



European  
Social  
Charter

Charte  
Sociale  
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COUNCIL  
OF EUROPE

CONSEIL  
DE L'EUROPE

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## **EUROPEAN SOCIAL CHARTER**

5th National Report on the implementation of  
the European Social Charter

submitted by

**THE GOVERNMENT OF AZERBAIJAN**

(Articles 1, 9, 20 and 24  
for the period 01/01/2007 – 31/12/2010)

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Report registered by the Secretariat on 28 February 2012

**CYCLE 2012**

**The Fifth REPORT**  
**of the Republic of Azerbaijan**  
**on**  
**implementation of the Articles 1, 9, 20 and 24**  
**of the European Social Charter (revised)**

**February, 2012**

For the period **1 November 2007** to **31 December 2010** made by the Government of the Republic of Azerbaijan in accordance with Article C of the Revised European Social Charter and Article 21 of the European Social Charter, on the measures taken to give effect to the accepted provisions of the Revised European Social Charter, the instrument of ratification or approval of which was deposited on **02 September 2004**

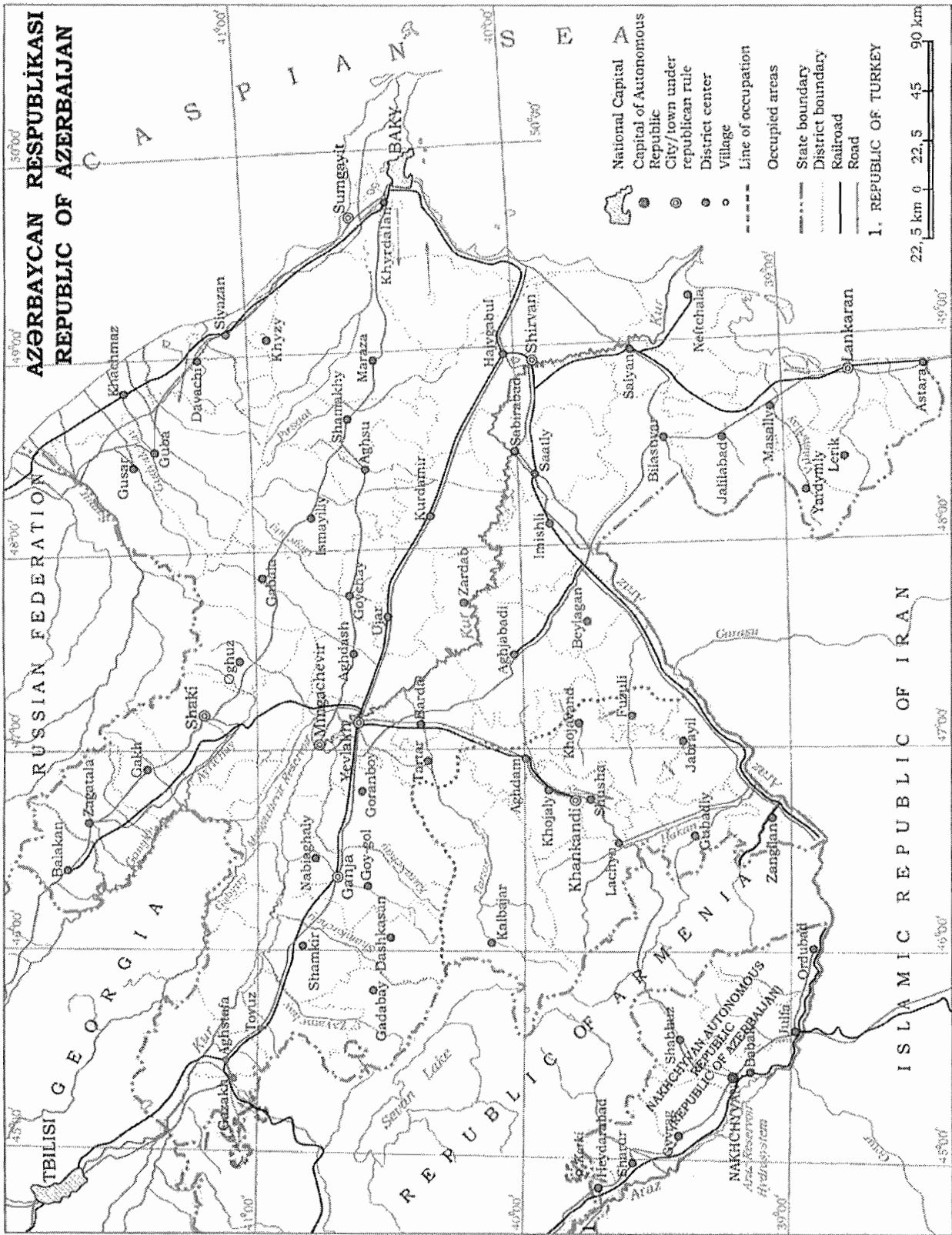
This report also covers the application of such provisions in the following non-metropolitan territories to which, in conformity with Article L, they have been declared applicable: **Republic of Azerbaijan**<sup>1</sup>

In accordance with Article C of the Revised European Social Charter and Article 23 of the European Social Charter, copies of this report have been communicated the

- Azerbaijan Confederation of Trade Unions
- National Confederation of Employers' Organisations

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<sup>1</sup> The Republic of Azerbaijan notifies that, she is not capable to ensure implementation of provisions of the Charter in territories occupied by Armenian Republic until its freedom. (schematic map of the territories is added)



## European Social Charter (Revised)

### Article 1. The right to work

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;
2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
3. to establish or maintain free employment services for all workers;
4. to provide or promote appropriate vocational guidance, training and rehabilitation.

