of children. In General Comment №7 on Implementing child rights in early childhood besides talking about protection in the context of care, the Committee also dedicated a separate part to the right to protection of children facing different hard circumstances.

<sup>170</sup> UNCRC Article 16. Here parents are not mentioned explicitly, however, as children are the subject of the right, it means they are protected against such attacks coming from one, including their parents.

<sup>171</sup> UNCRC Article 19.1

<sup>172</sup> UNCRC Article 17 (e)

<sup>173</sup> UNCRC Article 20

<sup>174</sup> UNCRC Article 22

<sup>175</sup> UNCRC Article 38.4

<sup>176</sup> UNCRC Article 36

<sup>177</sup> UNCRC Article 32

<sup>178</sup> UNCRC Article 33

<sup>179</sup> UNCRC Article 34

<sup>180</sup> UNCRC Article 35

<sup>181</sup> UNCRC Article 37

For children facing abuse and negligence in families it recognized destructive abuse young children frequently face and states should take all necessary measures in this regard,<sup>182</sup> and for children left without families and went through hard times it advised states to ensure care and security via foster families and adoption.<sup>183</sup> Besides referring other cases of harmful work, substance abuse, asylum and disability, the Committee expressed its serious concerns over the sexual exploitation of children and sale, trafficking and abduction of children here too.<sup>184</sup> General Comment №12 on Right to be heard also discusses two main forms of violation of child's right to protection, in the workplace and violence. For the workplaces, the Committee requests states parties to have proper labour laws in place and investigate the cases of abuse,<sup>185</sup> and for the violence, establishment of child-friendly mechanisms with which children experiencing maltreatment, physical and mental violence can talk with confidence and in private.<sup>186</sup> In 2011, the Committee issued General Comment №13 which addressed freedom from violence in details. Understanding that pervasive social and cultural behaviour (attitudes and practices) tolerate violence,<sup>187</sup> it demanded states to create and develop strategies to prevent and respond to violence, adopt a child rights approach.<sup>188</sup> In order to make comprehensive and universal notion of violence, the Committee explained what the various forms of violence are (varying from physical and mental to violence in mass media), and raised the issue of a gender-specific form of violence stressing that girls experience more sexual violence at home than boys and boys are more likely to encounter it in criminal justice system.<sup>189</sup> The Committee emphasized that for combatting all these forms of violence, isolated programmes and activities that are implemented by states will have limited effects unless they are integrated into sustainable and coordinated government policy and infrastructures.<sup>190</sup> States parties needs to take far-reaching steps, abide by its obligations with due diligence and follow the implementation of line of protective measures (prevention, identifying, reporting, investigation, treatment, follow up).<sup>191</sup>

Analysis of domestic legislation in Azerbaijan indicates that there are a number of legislative acts that provides protection to children in various circumstances. Firstly, the Constitution prohibits involvement of children in activities that are harmful to their life, health morality and employment under 15, as mentioned in the introductory chapter. This is a child-specific norm and follows the spirit of Article 36 of the UNCRC. Additionally, there is Article 46 on Protection of honour and dignity to which everyone is entitled, including children. It prohibits humiliation of personal dignity, torture and inhuman or degrading treatment or punishment absolutely.<sup>192</sup>

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<sup>182</sup> GC 7 para 36 (a)

<sup>183</sup> GC 7 para 36 (b)

