

THE CITIZEN'S LABOR RIGHTS PROTECTION LEAGUE
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**INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL
RIGHTS**

THE ALTERNATIVE REPORT
(ON THE ARTICLES 6 – 15 OF THE COVENANT)

**TO THE 3rd PERIODIC REPORT OF AZERBAIJAN REPUBLIC SUBMITTED TO
THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

The Citizen's Labor Rights Protection League was established in June 1997. It is a Non – Governmental Organization. It had got state registration by the Ministry of Justice in March 18, 2000.

The management body of the organization: the supreme body of the organization is the general assembly. The Executive Committee is managing the activities of the organization during the period between general assemblies. The Executive Committee selects the Chairman from the members of the committee.

The mission and main directions of activity of the organization: Basic mission of the Citizen's Labor Rights Protection League is to conduct legal, public, educational and advocacy activities in a way of providing human rights and freedoms in social sphere in the country. Along with the ensuring the social and economic rights the organization has also been specialized in providing the fundamental rights and freedoms. The organization is launching its activities basically in a form of monitoring, litigations, public campaigns, educational and advocacy activities. The organization has established cooperation relations with corresponding state bodies.

One of the main fields of activity of the organization is submission of alternative reports to the government reports presented to the UN treaty bodies.

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Introduction

One of the intentions stated on the constitution of Azerbaijan Republic is related with “provision of decent life for everyone in accordance with the fair economic and social rules”.

The economic, social and cultural rights stipulated on the chapter titled “Fundamental human rights and freedoms” of the constitution of the Republic of Azerbaijan adopted in 1995 are as following:

Economic and social rights: the right to choose the type of activity, profession, employment and job (Article 35), the right to sign employment contract voluntarily (no one can be forced to work) (Article 35), the right for healthy and safe employment condition and the right to get equal salary for equal labor (Article 35), the right to get compensation for unemployment (Article 35), the right for strike individually or together with others (Article 36), the right for having a rest (Article 37), the right for social protection (Article 38), the right to live in healthy environment (Article 39), the right for protection of health and getting medical assistance (Article 41), the right for apartment (43/2), the right for property (29/1), the right for entrepreneurship (Article 59).

Cultural rights: the right to take part in cultural life of the country (Article 40), the right for education, including the right for free of charge obligatory secondary education (Article 42), the right to use mother tongue (Article 45).

There have been adopted a lot of laws and other normative legal acts directed to provision of economic, social and cultural rights in the country after the Constitution was adopted.

At the same time, the country has ratified close to 60 Convention of the International Labor Organization including all of the 8 basic conventions. The Republic of Azerbaijan has also ratified the article 18 of the European Social Charter.

Existence of fundamental rights and freedoms is impossible in the countries where the social – economic rights are not ensured. The fundamental rights and freedoms can only be provided in the countries where there is a prospering economy and all the conditions are created for every citizen to live in a high level of welfare.

From this point of view the Republic of Azerbaijan has stipulated the provision of social and economic rights on its Constitution as one of the highly important aims of the country. A huge number of activities have been implemented for creation of necessary normative base for provision of social – economic rights in the country, formulating required mechanisms for application of the above mentioned norms. The country has joined majority of existing international norms for provision of social – economic rights.

One of the amendments made to the Constitution of Azerbaijan Republic through referendum was presentation of new edition of the second part of the Article 15. According to change the state “is creating conditions for development of socially oriented economy”.

There are several steps back in national legislative acts in a background of supporting the basic international agreements, as well as universal and common European norms related to social – economic and cultural rights by the country.

At the same time there are serious shortcomings in a practice of application of existing norms which lead to violation of economic, social and cultural rights in wide extent.

Along with the legislation directed to provision of human rights and freedoms in the country there are also litigation and outside the court mechanisms to ensure these rights and freedoms. Together with providing the right to apply to the courts directly with the aim to ensure violated rights and freedoms everyone has the right to apply and complain to the state bodies, Ombudsman on human rights too.

However, the existing mechanisms are not sufficiently effective for provision of economic, social and cultural rights. High level of corruption, mutual support and solidarity policy among the state structures towards each other are creating serious barriers for provision of rights.

The people living in the country have the rights to apply and submit complaint to international courts (European Human Rights Court) and quasi – courts (4 UN committees reviewing individual claims) concerning the violation of their fundamental rights and freedoms. However, only internal mechanisms exist regarding the violation of economic, social and cultural rights. The government of Azerbaijan has not yet joined to the collective complaint procedure of the Updated European Social Charter.

ON THE ARTICLES

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Employment

According to the article 35 of the Constitution of Azerbaijan Republic “The government uses all opportunities to eliminate unemployment”. According to another provision of the same article “Unemployed persons have the right to get social aid from the government”.

“The Law on Employment” of Azerbaijan Republic was adopted in June 2001.

The “Employment strategy of Azerbaijan Republic” for 2006 – 2015 and “State Program on implementation of employment policy of Azerbaijan Republic” for 2007 – 2010 have been adopted too.

However, unemployment rate is rather high in the country. The official statistics of the results of 2010 shows that the unemployed people comprise 5,8 % of the able – bodied. While non – formal labor sector of the country is not taken into account. During the crisis which started in 2008 – 2009 much more workforce left from the non – formal labor sector. According to the statistics of 2010, those registered as unemployed in the state employment service make up nearly 40.000. So it makes up less than 1% of the major able – bodied population of the country. Keeping with the researches carried out under the methods of International Labor Organization, official bodies admit that those who are searching for a job comprises 6% of the able – bodied people in the country, which is around 260.000 persons. As it is mentioned above, only 40.000 of these persons were registered as unemployed in the state employment bodies. It is related with the fact that the state employment services are not in most cases able to provide those people searching for a job with decent and appropriate jobs. Another reason is low amount of compensation provided to the unemployed by the government and complications of getting this funding.

Official statistics shows that the amount of the compensation provided from the State Social Protection Fund made up 2 880 000 AZN (3 600 000 US Dollar) in 2008, 4 050 000 AZN (5 062 500 US Dollar) in 2009 and 4 254 000 AZN (5 317 500 US Dollar) in 2010.

During these years the number of the unemployed who succeeded to receive compensation for unemployment is up to 5.000 persons (other 35.000 persons registered as official unemployed are not able to get such compensation).

Average monthly compensation provided to the unemployed comprised 115 AZN (143 US Dollar) in 2008, 161 AZN (201 US Dollar) in 2009 and 163 AZN (203 US Dollar) in 2010.

The results of the monitoring of Citizens' Labor Rights Protection League shows that around 11-12 % of the able – bodied population of the country is unemployed.

Unemployment issues in Azerbaijan deal with quite deep social – economic factors. Results of inefficient use of labor resources is negatively reflected even in present period of high rate of economic growth in the country. Issues related to unemployment in the country can be conditioned mainly with objective and subjective factors.

“Deep economic crisis occurred at the end of 80th of the past century caused paralysis of economic activity, social shock and financial aggravation of wide part of population in Azerbaijan, as it was in the post – socialist territory at the first phase of the transition period. The condition got much worse as a result of aggression of Armenian nationalists to the country. Occupation of 20% of the territory, more than 4 thousand industrial and agricultural enterprises and over 300 thousand work places remained in the occupied territory, more than 800.000 refugees and IDPs driven out of their land affected social – economic situation quite negatively, aggravated conditions in the sphere of employment”¹. Thus, one of the most serious problems of ensuring employment in the country is the **occupation of 20% of the land**.

There are series of subjective factors deepening problems in the sphere of employment. **Problems related with legislation** have a special importance among these factors².

It is not acceptable to consider those serving in armed forces among employed persons under the Law on Employment. Certainly, those taking permanent service in armed forces and receiving wages are to be considered as employed. However the persons in contemporary service can not be considered as employed. Because, under the same law “Employment – is an activity of citizens of Azerbaijan Republic, as well as stateless persons and aliens permanently living in Azerbaijan Republic in compliance with the legislation of Azerbaijan Republic and as a rule, generating profit (income)”. At the same time it is not right that “those having land property” are considered as employed. That’s because there are thousands of people who can not use their land property. Consideration of such people as employed makes employment statistics of the country more imperfect and causes misleading.

According to the Article 5.4 of the Law on Employment the jobs requiring no occupation and seasonal jobs are considered as a job for “the persons seeking for a job for the first time, persons who are unemployed for more than 3 years, having no occupation (specialty)”. This is leading to the case in practice when the persons who worked in high qualified jobs for a long time but have not been working for some reasons during the recent 3 years are often offered seasonal jobs or the jobs that are not corresponding to their occupation (for example the person who worked as a lawyer for a long time is offered a job of street cleaner). In case if these people are refusing to work in those jobs they are not paid any compensation for unemployment or state social aid. Although there is a necessity to issue the Article 5.4.1 of the law in new edition this amendment has not been made for many years.

Obtaining the statue of unemployment on legislation. According to the law “unemployed citizen – is a person without job and profit, ready to start for a job, registered as a job seeker in a corresponding executive power body and able – bodied at an able – bodied age”.

As a result the government considers as unemployed only those who are registered at employment centers as unemployed. According to the statistics, number of such persons was fluctuating between 54 and 56 thousands for long years. In recent years, this number is around 40.000. Actually, number of the unemployed is seriously distorted in this way in the country.

¹ The Employment Strategy of Azerbaijan Republic (2006 – 2015): approved by the decree 1068 of the President of Azerbaijan Republic dated to October 26, 2005.

² Citizen’s Labour Rights Protection League, employment strategy in Azerbaijan intergating to Europe Baku-2008. <http://clrp1.az/upload/file/Employment%20policy%20in%20Azerbaijan.pdf>

Studies of International Labor Organization claim that the figure is 5 – 6 times more in the country.

Legislation treats unemployment not as a natural result of activity and formation of labor market, but the right of searching for a convenient job of an unemployed person. This, of course, is in line with the requirements of the Constitution of the country and puts forward human factor and human rights as a key factor on the one hand. On the other hand, complicated procedures considered for getting the status of unemployed lead to bureaucratic arbitrariness and negative results in practice. For this reason, severe differences emerge between real and official unemployment in the country. Persons are not willing to get registered at employment centers for the following reasons.

- It is rather difficult to find an appropriate job and ensure decent employment through state employment service. However, although there is enough labor force in the human resources balance of employment services most of the offered jobs are not convenient and no longer ensures decent employment.
- It is very difficult to get the status of unemployed and aid for unemployment following this. There are enough procrastination and corruption cases. For instance, one of the requirements demanded for those willing to get addressed state social assistance which have been applied since 2006, is presenting a relevant reference on being unemployed from employment centers. In reality, the process of obtaining such references has become a complicated issue. As a rule, persons applying for a job, are provided with inconvenient ones. Those, who refuse are not given a reference.
- After all these challenges the amount of aid defined for those who obtained the status of unemployed and the date of giving this aid is not so much and a person obtaining the status of unemployed has to get registered again every month. According to the article 24.1 of the “Law on Employment”, “if citizens obtaining the status of unemployed possess a job with payment not less than 26 weeks during 12 months before the unemployment begins, their aid for unemployment is determined in amount of 70% of an average monthly wage calculated on the last 12 months of the last job”. In other cases, determination of amount is carried out by a relevant executive power body. Besides, under the article 25.2 of the Law, “the period of payment of the aid can not be more than 26 calendar weeks during a 12 month period”.

In such conditions the number of those applying for obtaining the status of unemployed actually no longer corresponds with the number of those searching for a job. Thus, those applying to employment centers in order to get a job are offered a job as a rule. It is rather difficult to prove the inconvenience of the job even if it is not convenient. This is characteristic particularly for Baku city. As Baku city is considered as an administrative territorial unit. Sometimes, the place of a job offered to an employee is 50 – 60 kilometers far from his/her place of residence. A person refusing to accept such job is offered another job after a while. When refusing this job the person is not able to obtain the status of unemployed.

According to the requirements of “Law on Employment”, relevant measures are to be taken by the government for vocational skills, professional development and retraining of job searchers. However, vocational replacement of persons searching for a job and their possessing new occupations are launched during the recent years, its scope is limited. Legislation is not perfect in this direction³.

Another factor causing a grave problem for implementation of the policy on ensuring employment in the country is high rate of the number of the employed in shadow labor market

³ Citizens' Labour Rights Protection League, employment strategy in Azerbaijan intergating to Europe Baku-2008. <http://clrpl.az/upload/file/Employment%20policy%20in%20Azerbaijan.pdf>

and non – formal sector. Along with causing impediment for implementation of employment policy, existence of such case leads to severe violation of human rights. “Existence of “shadow” labor market in the labor market of the country is one of the factors causing mass violation of labor rights. According to assumptions the number of people conducting employment activity without entering into any formal employment relationships is not less than those entering into formal employment relationships, despite the lack of official or non – official statistics. Employment activity of ten thousands of people through non – formal labor relations means that labor legislation is not applied to them. Employment activity of such employees is out of control of both government and trade unions⁴.

Employment on different categories

Women employment

It is mentioned on the employment strategy of the Republic of Azerbaijan for 2006 – 2015 that “Unemployment among the women is in high level. Although the specific weight of women among the unemployed population during the recent years is decreased e.g. went down from 59,7 % in 1995 to 53,4 % in 2003 the issue of eradication of gender inequality in employment is one of the cases for discussion on the agenda. In accordance with the result of the above mentioned observations while in 2003 the share of unemployed among the economic active men comprised 9.6 %, this indicator among women was equal to 12.2 %. The studies of statistical indications show that women usually make majority in the works with low status and wages. “The lack of jobs for women is reflected today predominantly with the shortage of flexible jobs (half working day and working week, changing work schedule, work for home etc.) corresponding to the role of woman in society and family.”⁵

“There is no clause giving base to any discrimination case in the labor relation with regard to women either in the State Constitution or all other norms. The country joined to all the basic international norms including relevant Conventions of the International Labor Organization directed to remove any discrimination regarding the women.”

Prohibition for women to work at some work places is considered on the Labor Code as a positive discrimination. These prohibitions are connected with women’s physiological features and were brought to the legislation from the point of view to protect women and especially maternity. There are quite superior rights and privileges with regards to women stipulated on the Labor Code”⁶.

“The presented privileges have a great importance to realize labor rights of women and carry out their functions as an employee and successor of the human race. However with the transition to market relations and in regards with foundation of private and mixed enterprises, various joint – stock societies in reality the majority of those privileges aren’t applied. Moreover employers due to being aware of women’s rights to use such privileges try not to use the women’s labor”⁷.

As it is seen existence of the privileges causes in reality the hidden discrimination. As a result of the monitoring conducted in 2006 – 2007 by the Citizen’s Labor Rights Protection League there were determined and generalized existing cases of discrimination against women.

- There are clauses prohibiting discrimination cases including discrimination cases in regards to women on the Labor Code. In accordance with the Article 240 of the Labor Code it’s inadmissible to refuse to terminate labor contract with the woman by the reason of woman’s pregnancy or if woman has a child below the age of 3. In this case woman has the right to insist on provision of an explanation from the employer and appeal to the court.

⁴ Monitoring of ensuring Labor Rights in Azerbaijan Republic: Legislation and practice. From monitoring report. Citizens' Labour Rights Protection League. Baku, 2007 <http://clrp1.az/upload/file/Monitoring%20of%20Labour%20Rights%203.pdf>

⁵ Employment strategy of Azerbaijan Republic (2006 – 2015): approved with the decree №1068 of the President of the Republic of Azerbaijan dated to October 26, 2005.

⁶ Monitoring of condition of provision of Labor Rights in Azerbaijan Republic: Legislation and practice. From the monitoring report. Citizens' Labor Rights Protection League. Baku, 2007

⁷ S.S.Mehbaliyev, R.K.Iskenderov – Labor market and social protection of population – Baku, 2002

Nevertheless above listed clauses are not effective and efficient. So, up to now it has not been applied in the practice. Despite a big number of such cases it hasn't been received any appeal in courts. The reason is impossibility to proof such case in the court. The employer can present legal basis (not having vacancy, unsuitability of the offered job for pregnant woman etc.) to justify the reason for not hiring pregnant woman or woman who has a child below the age of 3.