Scope of the provisions as interpreted by the ECSR

*Paragraph 1:* A policy of full employment should be pursued by means of economic measures conducive to creating and preserving jobs and assisting those who become unemployed in finding jobs.

*Paragraph 2:* This paragraph covers three different issues:

1. the prohibition of all forms of discrimination in employment,
2. the prohibition of forced or compulsory labour,
3. the prohibition of any practice that might interfere with workers' right to earn their living in an occupation freely entered upon.

Under Article 1, paragraph 2, legislation should prohibit any discrimination in employment on grounds of sex, race, ethnic origin, religion, disability, age, sexual orientation and political opinion.

The law should make the prohibition of discrimination effective. It must at least provide for:

- the power to set aside, rescind, abrogate or amend any provision contrary to the principle of equal treatment which appears in collective agreements, in employment contracts or in firms' own regulations;
- protection against dismissal or other retaliatory action by the employer against an employee who has lodged a complaint or taken legal action;
- appropriate and effective remedies in the event of an allegation of discrimination; remedies available to victims of discrimination must be adequate, proportionate and dissuasive.

As regards discrimination on grounds of nationality while States party may make foreign nationals' access to employment on their territory subject to possession of a work permit, they cannot ban nationals of States party, in general, from occupying jobs for reasons other than those set out in Article G of the Charter.

Forced or compulsory labour in all its forms must be prohibited. The definition of forced or compulsory labour is based on Article 4 of the European Convention on Human Rights and on ILO Convention 29 on forced labour: "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" (Article 2§1). It also covers the coercion of a worker to carry out work he previously freely agreed to do, but which he subsequently no longer wanted to carry out. It may also under certain circumstances cover prison work.

Several other practices may give rise to issues under Article 1 §2 including the length of service to replace military service.

*Paragraph 3:* Free and effective employment services should be guaranteed. Basic placement services such as registration of job-seekers and notification of vacancies must be provided free of charge.

*Paragraph 4:* Vocational guidance, continuing vocational training for all workers should be guaranteed. Persons with disabilities should receive specialised guidance and training<sup>2</sup>.

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<sup>2</sup> Please provide indicators, estimated if necessary, on the functioning and the performance of the employment services in practice, including the number of vacancies registered by employment services; placement rate (placements made by the employment services as a share of notified vacancies).

## **Paragraph 1 – Policy of full employment**

### **Conclusions of the European Committee of Social Rights**

The Committee takes note of the information provided in Azerbaijan's report.

#### *Employment situation*

The Committee notes that according to Eurostat, Azerbaijan experienced strong growth during the reference period (34.5% in 2006, whereas it was 10.1% in 2004). It requests that the next report state the employment rate.

The Committee notes from another source<sup>3</sup> that unemployment stood at 8.5% in 2005. According to the report, the official figures for female and youth unemployment were 12.2% and 17.7% respectively in 2006. The Committee wishes the next report to show how the situation of young people and women with regard to unemployment has developed throughout the reference period.

It asks for information on the long-term unemployed as a proportion of all unemployed and the youth unemployment rate (among 15-24 year-olds). In the absence of any information in the report, the Committee asks for the statistics on unemployment among persons with disabilities and minorities.

#### *Employment policy*

The report indicates that the principal medium-term objectives of the employment policy pursued by the Government are to increase workers' competitiveness, encourage entrepreneurship and combat unemployment.

The Government has also made protection of unemployed and vulnerable persons one of the priorities of its Employment Strategy for 2006-2015 and has set the following specific objectives up to 2010:

- to reduce the level of unemployment significantly;
- to enhance the social protection of vulnerable persons;
- to improve the functioning of the labour market.

Various active measures (training, upgrading of skills, direct job creation) have been taken on behalf of persons with disabilities, women, young people, refugees and the elderly, through schemes to promote youth entrepreneurship, creation of regional training centres, and measures of positive discrimination in access to employment especially.

The report also mentions a programme to develop employment opportunities in the regions, aiming to create 600,000 jobs within five years. The Committee asks to be informed of the results of this programme.

In view of the scarcity of the information in the report, it requests that the next report answer the following questions:

- what is the number of beneficiaries of active measures for all categories of job seekers?
- how much time elapses, on average, between a person's registering as unemployed and being offered the benefit of an active measure for employment?

The Committee also asks whether specific employment programmes in favour of refugees are envisaged and for information on the results in terms of employment obtained by the beneficiaries of training measures.