<sup>184</sup> GC 7 para 36

<sup>185</sup> GC 12 para 117

<sup>186</sup> GC 12 para 120

<sup>187</sup> GC 13 para 12

<sup>188</sup> GC 13 para 13

<sup>189</sup> GC 13 paras 19-32

<sup>190</sup> GC 13 para 39

<sup>191</sup> GC 13 paras 45-57

<sup>192</sup> Constitution Article 46

The Law on the Rights of the Child does not have a separate Article dedicated to the right to protection. However, in several Articles the Law talks about protection in different contexts. Article 12 on Right to liberty and personal inviolability lays down that abuse of children by parents or other persons, use of mental and physical force against them, violation of children's rights shall result in deprivation of parental rights, as well as administrative or criminal liability in accordance with the legislation of the Azerbaijan Republic, and in the case of breaches children below 14 can apply to the respective executive bodies and after 14 directly to the courts.<sup>193</sup> As it can be seen, the norm is quite child-empowering and allows children to directly contact state bodies. Article 11 on the right to nurture protects children against the distribution and display of films, literature and other materials that promote violence, cruelty or erotica and pornography, as well as those that have a detrimental effect on children's mental and spiritual development, as well as the involvement of children in their production.<sup>194</sup> Article 27 touches upon the right to protection of children in a wider sense and highlights right to protection of honour and dignity which has been embodied in the Constitution. Here legislator paid more attention to the right to protection of dignity especially in the school environments and disciplinary measures.<sup>195</sup> Child's right to protection is also seen in the context of social protection and s/he is entitled to social benefits from the state.<sup>196</sup> The Law was amended during the last several years in order to bring it in line with international standards and provide better protection. In 2017 Article 11-1 was added which prohibits involvement of children in the advertisements that can harm physical, mental and moral development in all ways.<sup>197</sup> As mentioned above in the sub-chapter 3.2, in 2020 the Law was also amended with a new clause which prohibited sale of alcohol and energy drinks, tobacco products to children, employment with difficult working conditions.<sup>198</sup>

Family Code is an important piece of legislation since it has a specific Article dedicated to the child's right to protection. Article 51 provides that a child has a right to protection to his/her rights and interests, firstly.<sup>199</sup> While it lays down the protection is realized through child's parents or executive and judicial bodies,<sup>200</sup> in case of breach of the rights a child can directly apply to the state bodies.<sup>201</sup> Interestingly, the Family Code puts an obligation on officials and other citizens for the protection of children demanding them that if they are aware of the danger to the child's life and health, involvement in activities that may endanger his/her life, health or morals, violation of his/her rights and legitimate interests, are obliged to inform the relevant executive authority of the place where the child is, and it goes on further stressing that upon receipt of such information, the relevant executive authority shall take the necessary

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<sup>193</sup> Law RC Article 12

<sup>194</sup> Law RC Article 11

<sup>195</sup> Law RC Article 27

<sup>196</sup> Law RC Article 13 & 29

<sup>197</sup> Law RC Article 11-1

<sup>198</sup> Law RC Article 9

<sup>199</sup> Family Code Article 51.1

<sup>200</sup> Family Code Article 51.2

<sup>201</sup> Family Code Article 51.5

measures to protect the rights and legitimate interests of the child.<sup>202</sup> This clause has a vital role if implemented properly, as it can break the societal stereotypes of not “meddling with the family issues” and not informing the authorities about the instances of abuse and violence. For combating family violence, Family Code also rules that in exercising their parental rights, parents must not endanger their children's spiritual development, physical or mental health, and exploitation, humiliation, degradation, cruelty, rudeness and indifference cannot be allowed in the upbringing of children.<sup>203</sup> In circumstances of violation of rights and interests of children by parents, they shall be kept liable in accordance with the procedure established by law which can also end up with limitation<sup>204</sup> or deprivation of parental rights.<sup>205</sup> However, for providing upbringing children in family environment to the maximum extend possible, children can be taken from their parents only in exceptional cases of direct threat to the life and health of a child and placed in social care institutions.<sup>206</sup> This is a good approach as a child needs to be in contact with family and all other educative, administrative measures needs to be exhausted before using a drastic measure of placement. Additionally, Family Code protects children given to the adoption via monitoring their situation. Besides having criteria for which adopting parents must comply with,<sup>207</sup> it is required from state bodies to monitor the adopted child's condition in the family, mental, physical, psychological and mental health once a quarter in the first year of adoption and at least once a year in subsequent years in order to study the child's marital status. Besides these pieces of general legislation, there are other laws that refers to the right to protection of children. One of the first ones is the Law on Prevention of Juvenile Negligence and Delinquency. The Law defines neglected juvenile as “a juvenile whose behaviour is not controlled as a result of non-performance or improper performance by parents or other legal representatives of the duty to provide education or custody”<sup>208</sup> and juvenile in a socially dangerous situation “a juvenile who is in danger of life or health as a result of neglect or loneliness, or who is in a situation of not meeting the requirements for upbringing or maintenance, or who commits an offense”<sup>209</sup> and then provides that those children should be protected through preventive measures funded by the state and by the commissions on affairs and protection of the rights of minors, social protection, education, guardianship and trusteeship, health, internal affairs bodies, medical institutions, as well as youth affairs bodies.<sup>210</sup> It is an all-embracing approach as it involves authorities working in various areas and requires them to cooperate for the protection and interests of the child. One of the most recently adopted laws is the Law on Protection of Children from Harmful Information. It gives information on the types of information that is harmful for