- One of the cases of discrimination towards the women is related with their age and external appearance. In some cases the ages limits to hire women are determined illegally (for instance within 18 – 25 years old etc). There were made repeatedly applications by women to the Citizen's Labor Rights Protection League in regards to not hiring them due to their external appearance. Basically applying women were informing that they weren't hired by the reason of short height or excess weight. In most cases the job they should do has nothing to do with the age or appearance.
- Also career promotion of women comparatively with men is very low. It's also characteristic case for work places financed from the government budget. For instance although 70 – 80 % of people working in medicine and education systems are women indications of their representation at managing positions makes 20 – 35 %. Women working at managing positions in these spheres occupy mid management positions (school director, chief physician in polyclinic and ante – natal clinics, sometimes chief physicians of clinics etc).
- There are no direct differences in wages of women and men. This means that there wasn't recorded difference in payment of wages of women and men occupying the same position and working in the same sphere (only officially paid wages are under consideration). Nevertheless there are differences in average level of the wages of women and men in the country. So women have no access to the most high – paid positions and professions. Wages in the spheres women traditionally work at (medicine, education, culture, light industry etc.) is lower in comparison with other spheres. Employers prefer to hire men to the high – paid positions.

So although discrimination in labor sphere regarding the women is prohibited in the country's legislation and administrative – criminal responsibilities are stipulated for such discrimination requirements to the gender in practice during hiring process sometimes are of evident character. At present the government doesn't have any serious measure directed on prevention of such cases⁸.

Youth employment

An indicator of high unemployment among youth is quite serious problem. In the row of reasons making this problem more serious is being high specific weight of youths among able-bodied peoples in the country. The most important thing is the fact that youth in any country define the future of the country and at starting condition to get them in such failure like unemployment later on negatively influences on the lifestyle of that people.

In accordance with the results of conducted various research in the country the share of the general number of unemployed youth under the age of 35 comprises 69,1 %. The highest level of the unemployment was recorded among persons between the age 20 – 24. This indicator comprises 30,8 %. In the Employment Strategy of the Republic of Azerbaijan (2006 – 2015) was also shown employment problems of young people. "Observations conducted on the labor market of the country showed that growth of unemployment among young people is one of the main problems. In May – June of 2000 for the first time was conducted observation on economical activity problems of population in all regions of the country with financial support of UNDP and technical support of the International Labor Organization. In accordance to the

⁸ Monitoring of condition of provision of Labor Rights in Azerbaijan Republic: Legislation and practice. From the monitoring report. Citizens' Labor Rights Protection League. Baku, 2007

results of this observation the share of citizens below the age 35 made 69.1 % in the frame of general number of unemployed”⁹.

Problems of provision of employment to people with physical disabilities

Regarding the second periodic report submitted to the UN Committee on Economical, Social and Cultural Rights by Azerbaijan Republic there was expressed concern regarding the problems of physically disabled people in getting access to labor market on the “**Final notes of the Committee on Economical, Social and Cultural Rights**” on the 33rd session of the Committee conducted on November 8 – 26, 2004. It was stated in proviso:

“The Committee expresses its concern on unavailability of the legislation base providing access to the labor market of physically disabled people”. During the period since that time in connection with the concern of the Committee and giving its recommendations in this regards there was not implemented any serious actions either in the legislation or in practice.

There are too many restrictions to get access for the physically disabled people to the labor market and from this point of view it’s not enough to improve only legislation. In case if all the enterprises under the government don’t create conditions to the physically disabled people it is not real to expect from any entrepreneur in conditions of market relations to create in the enterprises special lifting device, ramps and sanitary network for the employers. The employer is not ready to cover such costs for the sake of few persons. From this point of view the physically disabled people are considered as “inappropriate for work” for employers. Hiring these people and creating conditions of privileged labor for them are not included in the plans of any employer.

However there is an appropriate legislation guaranteeing the facilitation of access to the labor market for physically disabled people.

There is also a Law on “Preventing disablement, rehabilitation of physically disabled people and social protection” adopted in 1992. There were further made a lot of changes and amendments on the Law. There is a number of Clauses providing access to labor market for physically disabled people on the Law. The Article 15 of the Law states, “Professional education preparation of physically disabled people is implemented in various forms including form of education at home and on individual class plans”. The Chapter 4 of the Law is called **provision of employment for physically disabled people**. In accordance with the Article 23 of the Law “special measures in the sphere of provision of physically disabled people with job consist of package of measures on stipulating by the legislation the rendering financial assistance and concessions to the enterprises, institutions and organizations (independently on the form of property) providing employment to physically disabled people and creating special work places for them, applying their labor”.

There are also clauses on the Law like growth of physically disabled people’s professional preparation, creating specialized enterprises giving an opportunity to use the labor of physically disabled people, creation of conditions by the enterprises to pass medical examination for physically disabled people. It’s inadmissible to fire physically disabled people who passed treatment, medical, professional and social rehabilitation except the closure of the enterprise”.

The legislation set a commitment to employers to provide work places to people who became physically disabled as a result of occupational disease or industrial accident where they would be able to work.

Unfortunately, while the law is defining the duties and responsibilities on employers for recruitment of physically disabled persons no stimulating concessions are set for them. This leads to the cases when employers are applying maneuvers in order to avoid recruitment of

⁹ Employment strategy of Azerbaijan Republic (2006 – 2015): approved with the decree №1068 of the President of the Republic of Azerbaijan dated to October 26, 2005.

physically disabled persons. The employers have to cover the costs for concessions considered for physically disabled employees on the legislation.

At the same time the Labor Code determines a lot of privileges for physically disabled people. Independently on disability level it gives physically disabled people rights to take 42 days paid vacation at any suitable time for them.

“Thus there are serious problems in application of the Law and in most cases it’s not observed Law requirements. In conditions of wide existence of shadow economics and “double – entry book – keeping” (or shadow book – keeping) it doesn’t seem real to apply this Law.

When employers became aware of the fact that the person they are going to recruit is physically disabled they refuse to hire them on various excuses. The main problems of it is connected with existence of some privileges for physically disabled people (for instance existence of right for longer paid vacation in comparison to others) and big likelihood of getting industrial disease of such people. At the same time employers bear responsibility of providing invalids with job will be able to bring harm to their health.

As a result, a large number of disabled people have to keep from employers in secret their disablement. In such case they lose privileges stipulated on the Labor Code including the right for 42 calendar day vacation and at the best they use a right for paid vacation for the period considered for healthy workers.

Although it is considered creation of jobs for physically disabled people in accordance with the Law on prevention of disablement, rehabilitation of physically disabled people and their social protection through creation of specialized working places for physically disabled people neither government bodies nor private structures don’t make efforts to create such working places. In accordance with the Article 26 of the same Law enterprises are obliged to allocate working places and organize new ones for people losing their labor ability as a result of an industrial accident or getting occupational disease and as a result of this considered as physically disabled people. Those employers who don’t fulfill these rules should remit to the State Social Protection Fund the sum 120 times exceeding the average monthly salary in the republic. Unfortunately in practice this requirement is not fulfilled either. Persons getting by the guilt of employers industrial disease or industrial disablement later on in many cases lose their work places. Physically disabled people have specific weight among the unemployed existing in the country. Not providing such people with employment causes their disintegration from society, marginalization and expose them to discrimination.

Despite the existence of legislation it wasn’t possible during long years to hire physically disabled people in accordance with the rules stipulated by the Law.

High level of **internal** and **foreign** migration is one of the factors creating serious obstacles to provide employment and dissemination of labor resources equally on regions in the country.

IDP (Internally Displaced People) has its specific weight in **foreign migration**. 10% of population of the country (800 000 persons) became IDP and refugees. Along with moving from occupied territories to another these people left their work places in the territories where they used to live. One of the negative results of leave by these people their native lands is losing their work places and this in its turn created serious problems in provision of employment in the country.

Labor migration has its specific weight in **foreign migration**. Hundred thousand people with working ability had to leave the country and go to foreign countries to look for job. As a result

the labor market of the country on one hand lost a great number of personnel on various professions and specialties.

Role of vocational education in providing employment

There are 108 vocational education facilities including 47 vocational lyceums, 1 vocational education center and 59 vocational schools under the Ministry of Education. The 8 of these facilities are under the penitentiaries.

With the decree of the President of the Republic of Azerbaijan dated to July 3, 2007 there was adopted “State Program (2007 – 2012) on development of vocational education in Azerbaijan Republic”. The Activity Plan had been approved corresponding to the order of the Ministry of Education of the Republic of Azerbaijan dated to 30.07.2007 for implementation of the State Program.

There was established Coordination Council with the corresponding order of the Ministry of Education with the purpose to fulfill the provision 5.13 of the Activity Plan e.g. organization of partnership relations between employers and vocational education facilities and regulate this process. Along with corresponding state bodies the representatives of non – governmental organizations are also included into composition of Coordination Council.¹⁰

In addition to these there are educational institutions giving vocational education in some ministries and big business structures. Nevertheless the material and technical capacity of vocational schools is weak and with low level of teacher’s qualification and zero level of relations between technical vocational education and industry makes this education unproductive. Activity directed to establishing relations between vocational education of the Ministry of Education and industry is ineffective.

Nevertheless educational centers of some business structures can show comparatively effective activity. As an example it’s possible to mention the Training Centre of the State Oil Company.

But at the present the biggest need in the country is connected with organization of short – term and productive education in order to change vocational education. There were created such courses under the Employment Service of the Ministry of Labor and Social Protection of Population. But coverage of this education is not so extended and from this point of view it doesn’t cover needs. In accordance with official statistics namely with the reason of absence of human resources on appropriate specialties there are more than 10 000 vacancies in the country.

Application of non – standard methods in provision of employment

On May 2011 the national parliament tried the non – standard method in provision of employment in the country making changes and amendments on several legislative acts. So in accordance with the amendments made on the Law on “State Service” and Labor Code limit for working period for civil servants and people carrying out their labor function at working places funded from the state budget determined on the age of 65. After this in exception cases employers can sign a contract with the same persons for a term of 1 year. Such termed contracts can not be for longer than 5 years.

These amendments on Laws directed to taking out ten thousands of people from the labor market artificially are considered as unnecessary policy. Taking out people with working ability from the labor market artificially in a country where pensions are lower than living wage is a result of absence of sustainable employment policy in the country.

¹⁰ Source: Official web site of the Ministry of education. <http://www.edu.gov.az/view.php?lang=az&menu=259>

Working migrants

In accordance with the Article 69 of the Constitution of the Republic of Azerbaijan aliens and stateless persons being in Azerbaijan Republic in the level with citizens of Azerbaijan Republic if other case hasn't stipulated on the international agreements ratified by the Republic of Azerbaijan are able legally to use all the rights and ought to commit all the duties. Rights and liberty of the stateless persons and aliens temporary living in the territory of Azerbaijan Republic can only be restricted in accordance with international regulations and legislation of the Republic of Azerbaijan¹¹.

There hasn't been determined any discrimination for aliens and stateless persons to implement their labor activity on the Labor Code of Azerbaijan Republic. In accordance with the Article 13 of the Code **“Aliens and stateless persons being in Azerbaijan Republic in the level with citizens of Azerbaijan Republic if other case hasn't stipulated on the international agreements ratified by the Republic of Azerbaijan and legislation can legally use all the rights and bear a certain duties corresponding to these rights”**.

It's prohibited to restrict the labor rights stipulated on the Labor Code or in any normative legal documents for aliens and stateless persons except the cases stipulated on the legislation.

Along with the Constitution of the Republic of Azerbaijan and Labor Code there are other laws and normative legal acts defining legal condition of aliens and stateless persons in Azerbaijan Republic. There are **laws of Azerbaijan Republic “on leaving country, arriving to county and passports”, “on immigration”, “On labor migration”** and decrees, regulations and other documents providing application of these laws.

Azerbaijan Republic has ratified the International Convention on protecting the rights of all working migrants and members of their families. The first report of the Government of Azerbaijan was discussed on the 10th Session of the Committee on protection of Working Migrants and members of their families held on April 20 – May 1, 2009 in Geneva. The report of the Citizen's Labor Rights Protection League was posted on the web – page of the Committee.

(<http://www2.ohchr.org/english/bodies/cmw/docs/ngos/CLRPLAzerbaijan10New.pdf>).

Regarding the second periodic report submitted to the UN Committee on Economical, Social and Cultural Rights by the Republic of Azerbaijan referring to the International Covenant on Economical, Social and Cultural Rights there was expressed concern on the **“Final notes of the Committee on Economical, Social and Cultural Rights”** adopted on the 33rd session of the UN Committee conducted on November 8 – 26, 2004 stating that, “the Committee is declaring with concern that free of charge compulsory education is not considered for non – ethnic Azerbaijani children according to the Article 19 of the Law “on legal statue of Aliens and stateless persons”.

It should be noted that taking into account the remark the Government of Azerbaijan made appropriate amendments on the legislation. At the present compulsory education regardless the citizenship is free of charge for all children. Nevertheless absence of the registration in the places with a great number of illegal migrants creates problem to their families to access the medical service and education.

Within the recent few years Azerbaijan Republic was the country of origin mostly for working migrants. 40 % of population of the country with labor ability was carrying out their labor activity in other countries, mostly in Russian Federation. Before mostly ethnic Azerbaijanis coming to the country from the neighbor Georgia as well as working migrants coming partially from Turkey and Islamic Republic of Iran were carrying out their labor activity. As a result of

¹¹ The Constituion of the Republic of Azerbaijan. Article 69. Source: <http://www.parlament.az/?/az/topcontent/2>

the fast development of the country's economy during last few years Azerbaijan Republic turned into the country of destination of working migrants. At the beginning of January 2009 there were recorded 4367 working migrants getting individual permission from corresponding structures of 65 countries from all over the world to carry out their labor activity in Azerbaijan.

But majority of working migrants are participants of uncontrolled labor migration. From this point of view due to being engaged in non – formal sector with illegal labor activity official statistics doesn't reflect the real situation.

In accordance with the unofficial statistics there are more than 100 000 (most of them ethnic Azerbaijanis coming from neighbor Georgia) aliens and stateless persons without citizenship are engaged in labor activity in the country at the present. Most of them are participants of uncontrolled labor migration.

The rights of working migrants engaged in illegal labor activity and members of their families are seriously violated.

There were implemented a number of measures by the government in regards with migration problems and with the aim to regulate labor migration. These are mostly the following:

- There weren't recorded xenophobia cases either against working migrants and members of their families or in general against any workers coming to the country with other purposes or stateless persons as well as any criminal cases on the national or ethnic ground;
- In accordance with the Article 19 of the Law "on legal condition of aliens and stateless persons" it wasn't stipulated free compulsory education for children of persons being originally non Azerbaijanis. However at the present as a result of amendments made on the legislation there has been provided access to the free compulsory education for children of aliens and stateless persons.
- There was established specialized government body – State Migration Service with the aim to regulate legal condition of aliens and stateless persons, getting migrant status, to carry out registration of aliens and stateless persons and solve other problems;
- Also there was established the migration information center having information on migrants and working migrants in the country;
- On March 4, 2009 the President of the Republic of Azerbaijan issued a decree "**on applying "single window" principle in management of migration**". The aim of applying the "single window" principle is to simplify procedures of giving corresponding permissions to foreigners to live in accordance with the legal bases and engage with labor activity.

Nevertheless such problems are still remained and the main problems are the followings:

- **The legislation is not perfect and procedures to get permission to engage with legal labor activity are complex**

Numerous laws and sub – legislative acts directed on regulating legal condition of aliens and stateless persons in the country in most cases are not perfect and contradict to each other. Individual permission procedure of working migrants is still complex. Creation of "single window" system hasn't simplified these procedures. Duty to get individual permission was increased from 45 AZN (approximately 55 US dollars) to 1000 AZN (more than 1200 US dollars). This makes impossible transition from non – legal condition to legal of working migrants in the country. It should be taken into account that working migrant can conduct 5 years labor activity in the country and for this purpose he/she should get individual permission every year. Expenses to get permission should be covered by the employer. But in the practice in many cases payments in accordance with these expenses are unofficially taken by the employer from working migrant. Thus it means that working migrant during his/her residence in the country should spend 4000 AZN (more than 5000 US dollars) to get individual permission. If we take into account that at present the average monthly income of working migrant in the country is changing from 100 US dollars to few hundred US dollars it seems impossible to make such

payment. In fact determination of such duty by the Government of Azerbaijan is directed to a serious restriction of implementation of labor activity of aliens and stateless persons in the country.