According to the report, the total figure for expenditure on employment policy was equivalent to 1.7% of the GDP in 2006, whereas it only represented 0.2% of the GDP in 2004. The Government acknowledges, although efforts are being made to reverse the trend, that a far larger share of this amount is spent on passive measures than on active measures (1.4% and 0.3% respectively).

#### *Conclusion*

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

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<sup>3</sup> Website of the International Labour Organization : [www.ilo.org](http://www.ilo.org)

## Answers

### Article 1, part 1

- 3) Using relevant figures and statistics (ex: Eurostat information) or other relevant sources, provide information about increasing dynamics of the GDP, employment trends covering all sectors of economy, indicators of employment (share of the employed population in the total number of population between the ages of 15-64), indicators of employment of young people, indicators of activity (proportion of the total labor reserve to population over 15 years of age) indicators of unemployment, figures of long term unemployment, indicators of unemployment among young population, employment status (full and part time job), GDP share of costs spent for implementation of employment policies including gender aspects in all indicators, as well as GDP share of costs spent for active (job creation, training, etc) and passive (compensation, etc.) employment activities.

The main goal of “State Program for implementation of Employment Strategy of Azerbaijan Republic (2007-2010)”, approved by the Decree number 2167 of the President of Azerbaijan Republic, dated May 15, 2007, is to establish political, economic, social and institutional environment to ensure improvement of effective employment of the population.

413407 jobs were created in the years of 2007-2010, 302404 of them being permanent, as a result of implementation of activities envisaged by the State Program. Activities included improvement and expansion of small and medium entrepreneurship, rural family businesses and self-employment in the regions for creation of new jobs, at the same time increasing employment, creating new jobs and implementing activities for development of local production in high priority regions, including mountainous and border districts, as well as in Nakhchivan Autonomous Republic.

As a result of targeted work for improvement of life standards of the population in the regions starting from October 2001 until January 1, 2011, 913000, including 654809 permanent jobs were created. 79.7% of these jobs were in the regions and 86.9% was in private sector.

**Table 1. Dynamics of Gross Domestic Product (mln manats)**

	2007	2008	2009	2010
GDP	25 228.1	38 005.7	34 578.7	41 574.7

Source: Official web page of Azerbaijan State Statistics Committee ([www.azstat.org](http://www.azstat.org))

**Table 2. Distribution of the employed population by types of economic activity (thousand persons)**

	2007	2008	2009	2010
On economy, total	4162,2	4215,5	4271,7	4329,1
Agriculture, forestry and fishing	1597,6	1611,3	1628,6	1655,0
Mining	44,3	44,2	42,7	41,5
Manufacturing	206,7	211,4	214,2	208,9
Electricity, gas and steam production, distribution and supply	34,6	34,9	30,0	30,6
Water supply; waste treatment and disposal	25,4	27,5	25,3	25,2
Construction	222,5	226,0	229,0	287,5
Trade; repair of transport means	656,5	670,0	678,9	626,7
Transportation and storage	178,9	181,2	183,6	179,1
Accommodation of tourists and catering	25,7	26,0	26,3	46,9
Information and communication	33,2	33,5	34,0	55,8
Financial and insurance activities	21,2	21,5	21,8	24,4
Real estate activities	84,1	85,2	86,3	69,6
Professional, scientific and technical activities	44,4	45,0	45,6	45,6
Administrative and support service activities	34,9	33,8	38,7	46,5
Public administration and defence; social security	262,9	266,3	269,8	279,1
Education	348,9	355,2	361,0	349,8
Human health and social work activities	192,6	192,4	201,9	170,3
Art, entertainment and recreation	53,2	54,3	56,9	59,6
Other service activities	94,6	95,8	97,1	127,0

Source: Official web page of Azerbaijan State Statistics Committee ([www.azstat.org](http://www.azstat.org))



**Table 3. Main social-economic indicators of the labour market**

	2007	2008	2009	2010
Average annual number of population - thsd. persons	8723,0	8838,5	8947,3	9054,3
Number of economically active population – thsd. persons <sup>1)</sup>	4443,3	4477,7	4531,9	4587,4
Men	2313,1	2315,8	2314,0	2329,7
Women	2130,2	2161,9	2217,9	2257,7
Number of employed persons in economy, thsd. persons <sup>1)</sup>	4162,2	4215,5	4271,7	4329,1
Women	2013,0	2042,1	2071,9	2101,7
Men	2149,2	2173,4	2199,8	2227,4
including by property forms:				
state	1234,6	1244,4	1149,7	1142,7
non-state	2976,6	2971,1	3122,0	3186,4
Unemployed persons, thsd. persons <sup>2)</sup>	281,1	262,2	260,2	258,3
Women	117,2	119,8	146,0	156,0
Men	163,9	142,4	114,2	102,3
By percentage (%)	6,5	6,1	6,0	5,6
Unemployment among young population (between ages 15-29) (%)	11,8%,	10,1%,	11,67%,	11,0%
Persons received official unemployment status in employment service offices, person	50651	44481	41100	38966
Including women, person	25329	20873	18092	16987
Number of employees in economy – thsd. persons <sup>3)</sup>	1376,0	1410,3	1385,4	1382,9
GDP for 1 person of employed population, in manat <sup>4)</sup>	5210,3	5682,9	6205,2	6145,1
Average monthly wages of employees in economy - in manat	215,8	274,4	298,0	331,5

<sup>1)</sup> Calculated taking into account total unemployed persons based on International Labour Organization's methodology during 2003-2010.