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<sup>202</sup> Family Code Article 51.6

<sup>203</sup> Family Code Article 60.2

<sup>204</sup> Family Code Article 68

<sup>205</sup> Family Code Article 65

<sup>206</sup> Family Code Article 72

<sup>207</sup> Family Code article 118

<sup>208</sup> Law on Negligence Article 1.0.2

<sup>209</sup> Law on Negligence Article 1.0.4

<sup>210</sup> Law on Negligence Article 4.1

children that is prohibited or limited,<sup>211</sup> and provides age classification according to which mass media should label information.<sup>212</sup> Despite its advantages, this law has its own problems. Although it was accepted in 2018, it became into force in 2020.<sup>213</sup> It is a bit problematic, as it has already been adopted quite late, and making it binding after almost two years results in less protection for children. Another point is related to the definition of “information discrediting the institution of the family” which has a heteronormative approach since it is defined as “information that can create distorted perceptions of family and marriage in children by denying family values or by undermining the importance of social institutions such as family, marriage, motherhood and fatherhood”.<sup>214</sup> It can be interpreted very restrictively and prohibit dissemination of any information that shows other relationship and family forms that do not comply with the society’s or authorities’ perception of family, especially bearing in mind the level of homophobia Azerbaijan has.<sup>215</sup>

Another essential legislative act is the Law on Prevention of Domestic Violence. It defines domestic violence as “intentional physical or moral harm of one of the persons by abusing close kinship, cohabitation or previous cohabitation”<sup>216</sup> and it can be applied to the relationship between children and their parents or other caregivers.<sup>217</sup> Domestic violence can result in both criminal and administrative liability for the violator<sup>218</sup> and depending on this various state bodies can be involved in the process. One of the good points about this law is that children can directly contact state bodies if they face domestic violation<sup>219</sup> and should be provided medical, psychological and social support, and placed in shelters free of charge.<sup>220</sup> Here it needs to be underlined that Article 19.3 states children can stay in those shelters for up to three months, but it does not say what happens afterwards.<sup>221</sup> Legislator needs to amend the law and clarify that if the parents have informative session and authorities think that children can be returned to their families then it will be so or if that is not the case then they should be placed in social care homes. Law on Domestic Violence also provides the victims with two types of protection orders against perpetrators: short-term<sup>222</sup> and long-term.<sup>223</sup> While these are beneficial to child’s right to protection, there is one problem related to the long-term protection order since Article 12.3 says “A case on issuance of a long-term protection order may be considered in a closed court session order to ensure the interests of minors in accordance with the procedure established

<sup>211</sup> Law on Harmful Information Article 4. Information such as perpetuating violence, criminal behaviour, pornography or life and health is categorised as prohibited, and information having erotic, slang and scary is classified as limited.

<sup>212</sup> Law on Harmful Information Article 5

<sup>213</sup> Law on Harmful Information Article 19

<sup>214</sup> Law on Harmful Information Article 1.0.8

<sup>215</sup> See for further information <https://www.ilga-europe.org/tags/azerbaijan>

<sup>216</sup> Law of the Republic of Azerbaijan on Domestic Violence (2010) (AZE) Article 1.0.1

<sup>217</sup> Law on Domestic Violence Article 4.0.1 and 4.0.3

<sup>218</sup> Law on Domestic Violence Article 5

<sup>219</sup> Law on Domestic Violence Article 6

<sup>220</sup> Law on Domestic Violence Article 7

<sup>221</sup> Law on Domestic Violence Article 19.3

<sup>222</sup> Law on Domestic Violence Article 11. Short-term security order is effective between 24 hours and 30 days and is issued by the executive body

<sup>223</sup> Law on Domestic Violence Article 12. Long-term security order is effective between 30 and 180 days and is issued by the court

by legislation”.<sup>224</sup> Bearing in mind that the case affects the wellbeing of a child, the case should be heard in close session, and parliament needs to amend the law respectively for the best interests of the child.

