

## “RESONANS” PUBLIC UNION OF YOUTH

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### ALTERNATIVE REPORT

#### on the Convention on the Rights of Persons with Disabilities

#### *(Under Articles 13, 24, 25, 27, 28 of the Convention)*

“Resonans” Public Union of Youth (the “Union”) has been founded and registered in 2007. The purpose of the Union is to protect the rights of young people, including young people belonging to vulnerable groups, to promote their better integration into society, and to support them.

The Union has so far promoted social rehabilitation of young people, healthy lifestyles, public participation, open government, etc., and implemented 16 projects related to the mentioned areas. It has held about 100 trainings, seminars, round tables and conferences on these projects, and has prepared 7 publications, 5 reports and proposals, and therefore, has experience in the field of legal education and research. In addition to these, the Union has participated as a partner in the implementation of a number of projects with several public associations.

At the same time, Orkhan Bashirli, who prepared this Alternative Report, has a higher legal education and a master’s degree in international and European Law. Until now, he has participated in a number of projects in the field of legal education, provision of free legal aid and conducting legal analysis, including the preparation of the Alternative Report to the fourth periodic report submitted by the government of Azerbaijan to the UN Committee on Economic, Social and Cultural Rights.

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## General information

According to the official data of 2023, there are 488,774 persons with disabilities in Azerbaijan, and 46,654 of them are children with limited health conditions under the age of 18. In 2023, 56,700 people have been assigned a disability, and 15% of them are children with limited health conditions. 19,720 people have been given initial disability and 37,180 people have been re-appointed disability.<sup>1</sup>

The Republic of Azerbaijan has ratified more than 60 international conventions and other international legal acts. Under the international legal acts to which the state has joined, it has undertaken obligations to guarantee human rights and freedoms for all people, including persons with disabilities, in the same manner. The legal basis for the rights of persons with disabilities in the country is the Constitution of the Republic of Azerbaijan (Constitution), international legal acts to which the Republic of Azerbaijan has joined, and other relevant normative legal acts.

According to the Constitution, the State of Azerbaijan takes care of improving the welfare of the people and every citizen, its social protection and a decent standard of living (Article 16). It also states that those with limited health capabilities enjoy all the rights established in the Constitution, except for the rights and duties that are difficult to implement due to their limited capabilities (Part IV of Article 25).

After the Constitution, the main regulatory legal act in this field is the Law “On the Rights of Persons with Disabilities”. This law regulates the main issues such as the foundations of the state policy regarding persons with disabilities and the duties of the state in the field of protection of their rights, the elimination of risks that cause disability, all forms of discrimination based on the sign of disability, the rehabilitation of persons with disabilities, their full participation in the life of society and the creation of conditions for their social integration, active involvement in the decision-making process regarding relevant strategies and programs, full and equal implementation of the rights and freedoms of persons with disabilities, etc. The law also provides for the basic principles of the state policy for persons with disabilities, the basics of the legal status of persons with disabilities, the criteria for determining disability, the rehabilitation and development of persons with disabilities, accessibility for persons with disabilities, as well as their education, employment, and participation in political life and justice.

In addition to these, a number of normative legal acts regulating the rights and freedoms of persons with disabilities, including the Civil, Family and Labor Codes, the Laws “On Protection of Health of Population”, “On Social Services”, “On Social Allowances”, “On

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<sup>1</sup> <https://stat.gov.az/>

Compulsory Medical Insurance”, Rule for “Disability Assessment”, Criteria for “Determining Disability”, Regulation on “Standards of Specialized Workplaces for Using the Labor of Persons with Disabilities”, relevant normative legal acts of the President of the Republic of Azerbaijan and the Cabinet of Ministers are in force.<sup>2</sup>

Rights and freedoms established by legislation are exercised and protected by courts and other legal protection mechanisms. Currently, the country has a three-level court system – courts of first instance, appellate instance and cassation instance. At the same time, the Constitutional Court of the Republic of Azerbaijan operates as a constitutional control body, as well as the Ombudsman Institute for the protection of human rights.

However, although the legal framework related to human rights and freedoms is generally satisfactory, it needs to be improved and there are many problems in the implementation and protection of these rights. These problems mainly arise from the fact that the rule of law is not always ensured and legal protection mechanisms are weak. All this creates certain problems in the field of rights and legal protection of persons with disabilities.