<sup>2)</sup> Based on International Labour Organization's methodology (including unemployed persons received official status).

<sup>3)</sup> Number of employees in the structure of list for the end of 2005-2010.

<sup>4)</sup> In 2005 prices.

Source: Official web page of Azerbaijan State Statistics Committee ([www.azstat.org](http://www.azstat.org))

**Table 4. Financing of social protection measures of job-seeking and unemployed citizens (manats)**

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
<b>Total :</b>	3 060 000,00	4 100 000,00	5 620 000,00	5 909 000,00
Passive policies	2 100 000,00	2 880 000,00	4 050 000,00	4 254 000,00
Total of active policies:	960 000,00	1 220 000,00	1 570 000,00	1 655 000,00
Organization of vocational training, re-training and qualification courses	660 000,00	810 000,00	1 000 000,00	1 054 000,00
Organization of paid public work	100 000,00	150 000,00	200 000,00	211 000,00
Establishment of labor exchange, carrying out job-fairs and other social activities	200 000,00	260 000,00	370 000,00	390 000,00

Source: State Employment Service of the Ministry of Labor and Social Protection of Population

**Table 5. Number of jobseekers benefiting from active measures for all categories (persons)**

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
Involved in professional orientation	3200	8444	20882	108486
Involved in vocational training	2623	3393	4827	3921
Involved in public work	1832	1907	1508	1492
Benefiting from job-fairs	9056	9475	8132	7500
Total	16711	23219	35349	121399

Source: State Employment Service of the Ministry of Labor and Social Protection of Population

## **Paragraph 2 – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)**

Conclusions of the European Committee of Social Rights

The Committee takes note of the information provided in Azerbaijan's report.

### 1. Elimination of all forms of discrimination in employment

The Committee notes that under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of sex, race, ethnic origin, religion, disability, age, sexual orientation and political opinion (Conclusions 2006, Albania).

The legislation must also cover both direct and indirect discrimination (Conclusions XVIII-1, Austria). With regard to indirect discrimination, the Committee points out that Article E of the Revised Charter prohibits "all forms of indirect discrimination" and that "such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all" (Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §52).

For states such as Azerbaijan that have accepted Article 20, the right to equal treatment and opportunities without discrimination based on sex is considered under this provision.

Under article 25 of the Azerbaijan constitution, all persons have equal rights and freedoms irrespective of race, nationality, religion, sex, origin, possessions, social position, political beliefs or membership of a political party, trade union or social group. Restrictions on or recognition of rights and freedoms based on race, nationality, social status, linguistic origins, beliefs or religion are prohibited. Article 16 of the labour code prohibits discrimination in employment based on citizenship, sex, race, nationality, language, place of residence, social status, social origin, age, family situation, religion, political opinions, beliefs or other factors unrelated to professional qualifications, job performance or professional skills of the employee. Nor is it permitted to grant privileges or restrict rights, directly or indirectly. Special measures on behalf of women, disabled persons, minors and other persons requiring social protection do not constitute discrimination. Persons who consider that they have been discriminated against may appeal to the courts.

The Committee notes that disability and sexual orientation are not explicitly included in the grounds on which the legislation bans discrimination. The Committee considers that these grounds are included under the formula "other factors unrelated to professional qualifications, job performance or professional skills of the employee". It however asks the Government to confirm this interpretation. It also asks to be informed of any measure taken in order to avoid discrimination, in particular on the basis of these grounds.

The Committee has ruled that the discriminatory acts and provisions prohibited by this provision may apply to all aspects of recruitment and employment conditions in general, including remuneration, training, promotion, transfer, dismissal and other forms of detriment (Conclusions XVI-1, Austria). It asks for information in the next report showing how the aforementioned legal provisions are applied and enforced for each of the forms of employment discrimination prohibited by Article 1§2. It also asks whether there is a national strategy for combating all forms of discrimination in employment.

The Committee asks how the bans on direct and indirect discrimination are enforced.

The Committee has ruled that exceptions to the ban on discrimination may be authorised for essential occupational requirements or to permit positive action (Conclusions 2006, Bulgaria). It asks whether such exceptions are allowed and how they are applied.

The Committee has also ruled that legislation banning discrimination must be effective, and at the minimum must:

- grant authority to set aside, withdraw, revoke or modify any provision in collective agreements, employment contracts and firms' internal regulations that is incompatible with the principle of equal treatment (Conclusions XVI-1, Iceland). The Committee asks what the legislation stipulates in this regard and how it is enforced;

- offer employees who lodge complaints or bring actions in court protection against dismissal or other reprisals by employers (Conclusions XVI-1, Iceland). The Committee again asks what the legislation stipulates in this regard and how it is enforced;
- provide for appropriate and effective remedies in response to allegations of discrimination. When discrimination is established, the compensation must be effective and proportionate and act as a deterrent. Imposing a predetermined upper limit is therefore not compatible with Article 1§2 as in some cases the compensation awarded may not be commensurate with the loss or damage incurred and not sufficiently dissuasive for the employer (Conclusions 2006, Albania). The Committee asks what remedies are available for persons who think they have suffered discrimination and what compensation is possible if discrimination is found to have occurred. It also asks whether there is an upper limit to the compensation.