Azerbaijan is a party to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and adopted a law for making it part of its legislation in 2019. It happened quite late, as the Convention itself was adopted by the Council of Europe back in 2007. Currently the implementation is taking place as in the Criminal Code there are already two chapters, namely Chapter 20 on Crimes against Person’s Sexual Inviolability (which protects minors as well and accepts it as aggravating circumstance if committed against a child) and Chapter 22 on Crimes against Juveniles and Family Relationships,<sup>225</sup> protecting children from the various forms of sexual exploitation and sexual violence, but at the same time there is no system developed for the collection of the genetic profile (DNA) of persons convicted of the offences established in accordance with the Convention.<sup>226</sup> There are other laws that provides for the child’s right to protection from social care perspective, such as Law on Nutrition of Infants and Young Children which protects health of children or Law on the Social Protection of Orphans and Children Deprived of Parental Care which provides social protection to those vulnerable children as mentioned above in Chapters 3.2 and 4, respectively, however, the main problem that Azerbaijan faces is related to the social perception, prevailing family violence against children and non-implementation of the laws by the state authorities.<sup>227</sup>

## 6. JUVENILE JUSTICE

Juvenile justice is one of the most problematic fields in the Republic of Azerbaijan in the area of children’s rights since there is no special bodies dealing with children in conflict with the law and existing laws need to be updated and take a child rights-approach. Therefore, researchers decided to dedicate a chapter to the issue and provide analysis of international legal standards and recommend its proper incorporation and application in Azerbaijan.

Children are usually seen as innocent beings not capable of breaking laws. That can be one of the reasons why 1959 Declaration did not dedicate even a principle to children in conflict with the law in its text. However, because of the environment they are brought up they can commit breaches and harm others and themselves. As a more

<sup>224</sup> Law on Domestic Violence Article 12.3

<sup>225</sup> Criminal Code

<sup>226</sup> Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (25 October 2007) CETS 201, Article 37.1

<sup>227</sup> See for example: <https://www.bbc.com/azeri/azerbaijan-54021557>  
<https://apa.az/az/apa-tv/xeber/xeberler/goranboyda-11-yasli-usaq-olduruldu-teferruat-66066>  
<https://yenisabah.az/atasi-terefinden-zorlanan-15-yasli-qizla-bagli-resmi-aciqlama>  
<https://sonxeber.az/94277/azerbaycanda-5-yasli-usaq-ogey-atasi-terefinden-doyulerek-olduruldu>  
<https://mikroskopmedia.com/2021/08/03/eri-terefinden-doyulduyune-gore-5-ay-evvel-sikayetci-olan-qadin-qetle-yetirilib/>

comprehensive document, the UNCRC devoted some articles to the children in conflict with law and protected their rights requiring to set minimum standards and abide by the international and domestic standards. Those articles can be seen in two contexts: first, rights that need to be protected in case of detention, arrest and imprisonment, and second, specific penal and criminal procedural law rules.

Article 37 belongs to the first group as it talks about protection of liberty of a child. It lays down mostly general human rights laws standards, such as prohibition of unlawful deprivation of liberty, access to a lawyer, right to correspondence and challenging the legality of the decision on deprivation of liberty.<sup>228</sup> Additionally, Article 37 has child-specific requirements; it demands states parties to use deprivation of liberty as a measure of last resort and for the shortest period of time, to take into account their age and separate them from adults upon placing them in detention centres or other places of deprivation of liberty.<sup>229</sup> Lastly and most importantly, the UNCRC prohibits states parties to apply death penalty and life imprisonment without parole to children.<sup>230</sup> It would be better if the drafters did not allow application of life imprisonment to children in general, not just conditional.

The most important Article in the UNCRC related to children in conflict with law is Article 40 which tries to protect child rights in those hard circumstances. Firstly, Article requires states parties to respect dignity and worth of a child throughout the whole process of criminal procedure, starting from allegations to post-imprisonment stages. The whole process should aim to promote child's reintegration into society as s/he play a constructive role in the formation of the future of the society.<sup>231</sup> In its second paragraph, Article 40 provides a set of standards that states must meet and amend their legislation accordingly. While some of them reflect general principles of criminal law, such as non-retroactivity of laws, double jeopardy, presumption of innocence, and international human rights standards, such as right to prompt and direct information on the charges, right to interpreter, right to competent, independent and impartial tribunal hearing and decision, right to appeal, right to privacy, etc.<sup>232</sup> Additionally, there are child-specific requirements. Besides asking for minimum age for the criminal responsibility, UNCRC demands that non-judicial ways should be developed in order to deal with children in conflict with law so that they remain in contact with society and rehabilitate more quickly and effectively.<sup>233</sup> However, this clause is a bit problematic, since it does not specify what age should be minimum which results in states having minimum age varying from 8 to 16.<sup>234</sup> That is why in the General Comment №10 the Committee advises to make it at least 12 and then to increase it to higher age level.<sup>235</sup> In its last paragraph, Article 40 requests for the existence in the legislation and their application of alternatives to criminal punishments such as guidance and supervision