- **Non – formal sector comprises considerable part of the country’s labor market (according to unofficial information 40%) and this creates condition to make majority of working migrants in non – formal sector.**

The majority of Working Migrants is assembled in non – formal labor sector and this prevents to protect their labor, providing decent labor and correspondence of their rest and work in regards to the legislation. It makes Working Migrants fully dependant on employer, leads to violation of their labor and social rights.

- It’s quite complex to get access to the education and medical aid for family members of working migrants without having the official status and being unofficially in the country. It’s necessary to get registration in order to be educated and access to the medical service.

- **It’s problematic to solve conflicts between Working Migrants and employers.**

In accordance with the norms in case the labor contract between working migrant and employer is terminated the working migrant should immediately leave the boundaries of the country. In this case it is impossible to launch in legal form labor litigation between working migrant and the employer. The person who has left the country can not take part in litigation process in the country and as a rule they don’t have sufficient funds to hire a lawyer.

Forced Labor

In accordance with the Article 17 of the Labor Code “it is prohibited to enforce performance of job (service) beyond employee’s job duties by posing a threat of labor contract termination or by any means of force. Persons found guilty in forcing an employee to do a job bear responsibility according to the legislation.”

The 2nd paragraph of the mentioned article states that “it is allowed to perform a forced labor under control of relevant government agencies during martial law and in state of emergency as well as during enforcement of judgments.”

The “Final Notes of the Committee on Economic, Social and Cultural Rights” adopted during the 33rd session of the Committee conducted on November 8 – 26, 2004 regarding the second periodical report submitted by Azerbaijan Republic to the UN Committee on Economic, Social and Cultural Rights expressed its concerns regarding this provision. Committee’s final notes state that the **“Committee at the moment expresses its concerns in terms of practicing a forced labor as means of corrective measure and criminal penalty towards persons found guilty in criminal actions in compliance with the Criminal and Labor Codes of participating country”**.

The mentioned Article remains unchanged though Labor Code was several times amended and improved during the recent period. The Republic of Azerbaijan has not taken the recommendations of the Committee into account.

However it has to be noted that according to the Article 35 of the Constitution of Azerbaijan Republic “it is allowed to bring persons to forced labor, thereof conditions and periods are legally established in accordance with court order; to enforce persons to perform the orders of the authorities while on military service; to enforce civilians to perform the required obligations in state of emergency and during martial law”.

Cases of application of Forced Labor

Presence of “shadow” labor market in the country is one of the main factors promoting massive violation of labor rights. It is assumed that number of population engaged in illegal labor relations is high although there is not any official and unofficial statistic information in hand concerning the number of participants of the informal labor market. Nowadays the cases of illegitimate employment relations and hired labor relations without job contract are mainly observed in construction, catering (restaurants, wedding houses etc.), trade, house cleaning service and agrarian sector. Engagement of ten thousands people in illegal labor relations proves that labor legislation is not applied in terms of their labor rights. Such labor activity is left out of trade union’s consideration and promotes a forced labor. In most cases such hired workers are forced to work 12 – 14 hours a day, are not insured against anything, are not paid wages or paid with delays.

One of the practical examples for the forced labor is enforced participation of employees (doctors, teachers, employees of the cultural institutions etc.) of the government – funded structures in subbotniks (a day of the unpaid voluntary work) arranged by the local executive power officials. In several districts of the country, particularly in Nakhchivan Autonomous Republic, this method is being widely practiced. Such employees are regularly involved in renovation, cleaning activities in the city parks etc. especially on Saturdays and Sundays.

Cases where a forced labor is applied are also reflected in exploitation of foreign citizens as well as stateless people who are brought to the country. With support of the International Migration Organization during 2010 – 2011 the Citizen’s Labor Rights Protection League filed and carried out two litigations concerning mobilization of Turkish citizens in forced labor.

“**Istanbul Charshi Import & Export Ltd**” and its contractor “**Lehva Metal Inshaat Sanaye ve Tij. Ltd. Sti**” are legal entities registered in Turkey Republic mobilized 13 persons who are citizens of Turkey Republic in installation works of the business center (contractor for construction works is “Intepe MTK”) constructed in the capital of Azerbaijan Republic – Baku.

The above mentioned persons came to Baku on 29.09.2010 and started their labor activities. While they were in Turkey they were promised to be each paid a salary in amount of 1300 – 1500 USD per month. Their employer never signed a labor contract with them or they were not offered either social or medical insurance although they were engaged in jobs with special risks and heavy conditions. They were fired from their jobs when they protested with complaint that they are not paid salaries. They were sent back to Turkey upon they expiration of stay after spending their time in the shelter of International Migration Organization.

The other group consisting of 12 persons was paid only 700 USD out of 4500 USD accumulated for the period of 3 months which was expired on 28th of December 2010 while they performed job 6 days a week per 9 hours and worked out two Sundays of each month. Generally although they have working migrant statue the employer did not obtain *an individual license* for them from relevant executive power office which is required by the legislation. On the 10th of January 2011 the term of their **registration license for foreign citizens willing to live in Azerbaijan Republic for more than 30 days** expired. In this period these people applied to the International Migration Organization and on its turn it submitted a lawsuit through Citizen’s Labor Rights Protection League. Following this the company gathered all employees and obtained a written note proving absence of any complaint against the company. Officers of the State Labor Inspection and State Migration Service witnessed the enforcement for obtaining this forced note

from the employees. Further members of the second group were paid salaries and sent back to Turkey. Meanwhile the first group didn't receive any payment (13 persons).

Judges of the Court of Sabayel region of Baku city never accepted a claim although court procedures on two litigation containing payment of salaries to the persons mobilized in the forced labor continued almost 6 months. It even could not bring a responsible company to the court. Nevertheless the panel of judges of the Appeal Court of Baku on Civil Cases city dismissed the judgments of the Sabayel District Court made for both claims (first court procedure was chaired by Sagi Mammadov who is a judge for the Appeal Court, second one was chaired by Madina Bagirova) and issued a judgment for payment of salaries to 13 migrants from Turkey against "**Istanbul Charshi Import & Export Ltd**". These judgments were innovation in the judicial practice of the country. Recommendations developed by the Supreme Court of Azerbaijan Republic numbered as 233/11 dated to 31.01.2011 sent to all courts played an important role in adoption of judgments. In the Recommendations it is said that [the United Nations Convention on Protection of Rights of All Migrant Workers and Members of Their Families](#) recommended to improve access of Migrant Workers and their families to the courts in Azerbaijan. Thus it created a precedent in terms of rehabilitation of migrant workers' rights through courts in the country.

In accordance with the Article 30.2 of the Law on Civil Service "**a leader of the government agency can raise working hours up to 5 hours in one month without considering it as overtime hours when it is necessary for work**".

This Article of the Law enables an employer to mobilize civil servants in voluntary unpaid activities up to 60 hours during a year (one and half week). It does not comply with third part of the Article 35 and second part of the Article 37 of the Constitution. Presence of such articles in the Law creates favorable conditions for putting **a forced labor** into practice.

Forced Labor in Trans – National Corporations

Some articles of employment contracts signed with employees of Transnational Corporations engaged in the oil sector offers favorable conditions for a forced labor. On the contrary of the Article 45 of the Labor Code employees are hereby signed temporary contracts. Such contracts can provide 6 months working period. The purpose of carrying out this measure is to maintain dependence of employees on employer. Labor Contracts include articles promoting engagement of employees in overtime hours. For example an employee gets a certain amount of salary for 8 hours work but he/she is attracted to extra 4 hours works. Thus he is paid on top of his/her salary. As a result of this employees are enforced to work 12 hours instead of standard 8 hours considered on the Constitution, relevant International Norms and Labor Code supported by our country.

With the aim to prevent a forced labor it is considered to apply an administrative responsibility or criminal pursuits according to the Administrative Offence Code (Article 53 – 1) and Criminal Code (Article 144 – 2). Meantime courts almost do not apply these articles in practice.

Discrimination towards National Employees is Obvious in Transnational Corporations.

Mostly observed discrimination cases in TNC can be classified as per following signs:

- **Distinctive payment for the equal activity**

This discrimination is applied towards local employees. Foreign employees engaged in foreign companies e.g. oil companies as well as in their contractors are paid much higher salaries

compared to national staff. The companies attempt to justify this fact with general low level of national salaries, yet it has no legal grounds.

- **Distinctive working conditions, distinctive nourishment, distinctive living standards and respective discrimination**

This discrimination is also applied towards national employees. Foreign companies offer living places supplied with better conditions in terms of conditioning system and modern heating system as well as sanitary – hygienic systems to the foreign employees while the national employees of the same category are supplied with places not complying with sanitary standards or with worse places compared to foreigners’ standards. In some companies nutrition standards also are different between employees.

Distinction in the working conditions is also observed if foreigners and nationals do not work at the same place (e.g. workshops).

- Employees willing to join trade unions or claiming their rights are discriminated and pursued both in national private companies and foreign companies. Job places attributed to the government sector experience discrimination and pursuits when employees attempt to create alternative trade unions¹².

Labor of Prisoners

Prisoners with abilities to work are involved in labor in compliance with the Article 95 of the Penalty Execution Code. Mobilization of prisoners in labor, creation of fair and favorable working conditions for them as well as ensuring labor protection and labor payment is equally carried out for all employees in compliance with the requirements established on the Labor Code.

In accordance with amendment made to Penalty Execution Code in 2008 prisoners are not charged from their salaries for detention in penitentiaries, nutrition and clothes. They are charged for income taxes and social payments as ordinary employees. Payment for damages (material damage) is carried out according to court orders.

Nevertheless some restrictions are considered for prisoners engaged in employment in the penitentiary facilities. According to the Article 95.6 of the Penalty Execution (Enforcement) Code “prisoners are prohibited to stop their labor activity due to resolution of arguments and go on strike. Unreasonable refusal from performing labor or unreasonable termination of labor activity is regarded as violation of rules for execution of punishment and prisoner undergoes reprimanding measures or is made responsible for financial liability”¹³.

Labor conditions of the prisoners meet minimum standards according to information obtained from the Public Committee on Penitentiary Service (the Committee members have rights to enter to penitentiaries without prior notice, conduct monitoring in all facilities and arrange confidential meetings with prisoners) under the Minister of Justice and consisted of NGO leaders engaged in defense of human rights. Nonetheless majority of prisoners with working abilities cannot be

¹² Monitoring of conditions of provision of Labor Rights in Azerbaijan Republic: Legislation and Practice. From the monitoring report. Citizen’s Labor Rights Protection League. Baku, 2007 <http://clrpl.az/upload/file/Monitoring%20oP%20Labour%20Rights%203.pdf>

¹³ The Punishment Execution Code. Article 95.6
<http://www.e-qanun.az/print.php?internal=view&target=1&docid=15&doctype=1#>

involved in labor activity due to the limited number of job places in penitentiaries. There are technical colleges and computer courses in the penitentiaries.

Judicial Ensure for Protection of Labor Rights

“The Final Notes of the Committee on Economic, Social and Cultural Rights” adopted during the 33rd Session of the Committee conducted on November 8 – 26, 2004 regarding the second periodical report submitted by Azerbaijan Republic to the UN Committee on Economic, Social and Cultural Rights states that the Committee “re-emphasized importance of independence of all courts to ensure effective judicial relief when all human rights, as well as economic, social and cultural rights are exercised or violated.”

Unfortunately in most cases claims raised by employment disputes caused by violation of labor rights are satisfied for the favor of employer. In this regard number of appeals containing violation of labor rights is being decreased. In majority of cases a wide range of claims accepted in the first instance courts are later dismissed as a result of appeal case or on the contrary majority of claims are dismissed on the basis of court order when a claim is not accepted in the first instance court. Another example of defective practice is generally disobedience of court orders. Today thousands of court orders concerning employment disputes remain disregarded in the country. Many of them deal with court orders containing cases like money, reinstatement of employment and material compensation for compulsory absence in the work.

In fact a process of commencing a legal action for resolution of disputes is not such a difficult job to do. However main and serious problems occurred during regulation of labor relations related to courts. Courts promote rather total disorders happening in the labor sector than preventing them. Factors characterizing the inefficiency of court mechanisms are given below:

- Corruption;
- Extra workload of court judges;
- Specialization of judges and absence of the comprehensive description of problems. There is nobody among judges in the country who knows labor legislation thoroughly;
- Employees not raising claims in timely manner and as a result of this disallowance of claims (expiration of claim period);
- Absence of effective defense (rendered by advocates, trade union representatives etc.);
- Withdrawal or change of court orders in the following instances.
- Existence of collision between the Article 45 and the paragraph “f” of the Article 47 of the Labor Code;
- Disregard of court orders¹⁴.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

¹⁴ Monitoring of conditions of provision of Labor Rights in Azerbaijan Republic: Legislation and Practice. From the monitoring report. Citizen’s Labor Rights Protection League. Baku, 2007. <http://clrpl.az/upload/file/Monitoring%20of%20Labour%20Rights%203.pdf>

- (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;*
- (b) Safe and healthy working conditions;*
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays*

Salaries

In compliance with the Labor Code piecework and timework payment system should be applied for payment of wages. Piecework payment system is determined on the basis of tariff (occupational) rates and output standards (time standards). In fact employees in some fields are paid only according to output standards and this leads to violation of employment rights. A minimum salary is interpreted in the 2nd paragraph of the Article 155 of the Labor Code. The Labor Code states that **a minimum salary is a social standard defining the lowest level of a monthly salary paid for unskilled labor and services taking social conditions into consideration.**

According to the 3rd paragraph of the mentioned Article **Monthly salary of an employee who works full monthly hours and fulfils his/her job duties cannot be lower than a minimum salary rate established by the government.**

The Established monthly salary rate breaks the principles given in the Code (Article 155, paragraph 2). Economic and social conditions of the country are not taken into account when minimum salary is determined. **An hourly minimum salary** which is considered to be **a social standard** is not practiced. In this case international standards are not followed. Absence of control over labor standards and presence of double account system served as a reason for violation of labor rights and salary standards, and regulations described in this section of the Code.

Requirements put forward in these articles are not reflected in the practice. In compliance with the requirements of the 2nd paragraph of the Article a minimum salary should meet minimum living standards. But a minimum salary determined for the overall Republic falls much behind the minimum living standard.

The conducted monitoring helped to reveal that overtimes are not paid by the majority of employers. However according to legislation timework payment system should ensure at least twice as much of the amount

During the monitoring it was discovered that in many work places no wage is given for overtime job. But according to legislation, in payment for the hour system extra wage not less than double sum of hourly tariff (official) wage must be paid for every hour of overtime job and in piece – rate system extra wage not less than hourly tariff (official) wage of piecework employee of respective category (specialized) by paying piecework wage fully must be paid. Collective contracts can set higher wages for overtime jobs. Admitting overtime jobs in foreign companies, especially in oil companies employees are intentionally were made to work for 12 – 14 hours and paid wage not meeting the requirements of legislation.

In many workplaces employees are not paid wages for months without serious grounds. According to the Labor Code, **if payment of wage is delayed because of fault of employer and this case has not caused individual labor dispute, the employee must be given payment in amount at least 1% of wage for every day delayed.** Payment of extra amount to the employee by the employer voluntarily for delayed wage was not registered in practice. Vice versa, in labor disputes related to these reasons employers use all means not to pay extra wage to employees.