In disputes relating to an allegation of discrimination in matters covered by the Charter, the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment. It asks for a description in the next report of the situation regarding the burden of proof in disputes concerning allegations of discrimination.

The Committee considers that other means of combating discrimination in accordance with Article 1§2 of the Revised Charter include:

- recognising the right of trade unions to take action in cases of discrimination in employment, including action on behalf of individuals (Conclusions XVI-1, Iceland). The Committee asks whether trade unions have this right;
- the right of collective action by groups with an interest in obtaining a ruling that the prohibition of discrimination has been violated. The Committee asks whether such collective action is possible;
- the setting up of a specialised and independent body to promote equal treatment, especially by providing discrimination victims with the support they need to take proceedings (Conclusions XVI-1, Iceland). The Committee asks whether such a specialised body exists.

Regarding discrimination on grounds of nationality, the Committee has ruled that states may make foreign nationals' access to employment subject to possession of a work permit, but they may not issue a general ban on nationals of states party occupying jobs for reasons other than those set out in Article G. The only jobs from which foreigners may be barred are therefore ones that are inherently connected with the protection of law and order or national security and involve the exercise of public authority (Conclusions 2006, Albania). The Committee asks whether foreign nationals have full access to employment, and in particular whether jobs in the public service are reserved for Azerbaijan nationals and if so how such restrictions are justified.

Finally, the Committee has ruled that excluding persons from the public service, in the form of refusal to recruit or dismissal, because of their previous political activities, is prohibited when it is not "necessary", within the meaning of Article G, because it does not apply solely to departments with responsibilities in the field of law and order and national security or to functions involving such responsibilities (Conclusions 2006, Lithuania). The Committee asks whether such exclusion is possible with regard to past or present political activities and if so in what way it can be deemed necessary, within the meaning of Article G.

## 2. Prohibition of forced or compulsory labour

The Committee considers that forced or compulsory labour in any form must be prohibited. Failure to apply in practice legislation that is not in conformity with the Revised Charter is not sufficient to bring the situation into conformity with the Revised Charter (Conclusions XIII-3, Ireland).

Forced labour is prohibited under article 35 of the constitution and article 17 of the labour code. The exceptions concern military service, states of emergency and the application of court rulings. Under the criminal code, the use of forced labour is punishable by two years' corrective labour or deprivation of liberty of the same duration. In certain circumstances the sentence may be for five or even ten years. According to the report, no one in Azerbaijan has been found guilty of using forced labour.

### *Prison work*

Article 1§2 of the Revised Charter requires strict regulation of prison work, in terms of remuneration, working hours and so on, particularly when the prisoners work for private employers. Prisoners may only be employed by private companies with their consent and in conditions as close as possible to an employment relationship freely entered into (Conclusions XVI-1, Germany).

Working conditions in prison are governed by the criminal code/execution of judgments code. Prison work is compulsory, except for men over 60, women over 55, disabled prisoners in the first and second categories, women who are more than four months pregnant and women with children living in the prison. Working hours, safety conditions, leave entitlements and pay are in accordance with employment law. Prisoners may be required to work for the prison unpaid for up to eight hours per month or to repair buildings damaged or destroyed by natural disasters or other exceptional events. Deductions from wages are allowed, particularly to cover meals and clothing. At least 25% of their wages must be paid to prisoners.

To complete this information, the Committee asks the Government to answer the questions on prison work in the general introduction to Conclusions 2006, namely:

- Can a prisoner be required to work (irrespective of consent):
  - A. for a private undertaking/enterprise?
    - 1. within the prison?
    - 2. outside the prison?
  - B. for a public/state undertaking?
    - i) within the prison?
    - ii) outside the prison?
- What types of work may a prisoner be obliged to perform?
- What are the employment conditions and how are they set?
- 3. Other aspects of the right to earn one's living in an occupation freely entered upon

Several other practices may cause problems from the standpoint of Article 1§2:

### *Part-time work*

There must be various legal safeguards attached to part-time work. The Committee needs to know whether there is a minimum working week and whether there are rules to avoid undeclared work in the context of overtime and ones requiring equal pay, in all its aspects, between part-time and full-time workers (Conclusions XVI-1, Austria).

The Committee notes that the report fails to deal with this matter. It therefore asks for information in the next report on the legal safeguards attached to part-time work and how they are applied.

### *Requirement to accept the offer of a job or training*

The Committee considers that in general the conditions to which the payment of unemployment benefits is subjected, including any obligations to take up offered employment, should be assessed under Article 12§1 of the Charter (or Article 12§3 in the case of new developments). However, in certain cases and under certain circumstances the loss of unemployment benefits on grounds of refusal to accept offered employment could amount, indirectly, to a restriction on the freedom to work and as such the situation would be assessed under Article 1§2 (See General introduction to Conclusions 2008, §10).