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<sup>228</sup> UNCRC Article 37

<sup>229</sup> UNCRC Article 37 (a) and (c)

<sup>230</sup> UNCRC Article 37 (a)

<sup>231</sup> UNCRC Article 40.1

<sup>232</sup> UNCRC Article 40.2

<sup>233</sup> UNCRC Article 40.3

<sup>234</sup> Committee on the Rights of the Child, General Comment № 10 (25 April 2007) CRC/C/GC/10 para 30

<sup>235</sup> GC 10 para 32

orders, counselling, probation, educational and vocational programmes and other institutional care options which are in favour of the child's well-being and proportionate to the circumstances of the case, child and offence.<sup>236</sup> It needs to be stressed that states should avoid placement of children in conflict with law in institution as recommended by Beijing Rules (which is endorsed by the UN General Assembly and is an essential document in the area of juvenile justice),<sup>237</sup> and even if s/he is placed there, conditional early release should be used to the maximum extent possible.<sup>238</sup> The Committee issued two General Comments on the issue of children in conflict with law. General Comment №10 was issued in 2007 and touched upon many important elements, varying from age limit to the measures applicable to children.<sup>239</sup> However, in 2019 bearing in mind the changes happening during the decade and evolution of human rights standards, the Committee published General Comment №24 replacing the old one. As it is clear from the objectives, the Committee tries to keep children away from contacting criminal justice system even if they commit offences<sup>240</sup> and therefore, advises to use diversion measures such as referral to programs and activities that are non-custodial rather than justice system.<sup>241</sup> It is one of the important principles of the juvenile justice system that a strictly punitive approach is not acceptable.<sup>242</sup> In the spirit of General Comment №10, it also lays down main fundamental guarantees for fair trial in case a child is brought before the court.<sup>243</sup> One of the important points is that the Committee advises the application of juvenile justice system to young offenders who are a bit older than 18.<sup>244</sup> There are other some child-specific requirements for criminal procedure. Unlike usual ones, in juvenile justice system, court sessions should be held behind closed doors and child's identity should be kept confidential in any case.<sup>245</sup> Additionally, every arrested or detained child should be brought before competent authority maximum within 24 hours for examining the legality of the deprivation of liberty and the case must be solved in 30 days after pre-trial decision is issued by the court.<sup>246</sup> Lastly, the Committee emphasized the establishment of comprehensive juvenile justice system which should require "specialized units within the police, the judiciary, the court system and the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child."<sup>247</sup> It could be better that the Committee advised the formation of special child police, prosecutor and courts rather than units inside those institutions.

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<sup>236</sup> UNCRC Article 40.4

<sup>237</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), UNGA Resolution 40/33 (29 November 1985) Rule 19.1

<sup>238</sup> Beijing Rules Rule 28.1

<sup>239</sup> GC 10

<sup>240</sup> Committee on the Rights of the Child, General Comment № 24 (18 September 2019) CRC/C/GC/24 para 6 (c)

<sup>241</sup> GC 24 para 15

<sup>242</sup> GC 24 para 76

<sup>243</sup> GC 24 paras 38-71

<sup>244</sup> GC 24 para 36. In General Comment №10 (paragraph 38) the Committee set the upper age limit as 21, and it can be reckoned that it is still applicable and desirable.