It should be noted that one of the more frequent problems related to persons with disabilities is that in recent years there have been negative cases in initial disability and re-appointment of disability. So that, cases of refusal to determine initial and secondary disability based on subjective considerations without legal grounds have increased significantly. According to the official information of the State Medical Social Expertise and Rehabilitation Agency, 43 percent of applications for determining disability have been granted. In this regard, we can note only one fact that in 2020, the number of persons with disabilities was 614,731, while in 2023, it was 488,774. The dynamics of decrease is also observed among persons diagnosed with disabilities under the age of 18. Although there were 67,081 children with disabilities at the end of 2015, in 2023 their number was 46,654.

## **CLAUSE-BY-CLAUSE**

### **Article 13 (Access to Justice)**

Articles 25 and 26 of the Constitution establish the right of everyone to defend their rights and freedoms by methods and means not prohibited by law, and the right of everyone to equality before the law and the court. The Constitution also provides legal guarantees for everyone’s rights and freedoms to be protected administratively and in court and to receive high-quality legal assistance. It also states that legal assistance is provided free of charge at the expense of the state in cases provided for by law (Articles 60 and 61).

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<sup>2</sup> <https://e-qanun.az/>

In addition, Article 20 of the Law “On Advocates and Advocacy” states that for administratively detained persons, persons suspected or accused in criminal cases, and persons who do not have sufficient funds to pay for the services of a lawyer in court, legal assistance is provided at the expense of the state without any restrictions. Also, according to Article 67-1 of the Civil Procedure Code of the Republic of Azerbaijan, persons who are disabled due to 61-100 percent impairment of body functions (persons with disabilities of the 1st and 2nd degree) and who do not work, as well as persons who are disabled under the age of 18 are provided with advocacy at the expense of the state budget in civil and administrative court proceedings. The amount of legal aid paid at the state expense and the order of payment are determined by the relevant executive authority.

Criminal procedural legislation provides for the availability of a number of appropriate appointments in the legal process, including procedural appointments, to ensure the effective participation of persons with all types of disabilities in the justice system. According to Article 229.1 of the Criminal Procedural Code of the Republic of Azerbaijan, the interrogation of a dumb, deaf or blind witness must be conducted in the presence of a person who understands his signs or is able to communicate with him in sign language. If the witness suffers from a mental disability or other serious illness, the interrogation must be conducted in the presence and with the permission of a doctor.

The application of the substantive legal norms established in the legislation on the implementation of rights and freedoms is carried out in the manner established by the civil, administrative and criminal procedural legislation. Based on the analysis of the current legislation, it can be generally concluded that the legal guarantees of justice for persons with disabilities, like other persons, can be considered satisfactory. However, there are problems in ensuring justice for persons with disabilities, as well as for other vulnerable groups. These problems are manifested both in access to justice and in the efficiency of the implementation of justice.

The problems in the field of access to justice are mostly characterized by the lack of financial resources of persons with disabilities to use paid legal aid, the difficulty of using the rules of free legal aid at the expense of the state, the lack of non-state pro bono legal services, the difficulty of the rules of applying to courts. Here also, the quality of legal aid at the expense of the state is not sufficient. Because such legal aid services are paid 6 manats per hour, which has a negative effect on the provision of quality legal aid.

The problems in the efficiency of the implementation of justice are that the rule of law is not always taken into account in ensuring justice, fair and objective trials and judicial proceedings are conducted in favor of administrative bodies rather than on the principle of equality of the parties, etc. In this regard, only one fact can be noted that court decisions

regarding refusal to determine disability and court disputes on social protection of persons with disabilities are mostly issued in favor of administrative bodies.

In addition to these, the electronic court system has been implemented in the country in recent years, and there are difficulties in making applications for the electronic court system of vulnerable population groups. At the same time, it is necessary to have more "ASAN" and electronic signatures of people to use this system. However, the fact that these signatures are paid does not allow all vulnerable groups to use them.