There were many such cases in court practice of the Citizens Labor Rights Protection League. For example, upon demand of employee (employees) court adopted a decision on payment of extra wage by employer, and employers achieved cancellation of this court decision in appeal instance. It is possible due to gaps of judicial system of the country. There are serious shortcomings in payment of wages when employees leave the workplace or taking holidays. Summarizing the results of other observations, studies and non – structured interviews during the monitoring implemented in 2007 by the Citizens Labor Rights Protection League brought to such a conclusion that in majority of private institutions so – called “double accounting” or “black accounting” method is applied for compensation of labor. Sometimes difference between the real wages of employees ten times less than the wage that employee receives by officially signing. Within the recent years with the reason to eliminate the “double accounting” the government implemented a number of actions. But any serious effect is not achieved yet. In another case, all relations with employees are established informally and wage of employees are paid not to the account of legal funds of institution, but of undeclared incomes of employer. Payment system called “wage given in envelope” is widespread in labor compensation. This system is applied more widely in some state structures and big business organizations. In this case equally with getting wage by signing the wage table employees receive extra money in envelope. In state bodies this case is created by corruption, in business structures it is connected to evasion from taxes and social payments. This case does not cause serious problems for employees in state structures. Because employees of this category have assured wage and they are insured according to that wage and can get grants in case of social insurance incident. But in business structures (mainly in private business structures) employees either are not paid wage (labor relations are not official) or small wages are paid (in many cases, in amount of minimum wage set on the country). Negative results caused to employees by payment of wage by “double accounting”, “wage given in envelope” or “black accounting” are the following:

- Labor relations are illegal with majority of those getting illegal wages. Such employees work as much as others, in many cases more than others, but they are considered unemployed. In another case, even if labor relations are official, the wage got by those employees is small. Imposing fines on wages of such employees dependent on employers or stopping payment those persons have no chance to complain. Employers wishing to punish employee start paying only legal wage to them.
- In case of social insurance incident such employees cannot get any grant. Most dangerous case is that employees do not create any guarantee for future. Reaching pension age such employees will not receive a decent pension for the labor they have spent.
- Persons having no official wages or possessing small official wages can not benefit of credits, especially favorable mortgage system being applied at present.
- Paying illegal wages employer avoids taxes and thus commits crime set in legislation. Employee agreeing with such payment helps the employer in committing the crime.

The Right to get equal wage for equal labor is one of rights violated in most brutal way in the country. Unequal payment method widely applied in foreign companies must not be accepted as violation of labor rights only. It also should not be evaluated as discrimination in labor sphere which is violation of civil rights. In all transnational corporations operating in the country differential payment system for equal labor is applied. Different researches and analysis conducted by the Oil Workers’ Rights Protection Committee, Citizens Labor Rights Protection League, Human Rights Institute of the National Academy of Sciences proved existence of serious offences in labor payment system in foreign petroleum companies. The employees are differentiated upon countries and regions they belong to in payment of wages in foreign companies. Employees involved from western countries get ten times higher wages regarding other categories. Other categories such as employees coming from South – East Asian countries divided into the categories like those from India and Bangladesh. Lowest category is local

employees that are paid the lowest wage for the same labor. As extra wage is given to employees in some state institutions, it was found out that also **illegal payments are taken from wage**. Different prizes, payments in form of extra to wage are set for employees and then big part of that money is received back illegally. This case is specific to majority of state, commercial structures and sometimes to budget organizations. Level of wages in budget organizations is quite lower than demanded minimum living wage on the country. Labor compensation contradicts with the principles of Constitution and international norms ratified by the country especially in the field of education, healthcare, culture, science. There is trend of increasing wages of civil servants for recent years. But while wages of some category of employees in some “law enforcement structures” are increased, wages of others remain in previous low level. Existence of such case can be assessed as discrimination¹⁵.

The president of Azerbaijan Republic signed the Decree on September 1, 2010 on increasing the amount of basic part of the minimum monthly wages and labor retirement pensions to 85 AZN (109 US Dollars) in the country.

By the Decree of the President dated to January 1, 2011 the minimum living wage was set as 95 AZN (119 US Dollars), for those who work this digit set as 102 AZN (127,5 US Dollars), for pensioners 72 AZN (90 US Dollars) and for children 76 AZN (95 US Dollars).

Conditions of workers’ recruitment, termination of employment and provision of labor rights.

According to the Article 16 of the Labor Code in hiring or a changing or terminating the employment no discrimination among employees shall be permitted on the basis of citizenship, sex, race, religion, nationality, age, marital status, language, place of residence, property, membership to trade unions or other public associations, professional standing, beliefs, or other factors unrelated to professional qualifications, job performance, or professional skills of the employees, nor shall it be permitted to establish privileges and benefits, directly or indirectly limit rights on the basis of these factors. It is stipulated on the state legislation creation of equal opportunities during the recruitment. Nevertheless at present recruitment to the civil service including in law enforcement bodies which are specific forms of the civil service is implemented by specialized state body through test exams. Constantly organization of examination processes in regard with recruitment to the civil service including in central executive authority bodies, prosecutor bodies and justice and court bodies. Examination processes were observed by the representatives of international and local civil societies. General conclusions of the observers state that examination processes are implemented in accordance with legislation and norms. Nevertheless there are subjective factors in appointment to these positions.

It was envisaged on the “section 20” of the “Action Plan” in regards to implementation of the National Strategy on Increasing Transparency and Combating Corruption for 2007 – 2011 about “improvement of recruitment to the civil service and increase of transparency”. There is a duty to deliver to community conditions in regard with recruitment to the civil service. During 2010 all conditions and regulations in regards to recruitment to various state bodies were placed on appropriate official web pages of the state bodies.

In the rule set on the national strategy during 2010 were held test examinations in regard with recruitment to prosecution and Justice bodies. Examinations were observed by the international and local observers. There weren’t discovered any violation cases. The next stage of examinations conducted for candidates to the judge was finished on 2010 and 78 new judges were appointed as judges to the courts of first instance through presentation to the Judicial Legal Council by the President. The examinations were held in 2011 with the aim to get a job at the

¹⁵ Monitoring on provision condition of Labor Rights in Azerbaijan Republic: Legislation and practice. From monitoring report. Citizens Labour Rights Protection League. Baku – 2007. <http://clrpl.az/upload/file/Monitoring%20of%20Labour%20Rights%203.pdf>

court, justice, prosecution bodies and other spheres of the civil service. There weren't recorded any violation cases at the examinations.

There are cases of serious violations of existing legislation during recruitment process in private sector. So as a rule it is applied practice of short – term contracts with hiring person and this is against the Labor Code.

In a number of entities there were recorded cases of the mass reduction of the staff. The State Oil Company in massive form reduced the number of persons reached pension age and this is also against the Labor Code. Considerable part of the labor market falls to the share of the formal labor market. Thus, this caused to recruitment of ten thousands of people without signing labor agreement. Such people are deprived of social insurance right and remain depending on the employer.

There are cases of secret discrimination against women and disabled people at work places. It mostly connects with privileges set on the legislation for such category of people and laying on the employers' material provision of these privileges.

Work time and the right for rest

In accordance with the article 37 of the Constitution of the Republic of Azerbaijan for those working based on labor agreements 8 hour working day, national holidays and at least one paid vacation with duration of at least 21 calendar days are guaranteed. The Labor Code sets working week of 40 hours. The Republic of Azerbaijan is participant of the **ILO Convention on Reduction of work time up to 40 hours week days**. In fact, the Labor Code has precise provisions on regulation of work time. The Code stipulates provisions on 5 day, 6 day, shortened work time, shortened work time for employees working under hazardous working conditions, also in works of special character, incomplete work time. However, the Chapter 14 of the Code includes **rules of regulation of working regime and overtime work**. There are many provisions here application of which causes wrong practice.

This chapter regulates issues such as working regime, total register of work time, duration of night work, employees for whom night work is forbidden, overtime work, ceiling of overtime works, exclusive cases admitting overtime works, work time register. In accordance with the Code, overtime work is admitted upon order of the employer and consent of employee. The Code includes the cases admitting and forbidding overtime works and terms of admitting overtime work. But in practice these norms are violated even at workplaces where labor legislation more or less implemented. At the same time the Labor Code regulates terms of work time only within one institution. Work time of employees working on rotation reaches sometimes the half of the working time at the main work place. So, legally daily working time for working at two places can take up to 12 hours.

In exception cases the Labor Code and Law on Civil Service admit over time works. According to the Labor Code, consent of employees is required while involving them in overtime jobs and this case is legalized by the order of employer. Also payment for overtime jobs is implemented upon superior terms. It was mentioned more comprehensively during the analysis of legislation. The conditions in practice are miserable. It was found out during the monitoring that involvement of employees in overtime jobs is widely applied in state budget and commercial organizations, private structures, especially foreign companies. No documentation is implemented admitting overtime jobs. As a result, when casualty is happened during the implementation of overtime job the employer says the employee stayed at the workplace by himself. The advanced payment to employees while admitting the overtime jobs can only be found in state institutions. In many institutions illegally determined production norms make employees do overtime job. To meet his/her and his/her family's demand for living the employee does overtime job and it is paid for the work done. Any payment for working hours is not carried out. The illegalities in this field has reached such a level that a number of companies, especially foreign oil companies have included the overtime job in labor contracts and it is accepted as an

ordinary case. Rights of employees to rest in working day and during working week are brutally violated. No break is given to employees working 10 – 12, sometimes 15 hours and rest till next working day is less than 12 hours. Adding here the time employee uses to reach the workplace (sometimes several hours), daily rest time is 6 – 8 hours. It brings to violation of right of employees to rest, also violation of labor and health safety rules and loss of health of employees. The Constitution of the republic declares annual paid leave not less than 21 days. But according to approximate studies, up to 80 % of employed population cannot use this right. Employees of the private institutions, especially small and medium ones can get unpaid leave for short time at the best. Mass character of this case brings to total violation of article the 37 of the Constitution of the country. During interviews conducted with employers of workplaces with small number of employees they confessed that they give no leave to employees. As labor relations with employees are not legalized in some private institutions women do not use the right to social leave (pregnancy and maternity leave). Person continuing education by not leaving the industry can not use in many cases the right to creativity and education leaves. This right is partly assured only for employees working and getting education in state sector. Employees working and getting education in private sector are obliged to go on unpaid leave in this period. As a result of investigation of complaints received by different bodies during the monitoring it was found out that many of complaints concern realization of the right to leave. Employees that cannot realize their right to leave for years are not given financial compensation for leaves they have not used while leaving the job. As a result, some of those facing violation of rights apply to courts and unfortunately, in many cases they can not provide their legal rights in courts¹⁶.

Protection of Labor

According to the Paragraph 6 of the Article 35 of the Constitution of the Republic of Azerbaijan “everyone has the right to work in safe and healthy conditions”.

Section 9 of the Labor Code completely reflects the clauses in regards to the norms of protection of labor, regulations, principles, legal, organizational – technical and financial provisions of protection of labor, provisions to carry out the right for protection of labor of employees and responsibility of employers in regards to protection of labor.

Numerous decisions were made by the Cabinet of Ministers and corresponding executive authority bodies and adopted regulations with the aim to apply the clauses in the section of the Labor Code related to protection of labor. Among the ILO Conventions ratified by Azerbaijan Republic the conventions directly or indirectly related to protection of labor and health dominating.

Nevertheless there are serious problems in regards to protection of labor in practice.

To work at justice and favorable conditions is the right for everyone giving on Constitution level. Nevertheless conducted monitoring with the aim to analyze the legislation and find out existence of condition in practice once again showed that situation in the labor field in regarding the protection labor and health of people is quite miserable.

Attestation of newly opened and existing work places either is not held or this attestation is of formal character.

On the contrary to the demands of the legislation to provide protection of labor the employers do not allocate necessary resources.

The lack of labor conditions meeting the necessary sanitary – hygienic demands, exhausted condition of major production tools physically and morally, lack of provision of employees with special overalls, serious violation of working regime, not instructing employees with safety rules in set times and cases bring to growth of **accident in industry and occupational disease** year by year.

¹⁶ Monitoring on provision condition of Labor Rights in Azerbaijan Republic: Legislation and practice. From monitoring report. Citizens Labour Rights Protection League. Baku – 2007. <http://clrpl.az/upload/file/Monitoring%20of%20Labour%20Rights%203.pdf>

However according to official statistics these indicators are almost stable by the years. It's a result of the fact that the majority of industrial accidents and occupational diseases, even a part of fatal cases taken place as a result of industrial accident are hidden.

Although Azerbaijan Republic had joined to the Convention No. 81 of International Labor Organization the provisions related to competencies of labor inspectors are not properly applied. The State Labor Inspection is conducting inspections at the work places with participation of other state bodies (the information about inspection is included to the register of the Ministry of Justice previously and inspectors can enter to work facilities only with the participation of the representatives of the Ministry of Economic Development).

Accidents used to take place in production on 2005 – 2007 (official statistics) ¹⁷

Injuries in production on directions of economic activity	2005	2006	2007
Number of people injured as a result of accidents in production – total, persons	189	273	330
Including: Extraction industry and exploitation of quarries	37	65	6
In processing industry	36	64	58
Electricity, gas and water production and supply	16	10	9
In construction	40	56	169
Transportation, warehouse and communication	12	20	8
In other types of economic activity	48	58	80
The number of persons who lost their lives among them – total, person	54	81	128
Including			
Extraction industry and exploitation of quarries	5	16	1
Processing industry	3	13	16
Electricity, gas and water production and supply	10	8	8
In construction	14	17	68
Transportation, warehouse and communication	5	8	2
In other types of economic activity	17	19	33
Number of persons suffering from professional disease s	300	350	301

¹⁷ The information was presented by the State Labor Inspection on the basis of the inquiry.

THE INFORMATION¹⁸

About the accidents taken place in production during 2010 on the types of economic activity

No	Content of data	Total	Type of economic activity									
			Industry	construction	Communication, transportation	Agriculture and forestry	Housing communal service	Trade, public catering and supply	Healthcare, sport, social security	Credit, finance, insurance	Science, education, culture, art	Other
1	Number of accidents taken place in production	239	93	65	24	6	16	9	5	0	10	11
2	From them: in a group	17	7	4	3	1	1	1	0	0	0	0
3	Mortality (person)	69	21	31	2	2	6	2	1	0	1	3
4	Injury (person)	197	81	45	25	5	11	9	4	0	9	8

The restriction of norms on protection of labor by state bodies in a background of the loss of professional labor capacities of employees for a long time as a result of accidents taking place in labor sector of the country or annual increase of employees losing their lives as a result of accidents is not leading to positive results. The facts of increasing indicators of administrative responsibility, including material responsibility to extremely high level has not improved the situation in this field. However, the corresponding executive body responsible for control of protection of labor in places of work and generally application of labor norms and regulations has not been able to ensure effective control over the labor sector of the country. There are objective as well as subjective reasons for it.

The fact of functioning of major part of labor market of the country in non – formal sector is also impacting to decrease of this control.

On the other hand as a result of non – observance of requirements of protection of labor the dynamics of disease s related with vocational occupation jobs are increasing along with the ones related to accidents. The statistical data referring to official state statistics on this report is also showing this clearly. It is possible to state that the official statistics do not reflect reality referring to the results of monitoring activities conducted by the organization before. In fact the accidents taking place in industry and disease s related with vocational occupation jobs are much more than the figures mentioned on official statistics.

The reasons causing accidents in industry have been identified through analyzing the accidents recorded for 2007 and for the first half of 2008:

- Non – satisfactory organization of production process;
- Malfunctioning of technological processes;

¹⁸ The information was presented by the State Labor Inspection on the basis of the inquiry.

- Lack of preparation or non – satisfactory preparation of employees to commit the requirements for protection of labor;
- Lack of knowledge and skills of employees on properly using the tools they use in their work;
- Non – observance of technical safety regulations by employees, violation of labor discipline;
- Lack of experience and negligence of executors, workshop supervisors, team leaders and other persons directly supervising the employee;

The reasons causing occupational diseases taking place for that period were the followings:

- Lack of necessary sanitary – hygienic conditions in work places;
- Non – fulfillment of medical check up of employees (places of works where it is obligatory);
- Lack of protection from air flow;
- Lack of equipping employees with necessary means of protection;
- Lack of equipping employees with special clothes in cold and warm climate conditions;
- Non – compliance of the used equipment with technical standards etc.

Managers of majority of entities, especially in small enterprises do not conduct any prevention measures regarding the protection of labor and they only take measures when the accident is happening which is not significantly influence to improvement of situation. Especially in enterprises which belong to private sector, particularly in the field of construction (it is mentioned about it separately) protection of labor is accepted as second, sometimes even the last objective. This on its turn leads to a number of violations in such enterprises and this kind of violations lead to industrial injuries and occurrence of occupational diseases¹⁹.