<sup>245</sup> GC 24 para 67

<sup>246</sup> GC 24 para 90

<sup>247</sup> GC 24 para 106

Upon analysing national legislation of Azerbaijan on juvenile justice one can identify several important issues. Firstly, all the fair trial guarantees and fundamental rights enshrined in Chapter III and Article 127 of the Constitution are applicable to children without discrimination because of the Equality clause in Article 25.1.<sup>248</sup> There is no requirement for the establishment of specific child courts or prosecutor's offices in the Constitution, unlike those on general and other special (such as district, martial, etc.) courts and offices. In the Law on the Rights of the Child there is a special chapter dedicated to children in vulnerable situations, and two articles deal with juvenile justice matters. While Article 41 talks about the placement of children in special education and medical institutions and general requirements in those cases,<sup>249</sup> Article 42 specifically handles the treatment of children in criminal justice system. It refers to the Criminal Procedural Code as a main source of law for children involved in court procedures.<sup>250</sup> Besides providing right to humane treatment in institutions and placement separate from adults, it rules that pretrial detention can be applied to children only in cases of violent less serious crimes, serious and grave crimes. It is stressed that punitive measures related to the deprivation of liberty of children should be applied by the courts only after perfect consideration of the matter and should be set as low as possible.<sup>251</sup> While the intention of the legislator is good, it is not understandable what is meant under "perfect consideration" as it is too ambiguous and not legal term.

The main legislative act laying down the criminal responsibility, diversion and punitive measures applicable to children is the Criminal Code. At the outset, it needs to be stressed that the Criminal Code is child-friendly and in compliance with the international standards. It prohibits the application of the rule of recidivism<sup>252</sup> and life imprisonment<sup>253</sup> to children, application of the community service as a type of punishment to the disabled children,<sup>254</sup> rules that committal by a child is a mitigating circumstance and the punishment should be less than usual,<sup>255</sup> etc. There is also a special chapter that criminalizes some actions against children and family relationships.<sup>256</sup> Although it is not mentioned specifically in the general Article 61 on aggravating circumstances, in all other Articles laying down the individual criminal acts it is an aggravating circumstance in case the crime is committed against a child.<sup>257</sup> Concerning the age limit, the Criminal Code is very sensitive. It sets the minimum age as 16, however, for specific set of violent crimes such as murder, kidnapping, rape, etc it is 14.<sup>258</sup>

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<sup>248</sup> Constitution Article 25.1

<sup>249</sup> Law RC Article 41

<sup>250</sup> Law RC Article 42

<sup>251</sup> Law RC Article 42

<sup>252</sup> Criminal Code Article 18.4.2

<sup>253</sup> Criminal Code Article 57.2

<sup>254</sup> Criminal Code Article 47.4.1

<sup>255</sup> Criminal Code Article 59.1.2

<sup>256</sup> Criminal Code Chapter 22

<sup>257</sup> See further Articles of the Special part of the Criminal Code

<sup>258</sup> Criminal Code Article 20

In the Criminal Code there is a special chapter dedicated to the elements of the criminal responsibility of juveniles and the measures applicable to them. Firstly, it recognizes juvenile is a person who is between 14 and 18 at the moment of the committal of the crime.<sup>259</sup> It means that children below 14 will not have any criminal responsibility for the acts in conflict with the law, and anyone above 18 will not be applied the norms on juvenile delinquency. The punishments applicable to juveniles vary from fine to imprisonment, however, they are twice low in comparison to the maximum limit applicable to adult offenders.<sup>260</sup> Azerbaijani Criminal Code lays down only 4 diversion measures, namely warning, supervision, compensation of the damage and limitation of leisure time; and they can be applicable only if the committed crime belongs to the category of representing small public danger or less serious.<sup>261</sup> One of the most concerning element about the diversion measures is that unlike punishments, there is no specific time limits for the application of diversion measures and it is left to the discretion of the state bodies.<sup>262</sup> This is not in accordance with the requirement of legal certainty and in the best interest of the child, and therefore, needs to be amended. Furthermore, the list of diversion measures needs to be broadened and more educative measures should be added.

The places where children in conflict with law are placed in case of imprisonment are divided into two categories: 1) Correctional facilities with general regime for the girls, and boys who are imprisoned for the first time; 2) Correctional facilities with severe regime for the boys who have been imprisoned before.<sup>263</sup> It is commendable that the Criminal Code tries to protect children with the history of less involvement of breaches of the law, and also girls, besides the general rule of division among juveniles and adults established by the Code of the Execution of Sentences.<sup>264</sup> The Code of the Execution of Sentences rules how children placed in those institutions should be treated, what kind of benefits are available to them<sup>265</sup> and comparison of those legal norms to the ones regulating adult offenders shows that they are more favourable. One of the best norms of the Code of Execution of Sentences is that young offenders who have reached the age of eighteen may be kept in correctional facilities until the age of twenty according to a court decision, despite the general rule of transfer from correctional facilities to penitentiaries.<sup>266</sup> However, again it is not specified under which circumstances the court can decide so, leaving it to the broad discretion of the court and actually paving the way to corruption that can harm the rights and best interests of children.