***In order to overcome the problems in the field of justice provision, the following is recommended:***

- Persons with disabilities, as vulnerable groups, should have access at the expense of state and free legal aid and legal mechanisms should be facilitated, and the fee for legal aid service should be increased at least 5 times.
- A separate law should be adopted in the field of legal aid at the expense of the State, which provides for complete, systematic and advanced legal rules and mechanisms.
- Procedural rules for appeals to courts should be simplified, and vulnerable people groups should be provided with "ASAN" or electronic signatures for using the electronic court system at the expense of the state.
- Legal consultations centers that provide initial legal aid services to vulnerable groups at the expense of the state should be supported under the courts.
- Persons with disabilities of the I and II degrees should be exempted from state fees for notarial acts and fees for mediation applications.
- The legally defined rights of persons with disabilities who are unaware of their rights and privileges and who do not apply in time must be recognized and the guarantees provided for them must be provided.
- Monitoring of court proceedings on appeals to courts by persons belonging to vulnerable groups and analysis of court decisions on these cases should be carried out.
- Those operating in the field of rights of persons with disabilities should be involved in the discussion of normative legal acts on the rights of persons with disabilities.
- In civil and administrative cases, in addition to persons with disabilities of the I and II degrees, persons with disabilities of the III degree must be provided with an advocate in courts at the expense of the state.

## **Article 24 (Education)**

Article 42 of the Constitution envisages the right of all citizens to receive education. Article 5.1 of the Law “On Education” states that the state guarantees the creation of appropriate conditions for every citizen to receive an education and does not allow deprivation of any level or form of education. Also, Article 10.6 of this Law states that special general education programs are defined and implemented, which provide education, treatment, development of social skills and integration into public life of students with disabilities, including those with limited health opportunities, who need long-term treatment.<sup>3</sup>

In recent years, important strategies and programs have been adopted in the field of education, and the development of education has become one of the main priorities of the state policy. The expenses allocated to education from the state budget increased significantly and reached more than 4.4 billion in 2033.

“Inclusive education project” has been implemented in the country since 2005. In 2015, within the framework of joint cooperation between the Ministry of Education of the Republic of Azerbaijan and the United Nations Children’s Fund (UNICEF), the organization of education of persons with disabilities has entered a new stage. In 2016, interactive processes have been implemented in the special education system and effective work has been done to improve the quality of inclusive education in the field of developing the creative potential of children with special needs. From the 2015-2016 academic year, the implementation of the “Inclusive education at the primary education level” project has been started in the Republic of Azerbaijan in order to involve children with disabilities in education together with other children in the educational institutions.

The “State Program for the Development of Inclusive Education for Persons with Disabilities in the Republic of Azerbaijan in 2018-2024”, approved by the Presidential Decree dated December 14, 2017, has been adopted. Currently, about 12,000 children of more than 60,000 children with disabilities are enrolled in education in Azerbaijan, and the number of children enrolled in inclusive education is 120. In the past period, a total of 3055 persons with disabilities have been given vocational and social rehabilitation courses. However, certain problems are encountered in the field of education of persons with disabilities, and these are mostly determined by the following.

Since the attitude towards the persons with disabilities in the Azerbaijani society is not normal, the majority of parents tend to keep their disabled children at home. This makes it even more difficult for disabled children to benefit from quality education and their integration into society. At the same time, parents cannot afford to hire specialists for education at home for children with disabilities. In addition, there is a lack of specialists in

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<sup>3</sup> <https://e-qanun.az/framework/18343>

special training and rehabilitation centers. Currently, the quality of education is not enough to convince parents to entrust their children to those specialists. Furthermore, there are also problems in placing children with disabilities in special boarding schools and other specialized schools.

***In order to overcome the mentioned problems in this area, the following is recommended:***

- Persons with I and II degrees of disability must be exempted from tuition fees and persons with III degree of disabilities should also be exempted from 50% of tuition fees.
- Provisions for out-of-school education of disabled children should be strengthened, and attention should be paid to the training of specialists in this field. Training of pedagogic personnel related to education of disabled children must be ensured and psychological services must be developed.
- The Law “On Education” should be amended to ensure the accessibility of buildings and the adequacy of curriculum for persons with disabilities, as well as appropriately equipped teachers, including teachers specialized in sign language and/or Braille.
- To improve the education of all children with disabilities, including deaf and hard-of-hearing girls and boys, the provision of quality training in Braille and sign language to teachers, including teachers with disabilities, should be strengthened.
- The opportunities to use the secondary education system by persons with disabilities, especially persons with disabilities who are more vulnerable to isolation, and children with physical or mental disabilities individually, should be increased by removing barriers caused by attitudes in society and ensuring the physical accessibility of secondary education schools.
- The availability of adequate conditions in secondary schools should be strengthened, and the possibilities of using textbooks and internet tools for persons with disabilities should be increased.