According to the Labor Code in case of damage to the health of employee as a result of industrial injuries or occupational diseases and if the employee lost his/her life for those reasons the employer is fully materially responsible. The employer had two options based on the Labor Code before January 1, 2011 for payment of compensation to employee for the damage. One of them was payment of monthly compensations by the employer to the employee in case if an accident or occupational diseases taken place or to the family member of the employee who has the right to get compensation if the employee lost his/her life another one was to arrange insurance for the employee through insurance companies in order to insure the employee from accident or occupational diseases.

The rules of payment of compensation for damage to the health as a result of industrial injuries or occupational diseases have been regulating till January 1, 2011 with the Decision No 3 of the “Cabinet of Ministers of the Republic of Azerbaijan on approval of the rules, conditions and amount for payment of compensations to employee whose health faced damage as a result of industrial accident or occupational disease or to the family members of the employee who lost his/her life for these reasons” dated to January 9, 2003.

The Law on “Compulsory insurance from the cases of losing labor skills as a result of industrial accident or occupational disease” adopted on May 2010 had come in force on January 1, 2011. According to this law all the persons involved into hired labor or recruited on the basis of civil – legal contracts have to be exposed to compulsory insurance from industrial accidents or occupational diseases. The insurance of employees is covered by the employers and employers which do not insure their employees are facing serious financial sanctions.

However the initial stage of application of the Law had led to several problems. These are mainly the followings:

- some of the employers are insuring their employees not with their own resources but with the income of employees;

¹⁹ The Citizen’s Labor Rights Protection League. Protection of Labor in Azerbaijan Republic: Legislation and practice. Baku 2008.
<http://clrlp.az/upload/file/Protection%20of%20Labour%206.pdf>

- the significant part of labor market in the country is in the non – formal sector and as the labor relations are not documented with the employees working in this sector ten thousands of employees are not covered with insurance;
- the life insurance system is weakly developed in the country and existing insurance companies do not have trust among the population;
- the is covering only the ones who were insured after January 1, 2011;

Thousands of people in the country at the moment had got damage to their health in different times as a result of industrial accidents and occupational diseases but majority of these persons do not have an opportunity to get any compensation. Thus the enterprises where these persons used to work before were closed, owner is changed or bankrupted.

With the aim to partially regulate the situation the President of Azerbaijan Republic had approved the **“the Rules of regulation of debts of state enterprises that are privatized and given to management on monthly payments to the employee whose health faced harm as a result of industrial accident and occupational disease or to the family members or other persons under the guardianship of the employee who lost his/her life as a result of it”** with the Decree dated to August 4, 2008. There were defined compensations from the state budget to the persons who lost fully or partially their professional – labor skills as a result of industrial accident or occupational disease, or to heirs of the persons who lost their lives as a result of it according to those rules. However these rules are only pertained to the debts on monthly compensation to the employee of the state enterprises mentioned on this Decree whose health faced harm as a result of industrial accidents or occupational disease or to the family member of the employee and other person under his/her guardianship who lost his/her life because of the same reason²⁰.

The statistics of persons who got occupational disease because of violation of rules of protection of labor and health in industry is not conducted at all. According to the information of the Ministry of Health 86 persons got occupational disease during 2005 with the diagnosis defined first time in their life. In fact this figure is also far from the reality. However, the list of occupational diseases on occupations and jobs has been approved by the corresponding executive power bodies. In most cases the employees are not able to prove that they had damage to their health because of industrial activity.²¹

Article 8

1. The States Parties to the present Covenant undertake to ensure:

- (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;**
- (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;**
- (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;**
- (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.**

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

²⁰ The Citizen's Labor Rights Protection League. Protection of Labor in Azerbaijan Republic: Legislation and practice. Baku 2008. <http://clrp1.az/upload/file/Protection%20of%20Labour%206.pdf>

²¹ The Citizen's Labor Rights Protection League. Protection of Labor in Azerbaijan Republic: Legislation and practice. Baku 2008. <http://clrp1.az/upload/file/Protection%20of%20Labour%206.pdf>

3. Nothing in this article shall authorize States Parties to the International Labor Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Conditions of rights to unite in Trade Unions

100 years anniversary of Trade Unions organizations and the first collective agreement was celebrated in 2004 in Azerbaijan. However, great objectives were put over trade unions during the existence of the Soviet Union. The power and functions of trade unions were entirely limited after Azerbaijan gained its independence. The issue of observing social insurance of employees, labor protection and labor legislation was taken back from the control of trade unions and given to that of specialized government bodies. The Law on Trade Unions was adopted on February 24, 1994. Other legislative acts, as well as the Labor Code adopted afterwards, made number of provisions of the law ineffective. According to the article 19 of the Labor Code, *“trade unions can be established on a voluntary basis without getting permission of employers and making any difference among employees”*.

According to the article 1 of the Law on Trade Unions, *“Trade Unions are independent public, non – political organization functioning in accordance with this law and regulations under which trade unions voluntarily united on the basis of individual membership on jobs, vocations and at the level of republic in order to protect economic, social, labor rights and legal interests of employees working in productive and non-productive fields, as well as those studying and pensioners”*. According to the article 3 of the law, *“...at least seven persons have the right to adopt the charter of trade unions uniting in it”*.

During the 90th of the past century alternative trade unions were launched to be formed in several spheres together with traditional trade unions. Besides, activity of these organizations was not sustainable. Only Oil and Gas Industry Workers Trade Unions consisting of 70 000 employees of Oil and Gas industry could survive by 1996. It collapsed as a result of consistent pressures of Transnational Companies (particularly BP) which invests oil sector of the country, State Oil Company of Azerbaijan Republic and government agencies.

Azerbaijan Trade Unions Confederation was established in the country on the basis of traditional trade unions in 1993.

At present, trade unions of 26 fields are united within the Confederation (Republican Committees of Trade Unions). The number of trade unions members makes up to 1 600 000 persons.

First organizations of 17 267 trade unions are united in the trade union of 26 fields. 3700 of them function at private sector, 13 567 in government agencies and commercial entities under the supervision of the government.

The Azerbaijan Trade Unions Confederation takes active part on ensuring the rights of workers defined under the law. Thus, a number of remarkable changes have been made to the Labor Code in favor of workers with the initiative of the Confederation. However, trade unions included to the Confederation vest public sector. Rate of encompassing private sector is quite low.

There are crucial challenges for establishing trade unions in several companies, especially oil companies. Endeavors of workers to unite face grave obstacles, attempters are subjected to serious pursuits. Despite of strict punishments for impeding uniting at trade unions according to the country legislation, these provisions are “dead provisions” and never applied.

Membership fees of workers of enterprises, at which trade unions exist, are collected by the heads. Every one admitted to work is considered as a trade union member. Workers are to give a written notification to the accountancy of the enterprise if they are not willing to be a trade union member²².

²² Monitoring of the position of ensuring Labor Rights in Azerbaijan Republic: Legislation and practice. From monitoring report. Citizens' Labor Rights Protection League. Baku, 2007. <http://clrpl.az/upload/file/Monitoring%20of%20Labour%20Rights%203.pdf>

According to the Law on Trade Unions and Labor Code which are in force now, power and duties of trade unions include *collective negotiations, collective agreement and sealing bargains, charging public control over fulfilling these agreements*. Trade unions have the right to start *collective disputes and organizing strikes* in the case employer is not eager to meet agreement obligations as well.

Citizens' Labor Rights Protection League has come to the following conclusions dealt with signing and fulfilling agreements during monitoring it conducted by the organization in labor sphere.

Collective Agreements and Understandings are indicated as a significant means on the Labor Legislation. Consideration of this institution as particularly important on the Labor Code is quite positive. As, the main role of the government on regulating Labor Relations consists of setting up relevant normative basis and charging public control over fulfillment of these norms. Also, according to the Labor Code, the main tool for regulating relations between employers and employees or their representative agencies is collective agreements and understandings. For the reason, collective agreements are considered as one of the sources of labor legislation and play the role of local (or inter – enterprise) normative acts.

It should be noted that one of the trends which Citizens' Labor Rights Protection League has studied for long time is Collective Agreements and Understandings, problems on collective negotiations and Collective disputes concerned with these agreements. That is why, certain conclusions have been made on these problems by the monitoring process of the organization.

- Collective agreements and understandings are mostly signed only with public sector enterprises. At the same time, not all of the public sector organizations sign such agreements. Signing collective agreements is an exceptional case at private sector enterprises. In international companies, as well as transnational companies and their contractors collective agreements are no longer signed and generally, trade unions are not allowed. It has been possible to establish trade unions in only some of the international oil companies. So there is no body to sign collective agreements with employers on behalf of collectives.

While conducting studies, it has been defined that 11 821 Collective agreements had been signed by first trade union organizations included to the structures of trade unions of fields by January 01, 2006. At the same time 85 collective understandings had been signed in the same fields. According to the information provided by the Confederation administration, understandings signed by the relevant executive bodies of Republic Committees of trade unions and companies substitute to these agreements at the enterprises, bodies and organizations where collective agreements are not applied. 3 251 of enterprises, bodies and organizations where collective agreements are signed are private, 41 are joint stock ones and 49 international companies. The rest of agreements have been signed with public enterprises.

Correspondingly, the number of collective agreements for 2008 was 12 695, 12 773 for 2009 and 12 020 for 2010.

If viewing the figures presented by the Confederation it is evidently seen that very few enterprises, bodies and organizations in the country apply collective agreements. This is because there are no trade unions at these enterprises, bodies and organizations.

According to the information provided by the Confederation, series of international companies sign agreements titled as private agreements. The number of such agreements is around 1100. These agreements differ from collective agreements on their form and content.

- During monitoring it turns clear that majority of the analyzed Collective Agreements are compiled in a formal way. Thus, provisions reflected on the Labor Code are included to
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Collective Agreements either directly as they are or in a partly changed form. However, rules reflected on the legislation are in force regardless of whether collective agreements are signed or not and their commitment is obligatory for employers.

- Exact conditions, which are not considered on the legislation on labor and social rights of workers are no longer practiced in agreements, otherwise these conditions do not conduce rooted improvement of labor and social condition of workers.
- Indefinite provisions such as “using all methods and means considered on the legislation in order to protect legal rights of workers” are reflected in agreements. This kind of provisions put no obligation over employers.
- Collective Agreements loses their significance in budgetary organizations. As, the enterprises, bodies and organizations based on budgetary resources are not able to adopt any condition positively affecting financial and social condition of workers and holding negotiations between employers and collectives (or trade unions representing them). All allocations are defined by the above mentioned bodies in advance and an employer is not able to spend these allocations out of their definition.
- Employers are not interested to sign collective agreements and to undertake obligations more than considered under the legislation in all cases. Besides, financial charge considered on the articles 57, 58, 59 of the Administrative Offences Code for denying collective negotiations or signing collective agreements and other obligations related with collective agreements is not based on concrete and strict mechanisms. Employer is able to avoid the responsibility anyway. (It is enough for the employer to claim the lack of suggestion for collective negotiations).

A number of minimal requirements were not included while preparing the Labor Code adopted in 1999. Regulation of these issues was considered through collective agreements. The result is that collective agreements are not applied, or series minimal rules, out of the Labor Code, are not reflected on collective agreements.

Thus, although the social partnership is widely applied in the Code such a partnership no longer exists in reality. Because only one party – workers are interested in such partnership. Neither employers, nor relevant government bodies are eager to involve a large mass of workers to the solution of any issue concerning the enterprise²³.

Trade Unions Confederation signs a trilateral General Agreement once in three years with the Cabinet of Ministers and Entrepreneurship Confederation representing business (this representation is formal in reality). While the Trade Unions Confederation has attained to include provisions aimed at ensuring workers’ rights to the General Agreement, there are troubles in execution of the General Agreement. The main reason for this case is related with the lack of real influence of the government, which is a party of the agreement, to business, poor representation of business agencies by the public union representing entrepreneurs.

Realization of the right for strike

According to the Article 36 of the Constitution of the Republic of Azerbaijan “*Everyone has the right to be on strike, both individually and together with others*”. It is mentioned on the second part of the Article that “*Right for strike for those working based on labor agreements might be restricted only in cases envisaged by the law. Soldiers and civilians employed in the Army and other military formations of the Azerbaijan Republic have no right to go on strike*”.

Although the right for strike stipulated on the Constitution and restrictions applied to it are in correspondence with the requirements of the Covenant, the legislation ensuring the execution of this right is defining the procedure and rights which are not possible for implementation with the

²³ Monitoring of the position of ensuring Labor Rights in Azerbaijan Republic: Legislation and practice. From monitoring report. Citizens’ Labor Rights Protection League. Baku, 2007. <http://clrppl.az/upload/file/Monitoring%20of%20Labour%20Rights%203.pdf>

aim to conduct strikes on the basis of collective disputes in the field of labor through creating serious restrictions.

The chapters 40, 41, 42 and 43 of the Section 11 of the Labor Code are about Collective Labor Disputes and the rules of their solution. Negotiations conducted for signing collective agreements and contracts, signing collective agreements and contracts, making changes and amendments to the existing collective agreements and contracts in force provision of execution of the collective agreements and contracts, argues taking place in regards to solution of other labor, social and economic issues with the aim to provide the interests of members of collective are the subject of collective labor relations. Employers, employees (employee staff or part of it) or trade unions are the parties of collective labor relations according to the Code.

Promotion of collective demands on the basis of collective labor disputes on the Labor Code, reviewing these demands, methods of solution of collective disputes through the way of compromises and procedures identified for conducting strikes with the aim to solve collective disputes are defined in unreal and impossible form.

From this point of view, the chapters 40, 41, 42 and 43 of Section 11 of the Labor Code are completely contradicting to the Article 31 of the Constitution of the Republic of Azerbaijan and violate the principles stipulated on the provision d of the Article 8 of the International Covenant on Economic, Social and Cultural Rights and provision 4 of the Article 6 of the European Social Charter.

Provisions stated on this section do not provide opportunity to use the right for strike as a mean for launching collective disputes and solving dispute for employees.

- On the Article 260 of the Labor Code is mentioned about what kind of collective disputes occurred on different cases are regulated by the Code. This list is limited and do not reflect the majority of collective disputes and cases causing the strikes existing in international practice.
- A part of working staff is mentioned as party of collective labor dispute on the Article 261 of the Labor Code. Nevertheless, the party of dispute on further articles is full working staff and employer. According to the part 2 of the Article 262 of the Code “Non – fulfillment or incomplete fulfillment of collective treaties and agreements, as well as collective demands related to other labor and social issues are promoted in general assemblies (conferences) of employees and trade union organization. Decisions are made with majority of votes or according to the order considered for other decisions on its charter.”

According to the requirement of this provision even a part of the working staff (for instance one of the workshops of a big plant) has to get a decision of the assembly of working staff or trade union organization for rising demand.

- The compromising methods for their solution are stipulated on the Code in case if collective demands are presented. These methods are consisted of ineffective and time spending procedures. Application of these procedures might be used with the aim to create bureaucratic barriers to the party rising collective demands, to put a pressure to the trade union bodies leading these processes, or to the party representing working staff.
- Organization of strikes with the aim to solve collective labor disputes in impossible through implementing all the requirements stipulated on the Code. There is no provision on the Code providing the right for employees to start striking directly without getting over the considered procedures (rising collective demands, negotiations and correspondence with the employer, use of methods leading to compromise). Oppositely, there is a demand to commit requirements stipulated on the Article 262 of the Code e.g. to get a decision of meeting (or conference) of members of trade union organization to start striking. The employer has to be informed in written form at least 10 days before starting to strike. The striking started without passing the considered procedures is accepted as illegal.

- Material and administrative responsibility is considered for strikes conducted without committing the above mentioned procedures.