The Committee has ruled that the right to earn a living in an occupation freely entered upon means that for a reasonable initial period job seekers must be able to refuse job offers that do not correspond to their qualifications and experience without risking the loss of their unemployment benefits (Conclusions 2004, Cyprus). The Committee asks for information in the next report on this subject.

### *Privacy at work*

The Committee asks for information to enable it to determine how far human freedom and dignity are protected by legislation and the courts against intrusions into personal or private life that may be associated

with or result from the employment relationship (see observations on Article 1§2, general introduction to Conclusions 2006, §§13-21).

### *Restrictions linked to the fight against terrorism*

The Committee asks whether there is legislation to combat terrorism (or incitement to terrorism) that bars individuals from certain occupations, and if so in which cases and according to what modalities is such legislation applied.

### *Conclusion*

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

## **Answers**

### **Prohibition of discrimination on basis of disability and sexual orientation.**

According to the Article 16 of the Labor Code beside other criteria, no discrimination among employees shall be permitted based on employee's gender and other factors unrelated to the professional qualifications, professional skills or job performance of an employee. According to the second part of the Article concessions, privileges and additional protection for disabled persons and others in need of social protection shall not be considered as discrimination.

Labour Code considers some concessions for persons with disabilities regarding their vacations, work hours and other labor conditions, and it is not considered as discrimination.

Even though disability and sexual orientation is not given as a direct criterion for discrimination according to the Article 16 of the Labor Code, as the Committee noted, they are among other factors unrelated to the professional qualifications, professional skills or job performance of an employee, therefore could not be considered as a reason for discrimination.

Discrimination for sexual orientation is not characteristic case of discrimination in labor relations in Azerbaijan Republic and such cases are noted in practice. If the Committee persistently differentiates cases of discrimination for gender and sexual orientation, then Article 16 of the Labor Code could be improved further.

Implementation of any provision in a collective agreement, employment agreements and entity's internal control norms that do not comply with existing principle of equal relations shall be prohibited and right for removal, cancellation or replacement of such provision is regulated by the Labor Code.

### Article 182. Internal Discipline Regulations

1. Internal discipline regulations may be adopted to ensure fulfillment of obligations of parties came from labour contracts as well as collective contracts, labour discipline and to comply with requirements of labour legislation.
3. Internal discipline regulations shall be enforced pursuant to this Code and other normative and legal Labour regulations. The relevant provisions of internal regulations and the legal result of their application shall be considered invalid if they contradict with these regulations.

### **Some exceptions on prohibition of discrimination on grounds of important occupational requirements or creation of positive measures**

According to the Article 16.2 of the Labor Code concessions, privileges and additional protection for women, disabled persons, minors under 18 years of age and others in need of social protection shall not be considered as discrimination.

The Labor Code considers some limitations to employment of women to protect their health.

#### Article 241. Jobs and work places that working of women is prohibited

1. Use of women employees in jobs with heavy labour conditions, in hazardous workplaces, and also in underground tunnels, mines, and other underground works is prohibited.
2. In underground works involving leadership positions, duties that does not include continuous physical work, also in social works, sanitation and medical services jobs, or in cases involving going down to underground and coming up without doing any physical work use of women employees is permitted.
3. Involvement of women employees beyond the limits specified in this Section for lifting or carrying of heavy items from one place to another is prohibited.
4. Work duties of women employees can include manual lifting and carrying of only the heavy objects which their weight is within the limits specified below (delivering services):
  - a) along with performing other duties, lifting of objects, which their total weight is no more than 15 kilograms, by hand and carrying to another place;
  - b) lifting of an object, which its weight is no more than 10 kilograms, to a height of more than one and a half-metre;
  - c) lifting of objects, which their total weight is no more than 10 kilograms, by hand and carrying to another place during the entire workday (work shift);
  - d) carrying of objects by carts or other vehicles which their lifting would require more than 15 kilograms of power.
5. Involvement of women employees who are pregnant or have children under three years of age in the jobs specified in this Section is prohibited.
6. The list of industries with hazardous workplaces, also such professions (duties), as well as jobs in underground tunnels and mines is approved by the Cabinet of Ministers of the Republic of Azerbaijan.

Besides this, appropriate proposals are elaborated to improve the paragraph 1 and 6 of the Article 241 of the Labour Code according to the requirements of the European Social Charter (Revised).

#### Article 242. Limits to involving women employees at night shift, overtime, and weekend jobs, or business trip

1. Involvement of women employees who are pregnant or have children under three years of age for work on night shift, on overtime, or weekend, or a holiday or on a day which is not work day, or sending them to business trip is prohibited.

#### Article 250. Working places where using of employees under the age of 18 is prohibited

Employment of persons younger than 18 years old in jobs with difficult and hazardous work conditions, also in underground tunnels, mines and other underground jobs, also in such places as night clubs, bars, and casinos which could be detrimental to development of his/her morality, including places where alcoholic beverages and toxic material are produced, carried, kept, or sold as well as places where narcotic

components, psychotropic substances, toxic material and their precursors turnover is carried out is prohibited. Persons younger than 18 years of age to whom legislation on compulsory general secondary education is applicable may not be employed in full time jobs depriving them of this education opportunity.