### **Article 25 (Health)**

Article 3 of the Law “On the Protection of the Health of the Population” states that the duties of the state in the field of protecting the health of the population include determining the basics of the state policy in the field of protecting the health of the population, preparing and implementing state programs in the field of health protection, and ensuring the provision of medical and social assistance to special groups of the population and

other such duties. Also, Article 21 of the Law states that the provision of medical assistance to persons with disabilities is regulated in accordance with that Law and the Law “On the Rights of Persons with Disabilities”.

In addition to these, according to the third part of the “Regulation on provision of medicines, medical services and sanatorium-resort treatment for persons with disabilities within the borders of the country”, medical services provided in the “Envelope of Services for Compulsory Medical Insurance” in state medical institutions and rehabilitation institutions are provided to persons with disabilities at the expense of compulsory medical insurance funds. Along with the medical services provided in “Types of medical services not provided at the expense of the state budget for persons with disabilities in state medical institutions”, other medical services are provided at the expense of the state budget based on referrals from relevant state institutions.

In the past period, rehabilitation services have been provided to 87.7 thousand people, 71.6 thousand rehabilitation tools have been given to them and rehabilitation services have been provided to nearly 1700 people at their addresses. Moreover,

Persons with disabilities are provided with medicines, medical services, sanatorium-resort treatment within the borders of the country, as well as prosthetic-orthopedic products, dental prostheses (except prostheses made of precious metals) in accordance with the procedure determined by the relevant executive authority.

***It is recommended:***

- Places in rehabilitation facilities should be increased and surgical operations should be expanded here.
- The control over the provision of medicinal preparations and other means of treatment should be strengthened.
- Preventive measures to eliminate the causes of disability should be reinforced.
- Free examination and treatment of the persons with disabilities should be provided in private medical institutions and rules should be prepared for compensating a certain part of the costs in this direction.
- Access to quality medical care for persons with disabilities should be improved.

## **Article 27 (Employment and work)**

Labor relations in Azerbaijan are mainly regulated by the Labor Code of the Republic of Azerbaijan. At the same time, the Law “On Employment”, “Rule of quota application for citizens with special need for social protection and who have difficulty in finding work”, “Standards of workplaces for persons with disabilities” and other legal acts are also in force.

Half of the 488,774 persons with disabilities in Azerbaijan are at the working age. However, the number of working persons with disabilities is 4.8 percent of the total number of persons with disabilities. In 2023, more than 1,408 people with disabilities, who have the potential to establish self-employment activities and small businesses, have been involved in the self-employment program.

However, according to the “Rule of quota application for citizens with special need for social protection and who have difficulty in finding work”, enterprises with 25 to 50 employees are entitled to 3 percent of the average annual number of employees, enterprises with 50 to 100 employees are entitled to 4 percent, and in enterprises with more than 100 employees the quota is set in the amount of 5 percent. According to the information of the State Employment Agency, 6,635 people have been employed under the quota during 2017-2023.

Besides these, there are some problems in the field of employment of persons with disabilities. Employers must inform the local bodies of the State Employment Agency about the number of workplaces in the enterprise and the average number of employees. Employers are not interested in providing this information and hiring persons with disabilities. Because the labor legislation provides for a number of concessions and privileges related to the persons with disabilities, which does not satisfy the employers. The state, on the other hand, does not take measures to stimulate employers with economic methods and puts pressure on them with administrative methods.

In addition, the document “Standards of workplaces for persons with disabilities” contains general requirements for workplaces of persons with disabilities, requirements for workplaces for persons with disabilities moving in wheelchairs, and requirements for workplaces for persons with complete and partial vision and hearing loss. However, the guarantees of the implementation of these standards are not sufficient.

Finally, there are many problems related to denial and evasion of loans to persons with disabilities. In particular, loans are not granted to persons with I degree disabilities. Thus,

there is a need to take appropriate measures and eliminate problems related to these issues.

***To overcome these problems, the following is recommended:***

- Employers should be given incentives (eg, tax breaks, preferential business loans, etc.) in order to provide employment for persons with disabilities. A quota of 3 or 5 percent should be applied to certain state bodies and enterprises that are not subject to the quota for a certain period.
- Workplaces and specialized enterprises that meet the necessary standards should be created for persons with disabilities.
- State control over providing employment to persons with disabilities and ensuring their labor rights should be strengthened, as well as public control over this area should be increased.
- Liability measures for the violation of the labor rights of persons with disabilities, as well as responsibility for all actions related to the violation of the labor rights of persons with disabilities, should be strengthened.
- The number of vocational training and courses with persons with disabilities should be increased.
- Practical restrictions on granting loans to persons with disabilities of the first degree in the field of entrepreneurial activity should be eliminated.
- “Standards of workplaces for persons with disabilities” should be developed and implemented by state programs for the creation of enterprises that meet such standards. Such jobs should be created in state-owned and operated enterprises and then transferred to the private sector. Of course, there should be an encouraging approach to the private sector in this area.