Thus, the chapters 40, 41, 42 and 43 of the Section 11 of the Labor Code is completely contradicting to the Article 36 of the Constitution of the country and making impossible organization of strikes through executing the rules stipulated on the Code. At the same time concrete definition of the reasons of rising collective demands and conducting strikes is against the international practice and regulations. Thus, **organization of strikes with the aim to express solidarity (solidarity strikes), as well as recognition of trade unions and accepting it as a party by employer, protesting against the social policy of the government etc. is not allowed by the legislation.**

Collective disputes taking place in work staffs are often taking place not on the basis of rules and procedures considered on the legislation but also in spontaneous and chaotic order. Such cases are usually occurred when there are cases of creation of unbearable conditions for employees by employers, massive delay or non payment of salaries, any kind of violation taken place against one of the staff members (this case might happens basically in foreign oil companies or their subcontractors). These disputes are traditionally started with contemporary stopping the work (warning strike) and organization of massive action within the entity. These cases happen not in accordance to the provisions stipulated on the chapters 40, 41, 42 and 43 of the Labor Code. So, it means that neither provisions of the Labor Code for launching the disputes nor for use of compromising tools are fulfilled. As it was mentioned by us before in fact it is not possible to launch collective disputes and meetings through fulfilling these requirements. From the period since the Labor Code has been adopted till now there have not been recorded a cases of launching and conducting collective disputes according to the legislation or realization of any litigation in courts for solution of collective disputes.

All these are proving that the legislation in this field has shortcomings and as a result it is impossible to apply it in practice.

The right of the employee to strike on his/her own

The article 36 of the Constitution of the country is stipulating the right of the employee for individual strike with the aim to restore his/her violated labor rights. The rules of execution of this right are regulated with the article 295 of the Labor Code.

The following is stipulated on the article 295 of the Labor Code: *“in case if the employee is not satisfied with negotiations conducted with the employer regarding the restoration of his/her violated rights, replies to his/her written application he/she can conduct a strike on his/her own through stopping the execution of his/her labor functions fully or partially for up to one month without applying to the court and cancelling the labor contract with the aim to solve individual labor dispute, as well as corresponding issue related to collective demands”.*

According to the paragraph 4 of the article, *“employer can apply to court considering actions of employee striking independently groundless and on illegal basis”.*

According to the paragraph 5 of the article, *“If the court has not made a decision on considering actions of the employee striking independently groundless and illegal, the employer can not terminate the labor contract.”*

However, fulfillment of this right causes implementation of severe administrative reproof of employee in practice. Thus, all persons trying to strike independently is immediately removed from their job and referring to the paragraph C of the article 70 of the Labor Code (*non – implementation of employment activity of employee or his obligations under the labor contract*), cancellation is applied to the labor contract or actual employment relations without sending appeal to the court about whether the strike is legal or not. While a lot of efforts for such

independent strikes were made during the period passed since 1999, when the Labor Code came into force, no appeal entered to courts from employers and the striking employee was fired in all cases.

For example, although the Turkish citizens involved to work in a business center built in Baku city, Ihami Aslan, Yaghsiz Murat, Arat Orhan, Akay Mehmet, Serkan Karatash, Mustafa Aksa, Istek Arif, Chakir Fuat, Durujan Hayri, Kayghusuz Mustafa and others started employment activity in 29.09.2010, labor contract was not signed with them and “individual permission” for their employment activity in the country as migrant workers was got, they were not insured from unfortunate accidents despite of their particularly risky work. The employees provided with food of bad quality and with beds out of sanitary hygienic requirements, stroke individually in October 22, 2010, as their wages were not paid. However, “Istanbul Charshi Import & Export Ltd”, one of the contractors that carry out the construction, immediately fired the employees and rejected to let them to stay in the hostel. After all, the employees were deported from the country without payment.

Limitation of rights of civil servants to strike

Although the right of Civil Servants to join trade unions is reflected on the article 19.0.10 of the Law on Civil Service, the article 20.1.7 of the law prohibits “*participation at strikes and other actions violating the work of government bodies*”.

There is no provision on limitation of right of government employees to strike on the Constitution. In accordance with the Constitution, “military servants and civil persons serving in the Armed Forces and other armed units can not strike”.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance

The Article 38 of the Constitution of the country stipulates the right of social support for everybody. Relevant normative acts were adopted in the country on fulfillment of social support for everybody, as well as right of pension and other types of social insurance. However, problems of social protection system of the country were not completely settled.

The Law “On Labor Pension” adopted in 2006 broke a ground for fundamental changes in the pension system existed before. Thus, “solidarity system” existed by the time was replaced with “individual accounting system”. However practical problems of application of the law still exist.

High rate of number of those receiving pension compared with the country population, challenges in collecting payments by the state social protection fund caused consistent deficits of pension budget. Eventually, the Parliament of country made serious changes to the Law “On Labor Pension” in 2009.

The main changes are:

- Pension age for men will be increased from 62 to 63, 6 months every year in 2010 – 2012, for women from 57 to 60 increasing 6 months every year in 2012 – 2015.
- 5 year insurance experience required for receiving employment pension has been increased to 12 year
- Privileges of mothers with many children have been decreased.
- Under the article 10 of the law, a new formula is suggested for calculating employment pension²⁴.

²⁴ Existing pension system and reforms in Azerbaijan Republic. Authors: Gubad Ibadoglu, Fuad Rasulov, Galib Togrul

Changes to the Law on Employment Pensions are related to the lack of resources in state social protection fund. Non-formal labor market existing in the country, application of “dual accountancy” system in enterprises hinders enough resources to enter the fund.

Amount of minimum monthly wage and basic part of employment pensions were determined on September 1, 2010 for the first time, being increased up to 85 AZN.

The minimum salary is 93,5 AZN since December 1, 2011.

According to the accurately defined statistics for the beginning of 2010 in Azerbaijan, the number of persons receiving employment pensions is 1 million 308 thousand 432. Estimation of experts shows that the number of those receiving minimum wage and employment pensions is 1 million 500 thousand persons in the country.

Researches carried out by the Support to Economic Initiatives Public Union show that most part of the population is not able to get pension age, another part lives only 3 – 5 years over the pension age in the country.

“According to the information for January 1, 2009, total number of people at the age of 70 – 79 was 315,5 thousand. Birth date of people at these ages encompasses 1929 – 1938. According to the information provided by the official statistics, 967.1 thousand persons were born within that 10 years interval. It means that 651,5 thousand or 67,4 % of those born in 1929 – 1938 could not get to the age of 80. Otherwise, let us consider retirement eve of men and age interval (60 – 69) encompassing 5 year period after it. According to the information of January of this year, total number of people at the age of 60 – 69 was 356.4 thousand. Birth date of persons at these ages includes 1939 – 1948. According to the information provided by official statistics, 651,1 thousand persons were born within that 10 years interval. This means that 294,7 thousand or 45,3 % of those born in 1939 – 1948 have already died. Total number of people at the age of 55 – 59 was 304,1 thousand for the beginning of 2009. Birth date of these ages covers 1949 – 1953. According to the information of official statistics, at that 5 years interval 483,1 thousand persons were born in the country. That means 178,9 thousand or 37,1% of those born in 1949 – 1953 have already died. However 10 years ago – in 1999 76,6 thousand or 26,6% of people at the age of 55 – 59 died (let me note that 288,6 thousand persons were born in Azerbaijan in 1940 – 1944, 212 thousand persons from these ages died in 1999). As it seems, factor of death of sufficient young people and those from the same age group increased for 10% during the recent 10 years.”²⁵

The Law “On Labor Pension” excludes establishment of alternative pension funds and by this way, the State Social Protection Fund takes a monopolist stance in this sphere. Under the law “every person will not be given pension for his labor in the nearest future. Legislation, which is in force at present, no longer sets out opportunities to elderly unable – bodied people to receive pensions. Those working in abroad will be able to get pensions in case if Azerbaijan has an agreement on this matter with the country they work, those leaving for another country and changing their Azerbaijani citizenship will be deprived of these pensions. At the same time indexation of insurance part of pensions according to inflation will cause tensions as it is based on the budget. Legislation, which is in force at present, does not stimulate employers to pay social taxes right way”²⁶.

“Share of social protection and social support expenses is quite little in Gross Domestic Product of Azerbaijan compared with developed countries. As, analyses carried out by the Organization for Economic Co-operation and Development show that this indication fluctuate in the interval of 8 – 21 % in developed countries”²⁷.

²⁵ Rovshan Agayev. Deputy Chairman of Support to Economic Initiatives Public Union. Source. <http://sei.az/news-327.html>

²⁶ Existing pension system and reforms in Azerbaijan Republic . Authors: Gubad Ibadoglu, Fuad Rasulov, GalibTogrul

²⁷ Existing pension system and reforms in Azerbaijan Republic . Authors: Gubad Ibadoglu, Fuad Rasulov, GalibTogrul

Implemented pension reforms have not hit the goal yet – elimination of deep difference between pension amount and average monthly wage. Thus, “in accordance with the European Social Charter, minimum amount of pension should not be below than 40% of average monthly wage in the country. It should be taken into consideration that consistent increase of average monthly wage is observed in the country, and this, on its turn, impedes annual commitment of the Charter standards. In 2009, average monthly amount of pensions in the country made up 99,93 AZN, increasing for 5% and accounted for 34 % of average monthly wage in comparison with 2008. More serious measures had to be taken in order to bring this index to compliance with the requirements of the European Social Charter”²⁸.

Poverty reduction and provision of sustainable development

Within the recent years economic development taking place in the country and as a result of this increase in many times of the state budget created serious bases to eliminate the poverty and provision for sustainable development. Nevertheless the majority of adopted state programs aren't being completely and effectively realized.

With the decree of the President of the Republic of Azerbaijan there was approved the “State Program on socio – economic development of the regions of the Azerbaijan Republic for 2004 - 2008”. There were stipulated actions directed on strengthening economic development in regions as well as main directions of the state policy for coming 5 years in the Program.

The main purpose of the program is more to effectively use the potential of the regions of the country, increasing employment level of population and with this provision of dynamic development of economy of the republic.

There was approved the “State Program on poverty reduction and sustainable development in Azerbaijan Republic for 2008 – 2015” (SPPRSD) and Activity Plan (AP) (2008 – 2010) on implementation of the State Program with the decree No. 3043 of the President of the Republic of Azerbaijan dated to September 15, 2008.

The aim of both programs is minimizing the indicators of poverty through provision of development of regions and sustainable development. It's being observed that there were allocated a lot of funds from the state budget and State Oil Fund on execution of the programs.

For instance allocation of Addressed State Social Aid (ASSA) was as following:

There were allocated 39 million AZN²⁹ with this aim in 2006 from the state budget to ASSA, 78 million AZN in 2007, 127 million 500 thousand AZN in 2008, 180 million AZN in 2009.

There were allocated funds in amount of 182.3 million AZN in 2010 on social protection of refugees and Internally Displaced People from the state budget. 88.8 million AZN (48.7 %) of these funds was considered for pensions in a form of cash, 88.8 million AZN (48.7 %) for utility services of refugees and Internally Displaced People (gas, electricity etc) used by them with privileges, the rest 4.7 million AZN (2.6%) for expenses related to administrative and bank services payments.

The Citizens Labor Rights Protection League conducted monitoring of activities related to provision of addressed state social assistance and managing processes regarding this in 2009 – 2010 as a leading member of NGO Coalition (other members of the Coalition the Eurasian Lawyers Association, Constitutional Research Foundation, Azerbaijan Lawyers Confederation and Information and Cooperation Network of Organizations Combating Corruption) with financial support of the USAID within the project titles “Alternative monitoring of activities related to the

²⁸ Existing pension system and reforms in Azerbaijan Republic . Authors: Gubad Ibadoglu, Fuad Rasulov, GalibTogrul

²⁹ Existing pension system and reforms in Azerbaijan Republic . Authors: Gubad Ibadoglu, Fuad Rasulov, GalibTogrul

social assistance and stipulated on the State program on poverty reduction and Sustainable Development”.

As it was noted on the SPPRSD the addressed assistance to families is temporary support and it doesn't mean for people getting rid of poverty. From this point of view the number of recipients of the Addressed State Social Assurances (ASSA) had to be decreased as a result of implemented actions directed to poverty reduction and provision of sustainable development in the country. Implementation of ASSA program was launched in 2006.

So in 2006 the number of families determined by the ASSA was 48 705 persons, number of family members determined by the ASSA was 218 673 persons. In next 3 years these figures continued to increase. In 2007 the number of families determined by the ASSA was 145 907 persons, number of family members determined by the ASSA was 672325 persons, in 2008 the number of families determined by the ASSA was 163 409 persons, number of family members determined by the ASSA composed 749 965 persons.

As it is seen during the 3 years the number of families and number of family members receiving assistance has grown to several times. During the 10 months of 2009 these indicators made 132 471 and 601 444 persons correspondingly.

In a frame of decrease of poverty in the country by the years the increase of the amount of funding allocated for ASSA and the number of families is related with growth of consumption indexes. Thus while the consumption index was 35 AZN in 2006 this figure had been increased to 75 AZN in 2011.

At the same time during these years the average monthly amount of the ASSA assigned for family and family members was continued to increase. So in 2006 the average monthly amount of the ASSA per family was 44.28 AZN and average monthly amount of the ASSA per person was 9.86 AZN. In following years these figures were continued to increase. In 2007 the average monthly amount of the ASSA per family was 80.03 AZN, the average monthly amount of the ASSA per person was 17.38 AZN, in 2008 the average monthly amount of the ASSA per family was 100.96 AZN, the average monthly amount of the ASSA per person was 22 AZN and during the 10 months of 2009 the average monthly amount of the ASSA per family composed 111.8 AZN and the average monthly amount of the ASSA per person was 24.62 AZN³⁰.

For 2011 demand criteria for providing compensations on addressed state social assistance was determined as 75 AZN (93.75 US dollars).

In a background of the intensification of anticorruption actions in the country from the beginning of 2011 in determination and issuance of the Addressed State Social Aids the Ministry of Labor and Social Protection of Population made a number of positive steps. Social cards issued for provision of the Addressed State Social Aids are not provided through Social Protection Centers but via banks and this excludes previous negative practice (cases of withdrawing 50 % of amount from cards).

There was given start of concrete activities in direction of implementation of second action plan (for 2011 – 2015) of the state program on poverty reduction and sustainable development. Beginning from the second half of 2011 there was given start to the “self – support” program had been launched in 4 pilot regions. The main point of the matter is consisted of allocation of

³⁰ The Eurasian Lawyers Association, Constitutional Research Foundation, Azerbaijan Lawyers Confederation and Information and Cooperation Network of Organizations Combating Corruption. “Alternative monitoring of the activities related to social aids and stipulated on the State program on poverty reduction and Sustainable Development” (2009-2010). http://clrpl.az/upload/file/Report_monitoriq_ENG.pdf

appointed funds to the poor families and by this way to render them in assisting in creation of small entrepreneurship activities by them. The issued funding is donation and is not going to be returned. Civil society organizations on sites take active part in determination of the families to be provided with such assistance. Successful implementation of the program will give a chance to apply it through all over the country.

There was established a social council with representation of public representatives regarding the provision of control of civil society organizations over the activities of the Ministry in all direction. The Social Council carries out activity on the basis of special regulations. The Public Council is consisted of the representatives of reputable NGOs of the country, Ombudsman etc.

The Ministry didn't have the official web page for a long time. The Ministry presented the official web page in 2011. The web portal was provided with necessary information and mainly meets the requirements of the Article 29 of the Law on access to information.

Provision of social rights of Internally Displaced People

The official information shows that the social problems of Internally Displaced People are gradually reduced. In accordance with the "State Program on Poverty Reduction and Sustainable Development for 2008 – 2015" approved by the decree No. 3043 of the President of the Republic of Azerbaijan dated to September 15, 2008 and the Action Plan related to the implementation of the mentioned State Program and the "State Program on increasing employment and improving living conditions of internally displaced people" approved by the Decree No. 298 of the President of the Republic of Azerbaijan dated to July 01, 2004 including the "Amendments" to this State Program approved by the Decree No. 2475 dated to October 31, 2007 by the President of Azerbaijan republic, the State Committee on IDPs and Refugees together with other governmental agencies regularly implement the activities related to provision of job opportunities to IDPs and reducing the level of poverty among them.