### **Prohibition of discrimination in labor relations**

Prohibition of any case of discrimination in labor relations is regulated by the Labor Code.

#### **Article 16. Unacceptability of Discrimination in Labour Relations**

1. In Labour Relations no discrimination among employees shall be permitted on the basis of citizenship, sex, race, religion, nationality, language, place of residence, economic standing, social origin, age, family circumstances, faith, political views, affiliation with trade unions or other public associations, professional standing, or other factors unrelated to the professional qualifications, job performance, or professional skills of the employees, establishing privileges and benefits or directly or indirectly limit rights on the basis of these factors.
2. Concessions, privileges and additional protection for women, persons with disabilities, persons younger than 18 years old, and others in need of social protection shall not be considered as discrimination.
3. Employer or other physical person who permits the discrimination indicated in Subsection 1 of this Section shall bear the appropriate responsibility in the manner established by the Legislation.
4. A person subject to the discrimination during his work may apply to the court for the restoration of his rights.

According to the labor legislation the cases of discrimination claims are the subject of individual labor disputes. It is noted in the Article 287 of the Labor Code:

#### **Article 287. Individual Labour Disputes**

Individual Labour disputes are disagreements emerged between parties on the fulfilment of an employment contract, the terms of collective agreements and Labour laws and other Normative Legal Acts and shall be resolved in a manner, methods, and provisions hereof on the basis of the principles of equality of the rights of the parties and rule of law, as given in this Labor Code.

Submission of evidence to the court for restoration of violated right of an employee subject to discrimination is regulated by the Civil Procedure Code of Azerbaijan Republic, as following.

#### **Article 77. Burden of proof**

77.1. Each party shall prove circumstances used as grounds for its claims and objections.

#### **Article 78. Presentation and demanding of evidence**

78.2. Person participating in case, unable to independently obtain a necessary evidence from persons or authorities whether participating in case or not, shall be entitled to apply to court with a motion requesting receipt of such evidence. Such motion shall show which circumstances being of importance for case may be obtained through such evidence, state characteristics and place of location of the evidence. Where necessary,



court shall issue a person participating in the case with a document for recovery of the evidence. Person in possession of evidence in dispute shall either present such evidence directly to court or pass the evidence to a person who has respective request for subsequent presentation to court.

Maximum amount of compensation for a case of discrimination is not regulated by the legislation.

## **Trade Unions**

Items “f” and “g” of the Article 12 of the Labor Code considers equal approach to employees and measures for prevention of discrimination as one of the basic obligations of an employer. Non-compliance with the obligations shall be considered violation of labor rights. According to the Article 12 of the Law on “Trade Unions” in cases of violation of labor rights of employees, trade unions have the right to demand elimination of violations. The administration is bound to consider these demands and inform trade unions about results in the specified period but not later than a month.

In cases of violation of labor legislation or failure to meet the terms of collective agreements by the managers of enterprises, trade unions have right to raise the matter for disciplinary proceedings before relevant authorities.

According to the article 19 of the Law on “Trade Unions” trade unions can organise and hold strikes, meetings, street marches, demonstrations and other mass measures.

Trade unions may raise claims and carry out duties of representation in courts to protect interests of persons exposed to discrimination.

Trade unions carry out legal aid services independently. Legal department at the Confederation of Trade Unions of Azerbaijan Republic and legal inspectors at country committees of trade unions serve to this purpose.

## **Civil Service**

According to the legislation of Azerbaijan Republic positions of civil service is only considered for citizens of Azerbaijan Republic. The notion of civil servant is defined by the Law of Azerbaijan Republic on “Civil Service”.

### **Article 14. Civil Servant**

14.1. Civil servant shall be a citizen of the Republic of Azerbaijan who holds salaried (the salary should be exclusively paid from the state budget) civil service position determined by this Law and swears an oath to be loyal to the Republic of Azerbaijan while being hired on an administrative position in the civil service.

### **Article 2. Civil Service**

2.2. This Law shall be applied to civil servants employed by bodies of executive, legislative and judicial authorities.

2.5. This Law shall not be applied to employees of institutions being subordinated to the relevant bodies of executive power. Issues related to service of these employers shall be regulated by the Labour Code of the Republic of Azerbaijan.

Citizens may not be removed from their position of civil service for their previous or current political activities. These cases are regulated by the Law of Azerbaijan Republic on “Code of Ethics Conduct of Civil Servants”.

### **Article 18. Public and political activity.**

18.1. Civil servant has a right to be a member of public or political associations unless issue considered by the legislation.

## **Prison labor**

Terms of labor of prisoners imprisoned for life or for a fixed period is stipulated in Articles 95-99 of the “Code of Execution of Punishment”. Thus, according to the Article 95.1. of the Code each prisoner shall be engaged in labor activity at places and works defined by administrations of prisons. Administrations of prisons should consider gender, age, labor ability, health and if possible specializations of prisoners to engage them in effective labor. According to the Article 95.2 of the Code men above sixty years of age, women above fifty five years of age, persons with disabilities of the first and the second degree, prisoners with disabilities under 18 years of age, prisoners with pregnancy of more than four months or women with children in daycares of prison may be engaged in labor on voluntary basis. Minor prisoners shall be engaged to labor according to labor legislation.