While the Criminal Code lays down the substantive norms on juvenile justice, the Criminal Procedural Code provides the process. In general, it needs to be highlighted that the Criminal Procedural Code does not support child autonomy much, as s/he is

<sup>259</sup> Criminal Code Article 84.1

<sup>260</sup> Criminal Code Article 85. Also see Article 91 and 92 for other measures.

<sup>261</sup> Criminal Code Article 87 and 88

<sup>262</sup> Criminal Code Article 88.3

<sup>263</sup> Criminal Code Article 85.5

<sup>264</sup> Code of the Republic of Azerbaijan on the Execution of Sentences (2000) (AZE) Article 72

<sup>265</sup> Code of the Execution of Sentences Chapter XV

<sup>266</sup> Code of the Execution of Sentences Article 128.1

mostly represented and informed through parents, caregivers, etc.<sup>267</sup> There are positive norms such as demanding special care for children during detention<sup>268</sup> or separation of the investigation and trial if both children and adults are involved<sup>269</sup>. Some clauses were also added in relation to changing circumstances such as conduct of trial process through video calls if needed for the interests of the child<sup>270</sup> and inclusion of supervision over children as a form of restrictive measure.<sup>271</sup> It is good that the measure can be applied not through court, but state body conducting criminal procedure, however, the negative side of the rule is that the rule says the measure can still be in force after the child reaches 18 if the supervisor agrees.<sup>272</sup> This is a flagrant violation of privacy and respect for the autonomy of a person and needs to be deleted.

Bearing in mind that the children in conflict with the law should be treated differently than their adult counterparts, there is a special chapter in the Criminal Procedural Code dedicated to the specifics of the process. It requires investigative bodies to determine first the age, living standards, level of physical and intellectual development.<sup>273</sup> Determination of age is important as the Criminal Procedural Code defines everyone below 18 as juvenile (unlike Criminal Code specified above) and investigators should drop the case if the child is below the minimum age for criminal responsibility.<sup>274</sup> However, if a child is below minimum age but the crime is serious or grave one, without raising the criminal case, the process of referral of a child to the closed correctional facilities starts, where the commission on affairs and protection of the rights of children has to decide the case within 3 days and refer it to the court which in its turn should decide maximum in 10 days.<sup>275</sup> There is an important incompliance with the UNCRC in this legislative act. Article 431.1 lays down that the criminal procedure involving both adults and juvenile should be separated as much as possible, and later on Article 431.2 says that for the sake of thorough and objective investigation of the case procedure should not be separated.<sup>276</sup> It is a very explicit breach of the requirement of the UNCRC on having the best interest of the child as a primary consideration and consequently, the clause needs to be amended respectively. The Criminal Procedural Code also stresses the rights enshrined in the UNCRC, requires state bodies immediately inform the parents and representatives, involve a teacher and a psychologist to the interrogation process.<sup>277</sup> Unfortunately, there is nothing in the legislation requiring the establishment of child courts, prosecutors, however, it is demanded by the law that special units within each state body is created and the experienced judges are assigned to the juvenile cases.<sup>278</sup>

<sup>267</sup> Criminal Procedural Code of the Republic of Azerbaijan (2000) (AZE) Article 90.10, 91.9, 226.3, etc