In general, the 36,2 % of the able – bodied internally displaced people (292 771 persons) which covers 106 786 persons were provided with the permanent job places. 59,1 % (173 072 persons) has chance to find seasonal work in villages related mainly with agricultural activities and other areas.

13250 persons were employed in 2008 – 2010, including 7598 persons were self – employed at the expense of allocated land parcel, 126 persons employed in the local structures of Housing Department of the State Committee on Refugees and IDPs, 150 persons employed in bee – keeping, 340 persons in the processing factory of "AzerSun Holding", 1752 persons employed in construction companies, 3284 persons employed with the help of the Ministry of Labor and Social Protection of the Population and its local structures.

In order to create job opportunities for IDPs approximately 50 thousand hectares of municipal land were allocated for being temporarily used by the Internally Displaced People. There was created 760 farms where 45 thousand IDPs had chance to get employment. At the same time the corresponding government agencies helped to establish 7 industrial factories and 7 agro – industrial enterprises in the newly established settlements. About 1500 IDPs had chance to get employment in those enterprises.

Sewing workshops were established in the new settlements constructed for IDPs in Sabirabad and Bilesuvar regions and 34 internally displaced persons were employed.

80 shops, 4 bakeries and furniture workshops were established in the settlements and 115 IDPs were provided with jobs.

In the settlements located at the territory of Agdam region, IDPs established car repair and leather manufacturing workshops and haircut saloons where 279 people were employed.

IDPs planted grain crops in 86 618 hectares of land and produced 173010,8 tons of grain in 2009. At the same time IDPs succeeded to produce 161582,8 tons of wheat and 11428 tons of barley.

In order to decrease the level of unemployment the National Fund of Assistance to Entrepreneurship issued tax credits to IDP entrepreneurs, farmers to establish small processing enterprises (in order to develop grain – growing, vegetable-raising etc), sewing and other workshops in the areas densely

populated by internally displaced people (Agjabedi, Bilesuvar, Saatli, Sabirabad, Shirvan, Mingechevir, Sumagyt). The National Fund of Assistance to Entrepreneurship issued tax credits in 2007 for financing 9 investment projects in amount of 329,7 thousand AZN, 24 investment projects in amount of 319,0 thousand AZN in 2008 and 195 investment projects in amount of 569,5 thousand AZN in 2009. It was planned that 348 new jobs will be opened at the expense of the mentioned projects. There was allocated funds in amount of 335,507 US dollars in 2008 on the project titled “continuation of small and medium entrepreneurship” implemented by the Representative office of the “Denmark Refugees Council” international humanitarian organization in Azerbaijan in Aghdam and Fuzuli regions funded by “Statoil Hydro” company. There was created 230 jobs in 37 small enterprises established in newly established 31 settlements and 6 villages in the territory of Aghdam and Fuzuli regions within the same project during 2007 – 2008.

269 various community – based micro – projects were implemented in 2004 – 2009 with the credit allocated by the World Bank to the Fund on Social Development of IDPs (the total cost of the micro – projects was *15,9 million USD*).

Approximately 163 thousand people benefited from micro – credit projects. 80 % of beneficiaries of micro – credit projects constituting 130.4 thousand people are IDP.

For the moment, at the expense of joint funds of World Bank and the government of Azerbaijan several IDP related micro – credit projects are implemented in various cities and regions of Azerbaijan (the total cost of these micro – projects is *2,1 million USD*). More than 5 thousand persons received micro – credits in 2004-2009 to manage small entrepreneurship. More than 15 thousand people benefited from micro – credit programs. *60% of beneficiaries, which means 9 000 people were internally displaced persons.*

74617 refugees and IDP were provided with jobs as a result of implemented activities during the recent 6 years and the level of poverty among them decreased from 74 % to 25 %.³¹

Although the official reports are showing the improvement of social conditions of IDPs, the monitoring conducted by the NGO Coalition showed existence of serious problems related to this group of population. The main one of them is related with restriction of access of IDPs to the labor market. The main reasons of these are the followings:

- The number of jobs in the areas of densely settlement of IDP is limited. New employment places created by the government can meet a small part of the need.
- Majority of IDPs are rural population and traditionally used to work in agriculture and has no any other profession and specialty. Implemented actions in a way of changing specialty or using short term education modules giving new specialty or profession for such people are limited.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

³¹ The Eurasian Lawyers Association, Constitutional Research Foundation, Azerbaijan Lawyers Confederation and Information and Cooperation Network of Organizations Combating corruption. Report on monitoring the activities addressed to solve the social problems of refugees and Internally Displaced People. Baku 2010. http://clrpl.az/upload/file/Monitoring_ENG.pdf

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labor should be prohibited and punishable by law.

There is a specialized central executive power body in Azerbaijan Republic dealing with the family, woman and children problems.

There was established the State Committee on Woman Problems with the Decree of the President of the Republic of Azerbaijan dated to January 14, 1998. The Committee conducted expedient activity in a way of solving the problems existing in this field during the period of its activity. However the necessity of fast solution of children and women problems along with family issues caused to establishment of the united state body. In regards with this there was established the State Committee on Family, Women and Children's Problems by the Decree of the President of the Republic of Azerbaijan dated to February 6, 2006. The State Committee of Azerbaijan Republic on Family, Woman and Children's Problems is the central executive authority body on implementing the state policy and regulating the work in the field of family, women and children's problems³².

There was founded and conducted activities by a number of NGOs in various spheres with the aim to protect women's interests and agitation. The number of such organizations in the country is equal to 105. Despite the variety of directions of their activity they consider solution of women's problems as priority and there is a word including sexual belonging (as a rule) in their names. However these organizations carry out activities in a way of protection of human rights, environment, peace and safety, humanitarian and interests of definite groups of women possessing certain professions etc.³³

Azerbaijan Republic ratified the UN Convention on Children's rights. There was adopted a separate Law regarding the children's rights. A number of clauses directed on provision of children's rights were reflected on the other Laws and normative legal documents.

There are organizations protecting interests of definite group of children in the country with the aim to provide participation of civil society organizations in solution of problems related to children.

There is a successful cooperation between specialized Non – Governmental organizations and corresponding state bodies. Majority of these organizations receive grants from the State NGO Support Council under the President of Azerbaijan Republic.

Marriage rights

In accordance with the Article 10 of the Family Code the minimal age limit to get married for men determines 18 and for women 17. With the consent of the local executive authority bodies in exceptional cases this age can be decreased to 1 year. The persons reaching this age on the basis of the written consent apply to specialized state body to get married. The non – imperative marriage agreement institution is also stipulated on the Code. But in practice signing of such

³² Source: http://www.scfwca.gov.az/az/about_the_committee/general_information/

³³ The State NGO Support Council under the President of the Republic of Azerbaijan. The National Report on the NGO Sector in the Republic of Azerbaijan. Baku-2010. <http://www.cssn.gov.az/en/book/hesabat%201.pdf>

marriages are not happened so often. At the same time there is also non – imperative institution of religious marriage. This marriage is signed by the religious officials. This marriage doesn't lay any liabilities on parties. But in practice there are cases of establishment of family only on the basis of the religious marriage. This is mostly applied in cases when youngsters establish a family violating demands of the Law. Despite on serious efforts of the state bodies and civil society organizations the number of such marriages is not decreased and it has a lot of negative consequences.

Non Governmental Organizations engaged with protection of human rights insist that there were more than 10 thousand early marriages had been registered in the republic and their number is growing year by year. There was observed a growth of cases of early marriage among 12 – 16 years old girls over the recent years during studies conducted by various social organizations in southern regions. It became clear that these girls have primary education only during revealing these facts most of which occurred in Jalilabad and Masally regions”³⁴.

Early marriages can be considered as a serious social problem in the country. So there are problems with registration and access to the medicine of children born as a result of such marriages. Upon early marriages cases divorce indicators are on high level. The majority of girls to be involved in the early marriages can not get the secondary education. There are also serious medical consequences of early marriages.

There are issues of signing marriage contract between pairs before marriage, demanding health certificate from them are in the list of changes offered to be made to the Family Code at the present.

The criminal legislation of the Country equalized abducting (kidnapping) of girls against their will to the kidnapping and considered as a grave crime.

State support in upbringing children

In regards to birth of a child the State Social Protection Fund gives lump sum allowance. Besides on the basis of resources of the Fund “the working women are granted to be paid maternity leave for a period of 126 calendar days for the pregnancy and post – pregnancy periods (70 calendar days before the birth of child and 56 calendar days after child is born). In case of complicated birth, at birth of two or more children, afterbirth maternity leave is granted for a period of 70 calendar days.

Women directly working at the agriculture production grain – growing, cotton – growing, vine – growing, tobacco – growing, tea – growing, vegetable – growing, water – melon, fruit – growing, potato growing, forage, young plant, dairy, pig – breeding, sheep – breeding, poultry keeping, horse – breeding, silkworm breeding, bee – keeping, fur trade and gardening for the pregnancy and childbirth is granted maternity leave on the following periods:

- 140 calendar days for normal childbirth (70 calendar days before the childbirth and 70 calendar days after childbirth) ;
- 156 calendar days at complicated childbirth (70 days before the childbirth and 86 days after childbirth);
- In case of birth of two or more children 180 calendar days (70 calendar days before childbirth and 110 days after childbirth)”³⁵.

³⁴ Source: http://www.gewi-az.org/Hesabtar_neshrler/alternative_report_CEDAW_GEWI_AZ.pdf

³⁵ Source: http://www.ssp.gov.az/upload/file/qanunvericilik/nazirler_kabinetinin_qerarlari/qerar_189.DOC

In accordance with the Labor Code before one child reach 3 years old the parents (or relative determined by them) can use the right on partial paid vacation. But in this case payment is symbolic and provides only the right on keeping job.

However the women who are participants of the non – formal labor market are deprived to use the right for the above mentioned privileges. So in order to not to make official labor relations with such employers they don't involve in compulsory social insurance and thus lose the rights to receive allowance.

There weren't stipulated any privileges in upbringing children of poor families. Such families have right to receive addressed state social assistance. But a lot of serious bureaucratic obstacles and corruption prevent to carry out this right.

There have not been stipulated any assistances from the government to young families. Although there was conducted the social mortgage program to get apartments within the recent years to benefit from this program is quite complicated in practice. Nevertheless within the social mortgage program it was allocated to the Mortgage Fund resources in amount of 56 million AZN.

Use of child labor

One chapter of the Labor Code dedicated to the peculiarities of recruiting women and children. In accordance with the Labor Code it is prohibited to recruit children under the age of 15. It is demanded consent of their parents or guardians to recruit the children over the age of 15.

The short – term working regime for children is determined on the Code. It is also stipulated on the Code a number of privileges (also with keeping the wages at the expense of the employer to improve professional skill) for working children. In accordance with the amendments included in the Constitution of Azerbaijan Republic in 2009 through the referendum it is prohibited to recruit children under the age of 15.

In 90th of the last century cases of recruitment of children in private sector were quite high. Unofficially children were mostly recruited to the commercial, catering and transportation fields. Recruitment of children is relevantly decreased at the present. The cases of illegal recruitment of children to beggarliness and catering sector are observed at the present.

Cases of recruitment of children in family farms also take place in agriculture. In general exploitation of children's labor doesn't carry massive character.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programs, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

One of the strategies on the “State Program on Poverty Reduction and Economic Development in Azerbaijan Republic for 2003 – 2005” on poverty reduction was carrying out reforms on replacement of social aids with addressed social assistances stipulated for unsecured part of the population.

Determination of Addressed State Social Assistances is stipulated as an action directed to temporary support of poor levels of the population.

Information is provided on the other parts of the report regarding the determination and issuance of Addressed State Social Assistances. Nevertheless it should be noted that existence of serious distortions and corruption cases in issuance of the aids in 2006 – 2010 didn’t have serious effect. From the beginning of 2011 a new level in anticorruption actions in the country intends to improve the situation in a way of determination and issuance of the addressed state social assistances.

However, the state bodies indicate decrease of level of poverty in the country every year. So in accordance with the official statistics in 2001 poverty rate in Azerbaijan was 24 AZN and poverty level was 49 % (table 1). Casting a glance at the statistics over the recent 8 years regarding this field it became clear that these figures were 89,5 AZN and 11.0 % correspondingly in 2009. Poverty limit in comparison with 2001 increased for 65,5 AZN (3,28 times) in 2009 and poverty level went down to 38 %.

At the beginning of 2010 the poverty level in Azerbaijan constituted 10,9 %. It was determined as a result of conducted surveys by the State Statistics Committee in Baku and regions by the method of representative choice in 4250 housekeeping units³⁶.

Table 1. *Poverty level in Azerbaijan Republic*³⁷.

	2001	2002	2003	2004	2005	2006	2007	2008	2009
Poverty limit, AZN	24,0	35	35,8	38,8	42,6	58	64	78,6	89,5
Poverty level, In percentage	49,0	46,7	44,7	40,2	29,3	20,8	15,8	13,2	11

The main indicator characterizing poverty limit in Azerbaijan is covering minimum consumption need of the population (physiological minimum, minimum budget for material provision) is considered as the amount of income and calculated taking into account the following indicators:

- number of population with income less than living wage (housekeeping and families);
- poverty coefficient (proportion of poor families (housekeeping and families) to generally determined population (housekeeping or families);
- nominal and real per capita incomes of population living below the poverty level (housekeeping and families), population with the income below the median and average amount of income (housekeeping and families), 10 % and 15 % the poorest population (housekeeping and families);
- Changing index of nominal and real per capita income of families in need (housekeeping and families) in accordance with time;
- negative growth of per capita incomes in housekeeping and number of families and relative measures at inspection;
- Comparison of minimum incomes and living wage³⁸.

³⁶ Economic Researches Center. Addressed state social assistance: evaluation of existing situation and problems of transition to the social rehabilitation

³⁷ **Source:** Report about activity of the Cabinet of Ministers of Azerbaijan Republic for 2009

Alternative analyses in determination of poverty indicators point at existence of poverty in the country on high level.

There was adopted the Law of Azerbaijan Republic “on living wage” on October 5, 2004.

The “content of minimum consumption basket” in Azerbaijan” came into force corresponding to the requirements of the Law “on living wage” by the decree No. 118 of the Cabinet of Ministers dated to June 23, 2005.

The “State Program on poverty reduction and sustainable development in Azerbaijan Republic for 2008 – 2015” (SPPRSD) and the Action Plan (AP) (2008 – 2010) were adopted to implement the above mentioned State Program by the decree No. 3043 of the President of the Republic of Azerbaijan dated to September 15, 2008. The Program states due to high level of the poverty risk of the “Population at able – bodied age” (being at retirement age the risk is higher) the existence of housekeeping and individual employment can not sufficiently protect from the poverty. From this point of view it is important to provide high income of employment and make it efficient in order to develop high value added tax spheres and replace incomplete employment of wide mass of population by complete efficient employment”³⁹.

Food safety

In accordance with the official information food production produced in the country cover up to 60 – 70 % of total demand. But this information doesn’t reflect the reality. There was adopted the program on food safety in the country. In case of emergency situations with food supply of population there is a special agency conducting activity under the Ministry of Emergency Situations.

Provision of population with places of residence

In accordance with the Article 43 of the Constitution of Azerbaijan Republic “the government gives consent to build dwelling houses and houses, takes special measures to realize people’s rights for apartment.

In accordance with the Apartment Code there are state, municipal and private apartment funds. The government keeps records of apartment fund.

In accordance with the official statistics for 2008 the state apartment fund was consisted of 1 500 000 apartments. This means that 180 apartments for 1000 people. Living space of 40 % of urban population is less than 10 square meters. In accordance with the information of the Assistance to Economic Initiatives Public Union 300 000 persons of population of the country live in hostels, 200 000 persons live as tenants⁴⁰.

During Soviet Union apartments in Azerbaijan were given on the basis of regular succession. Apartments were provided through local executive bodies at the expense of government and enterprises, partially by the housing fund of cooperatives.

However in the years of independence such succession was liquidated. Supply of apartments to population by the government, municipality and enterprises is quite low at the present. There are cases of provision of apartments only for some categories (invalids, veterans of war, refugees and Internally Displaced People).