**Article 28 (Adequate standard of living and social protection)**

The State has implemented a number of measures to ensure and promote an adequate standard of living and improvement of living conditions, including food, clothing and housing, for persons with disabilities and their families. Thus, it provides opportunities for persons with disabilities to use State programs for social protection and poverty reduction. At the same time, it provides pensions and allowances according to the degree of disability. Also, persons who have been declared disabled due to the war are provided with a pension of the President of the Republic of Azerbaijan. The provision of rehabilitation facilities to persons with disabilities is carried out at the expense of the state

budget based on the list of types of rehabilitation facilities approved by the relevant executive authority.

Currently, 273,153 people with disabilities receive pensions and the rest receive disability benefits. In the last 5 years, significant progress has been made in this field, the minimum pension has increased by 2.5 times, the average monthly pension has increased by more than 2 times, and allowances and pension payments have increased by 5 times. The average monthly amount of labor pension for disability has been AZN 325.4.

In the past period, 14,800 apartments and more than 7,500 cars have been given to persons with disabilities related to the war and families of martyrs. In addition to these, in the last 5 years, the rehabilitation infrastructure has been built in accordance with modern requirements and important steps have been taken to expand its network and the annual number of persons provided with rehabilitation services has increased by 3 times and reached 60,000.

At the same time, the list of types of rehabilitation facilities provided to persons with disabilities at the expense of the state budget has been greatly expanded. As one of the important steps, provision of high-tech last-generation prostheses is implemented in our country and 448 persons with war-related disabilities have been provided with 467 last-generation modern prostheses. Finally, rehabilitation services have been provided to 87,700 people with disabilities and 91,400 rehabilitation tools have been provided.

In addition to these, a number of problems remain in this field. These problems are mostly related to the improvement of housing conditions of persons with disabilities, lack of access to a number of social services, lack of necessary treatment and rehabilitation facilities in treatment and rehabilitation centers.

We note that in some normative acts adopted during the Soviet era, the requirement of 5 and 7 years of permanent residence in Baku and other big cities regarding the inclusion of persons in need of housing, including persons with disabilities, in the housing register is provided. These requirements are still enforced by local authorities and courts. Consequently, this practice also creates very serious problems in housing registration of persons with disabilities.

Apart from these, the provision of disabled persons with wheelchairs and other disabled equipment, and the provision of medicines are also insufficient. At the same time, in most regions, the provision of vehicles and other similar provisions for persons with disabilities is not at the necessary level. Special equipment (carts, prostheses, etc.) provided free of charge or at a discount according to the law does not meet the quality requirements and

breaks down prematurely. Due to the low financial resources of disabled people, they do not have the opportunity to buy these tools again, they live in misery, or in the best case, they are in need of the care of individual individuals. Also, there are certain difficulties in delivering wheelchairs and equipment directly and on time to people with disabilities in the regions.

***The following are recommended to overcome the problems in this area:***

- State and public control over ensuring the social rights of persons with disabilities should be strengthened.
- Persons with disabilities should be provided with social housing. State programs on housing provision for persons with disabilities of group I and II who are not war disabled should be implemented.
- “Model Rules for registering citizens and allocating citizens in need to improve the need for housing in the territory of the Azerbaijan SSR”, approved by the Decision No. 418 of the Council of Ministers of the Azerbaijan SSR dated 1983, which stipulates the requirement of permanent residence in those cities for 5 years and 7 years regarding the inclusion of persons in need of housing in Baku and other large cities, and the “Rules for accounting and allocating citizens in need of improvement of housing conditions in Baku” approved by the decision of the Baku City Council of People’s Deputies dated April 8, 1988 should be considered invalid.
- The rules and mechanisms for purchasing modern wheelchairs and wheelchairs should be simplified. Mechanisms for delivery of disabled equipment and medicines directly to persons with disabilities in the regions should be improved. Persons with disabilities should be provided with all means intended to improve their physical capabilities. Finally, out-of-order vehicles should be immediately replaced with new ones at the expense of the state.
- Responsibility for not ensuring the rights of persons with disabilities should be strengthened.