<sup>268</sup> Criminal Procedural Code Article 153.2.10

<sup>269</sup> Criminal Procedural Code Article 211.2.4

<sup>270</sup> Criminal Procedural Code Article 51.2

<sup>271</sup> Criminal Procedural Code Article 154.2.8

<sup>272</sup> Criminal Procedural Code Article 170.3

<sup>273</sup> Criminal Procedural Code Article 429

<sup>274</sup> Criminal Procedural Code Article 39.1.4

<sup>275</sup> Criminal Procedural Code Article 435-1

<sup>276</sup> Criminal Procedural Code Article 431

<sup>277</sup> Criminal Procedural Code Article 432 and 433

<sup>278</sup> Criminal Procedural Code Article 432.1 and 435.1, respectively

Another positive aspect of the Criminal Procedural Code is that it rules it is not reasonable to imprison the child unless the crime is serious or grave, or committed with violence.<sup>279</sup> This rule is applicable to pre-trial detention, as well, which is inserted newly.<sup>280</sup> Interestingly and sadly, there is no absolute rule on conducting trials in closed sessions, however, in the Law on Approval of the Regulations on Commissions for Affairs and Protection of the Rights of Children, it is laid down that the sessions of the Commissions shall be conducted in public and when necessary closed,<sup>281</sup> which should have been actually vice versa, as the cases involving should be conducted in closed sessions and if required, then open.

Azerbaijan needs to go much to comply with the international child rights standards established by the UNCRC, other documents, and General Comments of the Committee. There have been several reports on the issue which can also be taken into consideration.<sup>282</sup>

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<sup>279</sup> Criminal Procedural Code Article 435.4

<sup>280</sup> Criminal Procedural Code Article 434.1

<sup>281</sup> Law on Approval of the Regulations on Commissions for Affairs and Protection of the Rights of Children (2002) (AZE) Article 14

<sup>282</sup> See for example, UNICEF, Analysis of Azerbaijani Legislation in Regarding Children's Right of Access to Justice System (Baku, 2014) available at <https://www.unicef.org/azerbaijan/media/811/file/Azerbaijan%20Legal%20Review%20on%20Justice%20for%20Children-AZ.PDF%20.pdf>

## 7. RECOMMENDATIONS:

- 1) Bring domestic legislation in line with international standards, include the ground principles explicitly and clearly in domestic legislative acts;
- 2) Abide by the laws in practice, especially regarding the non-discrimination (especially at gender-based discrimination front) and best interest of the child principles;
- 3) Take ground principles more seriously and explicitly in public matters, such as in budget allocation, improve socio-economic conditions, so that children's right to survival and development are fulfilled.
- 4) Provide better protection for the child's right to life through informing the public via education and mass media channels;
- 5) Combat early child death through proper application of International Live Birth Definition (ILBD);
- 6) Fight against gender-based (selective) abortions through family planning and educative methods;
- 7) Protect and fulfil child's right to health via amending the existing legislation and making it more comprehensive;
- 8) Entitle children especially above certain age with a right to medical consent and in general all children with a right to information;
- 9) Bring domestic legislation in line with international child rights standards and implement them avoiding tokenistic approaches;
- 10) Create a room for true participation of children in the education process, support establishment and activities of student councils;
- 11) Combat discrimination in the education process: amend laws for making them more inclusive for stateless, disabled children, fight against gender-based drop outs at schools;
- 12) Abortions performed after the 12th week in the absence of social and medical instructions should be considered illegal abortions and doctors performing abortions should be held criminally liable;
- 13) To prevent abuses, to ensure the implementation of abortions with a medical prescription by a consultative decision;

- 14) Limit the scope of abortion by social instruction. Since unemployment, rented accommodation, and having many children are open to abuse they should be removed from the list of social reasons;
- 15) To protect the rights of the child, improve the criminal procedure code, especially in the protection of victims of domestic violence, and include domestic violence as a crime in the Criminal Code;
- 16) Amend the legislation, provide legal certainty in specific clauses, such as term for diversion measures, definition for “innate talent” and “information discrediting the institution of the family” and others;
- 17) Follow international legal updates in a timely manner, ratify and implement new international standards and conventions in a reasonable time;
- 18) Abide by its obligations in practice so that the rights do not stay just on papers, train professionals working with children experiencing violence so that they respond quickly and in favour of child’s best interests rather than societal stereotypes;
- 19) Monitor mass media for the protection of children from harmful information, sanction those outlets which violate the Law on Protection of Children from Harmful Information, use press for educative purposes, such as sharing information on child rights and on government services that children can use in case of violence;
- 20) Adopt a separate law on Juvenile Justice, where the rules are set more clearly and in accordance with legal certainty principle;
- 21) Establish juvenile justice institutions, such as child courts, prosecutors, police and so on;
- 22) Make child’s best interest as a primary consideration in all cases;
- 23) Set out clearly the confidentiality clause in all legislative acts concerning juvenile justice and provide penalties in case of breach by media, individuals and officials;