The statistics of provision of apartments by the Ministry of Labor and Social Protection of Population by the years is as following:

³⁸ Economic Researches Center. Addressed state social assistance: evaluation of existing situation and problems of transition to the social rehabilitation

³⁹ State Program on poverty reduction and sustainable development in Azerbaijan Republic in 2008 – 2015

⁴⁰ Source: <http://www.monitoring.az/public/print.php?lngs=aze&ids=987>

561 apartments – during 1998 – 2002
3624 apartments – during 2003 – 2010
715 apartments – during 2010
226 apartments – during 2011

Provision apartment to the employees is continued by a number of organizations.

House – building is basically carried out by private organizations at present and there is a sharp difference between their sell prices and real incomes of population.

Nevertheless the parliament moved forward the initiative to adopt a program regarding the provision of population with apartments.

In accordance with the Law the aliens and stateless persons have right to get apartments in the country.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

The Articles 39 and 41 of the Constitution of the Republic of Azerbaijan stipulates the right of anyone to live in healthy environment and to protect his/her health.

There was created corresponding legislative basis and ratified appropriate international norms in the country with the aim to provide these provisions of the Constitution.

As medical facilities belonging to the government are financed from the state budget the medical aid in these facilities are free of charge.

Nevertheless in reality all medical services are provided for money. Medical sector is one of the corrupted sectors of the country. There are unofficial rates for the medical service in the country and prices on these rates higher than official prices determined on the basis of medical insurance in a number of Eastern European countries.

Nevertheless within the anti – corruption measures started to be executed at the beginning of 2011 unofficial payments on some medical services have been stopped.

Nevertheless “along with the state medical facilities the private clinics also began to render a service to population. All of these innovations have created definite problems. But not all citizens can use the right of free service. The material and technical base at the hospitals and polyclinics belonging to the government is also weak. There are following negatives: service fee in the private clinics more expensive, non – application of general criteria during determination of the prices and other negative cases during determination of the prices. Problems like not giving any guarantees during treating patients and giving wrong diagnosis are problems to be solved”⁴¹.

⁴¹ **Economic and Social Development center.** Apily of Compulsory Medical Insurance as a Main Element in Development of Medical System. Baku 2009

In accordance with the studies of Centre of Economic and Social Development from 2003 to 2008 the stated budget increased to 10 times and funds from the budget directed to medical sector increased for 6,3 times.

While in 2000 40.9 million AZN allocated from the budget to the medical sector was making 5.4 % of general expenses, in 2008 this figure increased to 332 million AZN. However the share of the healthcare in general expenses is reduced to 3.9 %. Only in 2004 – 2005 this indicator was in the level of 2000. In the rest years there was observed a reducing trend.

Expenses allocated from the budget to the healthcare was 42 million AZN in 2001, 44.8 million AZN in 2002, 55.3 million AZN in 2003, 73.5 million AZN in 2004, 115.3 million AZN in 2005, 162 million AZN in 2006, 257.2 million AZN in 2007. But this growth especially didn't reflect on the wages of health care workers. One amendment is a growth of centralized expenses. The big part of healthcare expenses in 2006 was directed to local expenses. Only 30 % of centralized expenses were kept in connection with problems of medical field. But at the present the centralized expenses make 60.9 % of funds allocated to healthcare and it means two times reduction of funds allocated to healthcare service.

If there were spent 4.1 million AZN to the repair and building of medical facilities in 2005 this figure was 20.5 million AZN in 2006 and 58.4 million AZN in 2007. There was allocated at a rate of 61.1 % which is 91.9 million AZN in the state budget to the healthcare expenses on the labor payment in 2006.

It's important to increase the wages in a number of sectors. One of such sectors is the healthcare. At present healthcare sector has the lowest indicator among the sectors financed from the state budget. The average wages here vary between 90 - 100 AZN⁴².

Problems of transition to medical insurance system

Despite the adoption of the Law in 1999 on compulsory medical insurance its application is not carried out. The availability of the free of charge state medical system is mentioned as a main reason of this. "In accordance with the studies related to expenses on a healthcare in the country the arguments that population is not ready to transit to the medical insurance system are false. So despite the existence of free of charge service in polyclinics or hospitals financed by the state budget in most cases citizens anyway pay for that non – official fee. As a result of studies became clear that 75 % of payments for medical services population make from their own pocket. 5 % of it are legal, 70 % are illegal payments. The government pays only 25 % of medical expenses. In such case the legalization of payments made by citizens for their health may bring much more profit to the budget"⁴³.

From the January 2011 by the reason of industrial accident or professional disease it is started the application of the Law on compulsory medical insurance. But this shouldn't be accepted as a transition to the compulsory medical insurance system.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

⁴² **Economic and Social Development center.** Applying Compulsory Medical Insurance as a Main Element in Development of Medical System. Baku 2009

⁴³ **Economic and Social Development center.** Applying Compulsory Medical Insurance as a Main Element in Development of Medical System. Baku 2009

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;**
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;**
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;**
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;**
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.**

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

In accordance with the official statistics of 2010 – 2011 academic year the number of existing general education schools in the country were 4539 and 4522 of them are state general education schools, 17 are non – governmental general education schools. The total number of pupils studying in these schools is 1327532 persons and 1321091 persons from them are pupil studying in state general education schools and 6441 persons studying in non-government general education schools⁴⁴.

Within the recent few years there have been conducted special measures directed to growth of a number of general education schools, reconstruction and supply of them. In accordance with the official statistics “provision of general education schools with information – communication technologies have been ensured”. 82% from more than 4500 secondary schools were provided with computer equipment during 2005 – 2009. In accordance with the information for 2008 there is one computer for 29 pupils on average on 5 – 11 classes in general education schools. Over the recent 3 years 12232 teachers passed special preparation courses on information and communication technologies and this makes 7 % of pedagogical personnel. Nevertheless official bodies acknowledge that although today the coefficient with supply of computers in secondary school is high there are serious problems in the field of effective use of ICT equipment. Especially absence of the technical control system over computer equipment in villages and regions restricts chances effectively benefit from resources of the digital education. The position of the Ministry of Education is as following: one of the main factors preventing wide use of ICT in education process is weak development of the digital infrastructure, lack of coverage of education facilities in sufficient level with the intranet network inside of the country and lack of provision of high – speed internet connection. So at the present approximately 3 % of the secondary education schools of the republic have chances to access the internet⁴⁵.

⁴⁴ Source: http://www.edu.gov.az/print_preview.php?lang=az&id=360

⁴⁵ Source: <http://edu.gov.az/view.php?lang=az&menu=83&id=599>

Official structures note that at present there are quite serious problems in the field of provision of pedagogical personnel in the network of general education schools in Azerbaijan. In accordance with the same information from 4546 general education schools of the country there is a need in personnel in 2128 (46.8 %) on various pedagogical specialties. In the network of general education schools there is a need for 6774 people for personnel on various pedagogical specialties. 842 of them (12.4 %) on Azerbaijan language and literature, 803 persons (11.9 %) on foreign languages, 680 persons (10.0 %) history, 631 persons (9.3 %) geography, 562 persons (8.3 %) chemistry, 505 persons (7.5 %) mathematics, 479 persons (7.1 %) physical training and on other specialties. 8.4 % of pedagogical personnel need (571 persons) to be included to the share of city schools and 91.6 % (6203 persons) are on the share of the province schools. By the reason of lack of the personnel today in 469 schools of the republic foreign language is not being taught and in fact pupils completely deprived from the chance to get knowledge on that subject. At the same time at present in 1748 schools of the republic more than 54 thousand hours on 14 subjects of teaching load is been taught by 4956 persons from non – professional personnel⁴⁶.

Higher Education

Start of applying in 1993 the two – stage high education (bachelor and masters study) is one of the important events in the history of education of Azerbaijan. First time ever in 23 high education facilities were conducted student's admission on 80 directions and more than 300 specialties on bachelor degree. During the recent years there were happened fundamental changes and renovations in the content of the bachelor education. So existing rules were improved, there was created standards meeting requirements of the world education system, there was started the application of credit system in teaching⁴⁷.

51 official high schools conduct activity in the country at the moment. Nevertheless it should be noted that none of these high educational institutions can take any place in rating composed by various organizations around the world. This is an indication of the fact that high educational system in the country is imperfect and doesn't meet modern international standards.

It is conducted the state program for students to study in high educational system of foreign countries at the present. In accordance with this program at the expense of the government for the part of students is organized study in reputable educational institutions of foreign countries. It should be noted that there is no transparency in selection and sending processes of students to study in foreign countries.

Education of the ethnic minorities, aliens and stateless persons

There was provided the rights for nations living in the country for free compulsory education on their native languages. There are general education schools teaching in the native languages of that people at the territories where ethnic minorities live. It has been conducted production of the text – books for ethnic minorities and free distribution of it among pupils. Problems existing in such educational institutions are problems connected with the problems in general education system and can not be evaluated as a result of any discrimination. There were made amendments to the legislation to provide children of aliens and stateless persons permanently living in the country with free of charge compulsory education. There have been recorded problems in accessing the education of children of illegal migrants.

⁴⁶ Centre on Assistance to Economic Initiatives. Comparative researche of the secondary education system in Azerbaijan with South Caucasian, Batic and Eastern European countries. http://sei.az/upload/files/education-report_last.pdf

⁴⁷ Source: <http://www.edu.gov.az/view.php?lang=az&menu=110>

Corruption in education

Corruption in high, vocational and secondary education system is quite high. Beginning from 1992 student admission to the institutions giving high and vocational education was carried out through single test examination. In 1992 the students admission has been started to be carried out by the specialized state body - The State Students Admission Commission. Although test examinations were carried out comparatively fair during the recent few years there was formed social opinion regarding the corruption in students' admission.

The chairman of the Ana Vetən Party close to the authority MP Mr. Fazail Agamali speaking on the Parliament session dated to March 15, 2011 accused SSAC (The State Students Admission Commission) in corruption. He stated in his speech: "In its explanations to media and statements SSAC informed that education in secondary schools is in very low level. Constantly they claim that every year the level of education in secondary schools is lower and marks in the certificate do not properly reflect pupil's knowledge. How can it be that the same pupils later enter the high schools? And after graduating from there they work at the state institutions including engagement with pedagogical activity in High schools? This is not inexplicable. There are bribery cases in SSAC. Every year by the line of the SSAC students are accepted to the faculty of law in BSU (Baku State University) and Medical University. These students paying bribe in amount of 100 – 150 thousand AZN are admitted"⁴⁸.

In all secondary schools tutorship is widely developed. Outside the lesson time teachers taking big money prepare pupils to the admittance to high and vocational schools. A lot of school directors unofficially lease the classrooms to the teachers.

There are widely spread bribery cases to pass an examination at the examination sessions to high schools. In private High Schools rectors of such schools by various names collect fees from students (there were determined payment for the fine exam 100 US dollars and for repeated exam 400 US dollars in some private High educational Schools).

One of the main reasons of existence of corruption cases in education is the low wages of teachers. Despite there was existed dynamic for years in growth of wages in accordance with the official statistics the average volume of the wages paid to teachers increased from 51 AZN in 2004 to 265 AZN in 2010. But on the background of increase of prices in consumption market and high tempo of inflation growth the wages didn't bring serious changes to teachers' welfare.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

In the field of ensuring the cultural rights the policy and activities carried out by the government of Azerbaijan were completely reflected on the 3rd periodic report submitted by the government

⁴⁸ Source: <http://www.pia.az/index.php?l=az&m=news&id=8516>

to the Committee. The issues mentioned on the report in most cases reflect the reality. Nevertheless in addition the Citizens Labor Rights Protection League notes the followings.

Serious problems in a way of protection of intellectual property and copyrights in the country are still remained. All the measures directed to prevention of violation of copyrights including administrative and criminal prosecution for piracy and violation of copyrights do not yield serious outcomes. There was adopted the “**Law on Copyrights and related rights**” in the country. The specialized state body the Agency of Copyrights conducts activity regarding the copyrights. On September 30, 2005 Azerbaijan ratified the Treaty on World – Wide Copyrights. In accordance with the information given by this agency the infringements of copyrights is widely spread inside of Azerbaijan. Litigations are often conducted regarding this. The Agency on Copyrights was represented on 168 hearings of the Court during 2003 – 2008 and issued 60 experts’ references in general.

Cultural rights of ethnic minorities

There have been established cultural centers of ethnic minorities living in Azerbaijan in 1992. Inside of them there were created cultural centers of kurds, talish, lezghins, jewish, russian, mesheti turks and other peoples. These centers were provided by the government with offices at present to conduct activity as Non – Governmental Organizations. Also these centers get grants from the State NGO Support Council under the President of Azerbaijan Republic to implement activities.

Registration of print Media in the country has been simplified. Any legal of physical entity submitting information to corresponding state body can establish newspaper or magazine.

From this point of view people living in the country has newspapers and magazines on their native languages. Despite the equal conditions market relations do not create conditions for development of print media published on national languages. Sale of newspapers published on national languages is weak and is not of interest of advertisers. Nevertheless the State Media Support Fund established under the President of the Republic of Azerbaijan at present allocates grants to finance print Media. Establishment of electronic Media including radio and TV is a little bit complicated and licensed by the specialized state body. Nevertheless few regional TV channels carry out activity in the areas of compact settlement of ethnic minorities. Broadcasting on republican wide Public Television and Radio dedicates the important part of the programs to the propagation of the culture of people living in the country.

RECOMMENDATIONS

Anyone living in Azerbaijan has rights to use both regional and universal international mechanisms in case of violation or likely violation of his/her fundamental right and liberty. These are the European Court on Human Rights, the UN Human Rights Committee, the Committee against Tortures and other Committees. But there are no chances to use international mechanisms in case of violation of economic, social and cultural rights and impossibility of provision through the means of mechanisms inside the country protection of these rights. Although Azerbaijan ratified a number of Articles of the re-considered European Social Charter it has not joined to the collective complaint procedure.

In such case it is quite necessary for Azerbaijan to join to the Facultative Protocol of the UN International Covenant on Economic, Social and Cultural Rights.

There have to be made serious amendments and changes to the Labor Code. These are going to be:

Regarding the rules of solution of Collective Disputes

Chapters 40, 41, 42 and 43 of the Code should be processed again and conformed in line with the state Constitution. Procedures and regulations for moving forward by workers Collective Claims should be simplified. At the same time it should be included into the Code the mechanisms providing the right to move forward claims not only by the whole collective but even by the part of it and right to strike.

In connection with the structures solving Labor Arguments

- It should be reflected as an important condition in the Labor Code the establishment of structures considering labor disputes on the court, it should be indicated on the code concrete regulations and mechanisms of establishment of such a structure.
- In case of impossibility of establishment of such a structure in small enterprises and low staff entities there should be stipulated regulations and mechanisms of establishment of the structure on the code considering labor disputes. Responsibility on establishment of such a structure should be laid on the State Labor Inspection.
- It should be determined the additional guarantees for workers striking independently. It should be prohibited making answerable of workers for the discipline reproof striking independently in accordance to the legislation.

Regarding the regulation of labor relations with workers of special category

- Stratification of population, growth of number of people with wide potential and financial resources caused to increase of number of workers of special category in the country. At present the number of servants, nurses, private drivers, guards of private property and other category workers is increased in the country. But legislation doesn't concern in generally for such category of workers. Taking into account the features of the labor activity of such category of workers it should be stipulated on special chapter on the Labor Code. Insurance, protection of labor and health and other problems of such category of people attracted to the hired work should be regulated on the legislation. It's possible to say that there are no cases of creation of official labor relations with people being engaged with such work in practice.
- There should be stipulated a special chapters on the Labor Code for work places which impossible to regulate by general regulations reflected on Labor relations of the Code. These chapters should be named "features of regulation of labor relations in NGOs", "features of regulation of labor relations on Media" etc.

Regarding the payment of labor

- There should be established state control and guarantee regardless the property form for minimal labor payment in all work places. Nobody ought to stay without payment for the work done.
- The government should refuse from the minimum wages system used as normative basis in labor payment and instead of this should apply **minimum hourly salary payment system** considered as new **social standard**. There should be taken into account the **minimum living wage** of able – bodied people during determination of the minimal hourly payment.