According to the Article 95.3 of the Code prisoners serving time in prisons shall be engaged in labor only in prison area. Prisoners on their own will can be engaged to labor for public or private entity regarding their specialization.

According to the Article 98 of the Code prisoners imprisoned for life or for a fixed period can be engaged in non-paid jobs. Thus, with exception of security devices, prisoners are engaged in supporting works such as renovation of prison and its territory, improvement of prisoners’ cultural and social conditions regularly with turns, on their out-of-work times. Duration of these work cannot be more than eight hours per month. Prisoner may be engaged in restoration of security devices only in cases of harm or collapse of devices as a result of natural disaster or emergency situation.

Deductions from salaries of prisoners are regulated by the Article 99 of the Code. According to the Article 99.3. minimum 50% of monthly salaries of prisoners in penitentiaries and prisons shall be sent to their accounts regardless of amount of deductions and minimum 60% of monthly salaries, pensions and other income of men above sixty years of age, women above fifty five years of age, persons with disabilities of the first and the second degree, prisoners with disabilities under 18 years of age, prisoners with pregnancy of more than four months or women with children in daycares of prison shall be sent to their personal accounts.

Provision of financial and household needs of prisoners imprisoned for life or for a fixed period is regulated by the Article 91 of the “Code of Execution of Punishment”. According to the Article 91.3. prisoners are provided with an individual berth and bedding. Prisoners are provided with clothing, underwear and foot-wear by the expense of the state regarding their gender, season and climate. According to the Article 91.4 of the Code prisoners are provided with 3 courses of meal per day from public finances to ensure normal functioning of organism. Entities engaging prisoners to labor may provide additional meal from their own finances.

Employment conditions of prisoners are regulated by the Article 96 of the Code. Duration of work, occupational health and safety, and hygiene rules of prisoners are defined by the legislation. Prisoners are given days off and they are free of work on non-working national holidays given in labor legislation. Engagement of prisoners in paid work is registered in their labor records. Labor records are recorded by the administration of prisons at the end of the calendar year. Work period of prisoners continuously refusing to perform work duties or in other cases not fulfilling their duties can be deducted from their labor record with the decision of the court on the basis of the application of the administration of prisons.

## **Part-time employment**

According to the Part 2 and 3 of the Article 89 and the Part 1 and 3 of the Article 90 of the Labor Code normal weekly duration of work with normal daily work hours cannot be more than 40 hours. Employees may work no more than 8 hours per day. Regularly, a working week shall be determined as 5 work days and 2 days off. In a six-day work week, daily working hours may not exceed 7 hours for a weekly quota of 40 hours, 6 hours for a weekly quota of 36 hours and 4 hours for a weekly quota of 24 hours.

According to the Article 94 of the Labor Code short working hours, short workdays and short work weeks may be established by agreement between the employer and employee upon execution of an

employment contract. Part-time hours and their effective duration over a month or year shall be defined at the agreement of the parties. If the health and physiological state (pregnancy, disability, limited access to health care under 18 years old) of an employee, a chronically sick child, or any other family member, requires part-time employment on the basis of medical findings, as well as for women with children under 14 or a disabled child under 16, the employer should arrange part-time work (workday or work week) on the basis of their applications. Part-time work shall be defined according to compensation, time spent on the job, or by agreement of the parties. There shall be no limitation of any kind on the Labour rights of part-time employees as defined by this Code or the employment contract.

According to the Article 94 of the Labor Code an employer may consider part-time positions (occupations) at its staff list.

### **Requirement for acceptance of employment or training offers**

According to the Article 4.1. of Law of Azerbaijan Republic on “Employment” the able-bodied citizens of working age without employment and earnings but ready to start work and registered as jobseekers at the State Employment Services are entitled to unemployment status. At the same time, according to the Article 4.5. of the Law citizens are not eligible for unemployment status include:

- those who are under 15 years of age;
- citizens with pension rights (excluding pensions assigned to children for the loss of head of family);
- people not coming to the relevant authority on groundless basis for seeking relevant job within 10 days after being registered or those rejecting two relevant jobs (same job can not be re-offered to citizen) in this period.
- first time jobseekers;
- those who serve imprisonment sentence;

Except citizens of above mentioned categories, any citizen registered as a jobseeker is not offered relevant job after submission of documents, the State Employment Services makes decision on granting of unemployment status to this person within 11 days.

Jobseeker who is not granted unemployment status in line with the defined rules has the right to re-apply to the State Employment Services for getting employment status in a month.

### **Freedom of identity at workplaces**

According to the Part 4 of the Article 189 of the Labor Code the order (instructions, decision) concerning disciplinary action shall not include information denigrating the employee's honour and dignity, his identity or moral sensibilities, nor shall it be based on vengeance for his lack of discipline.

According to the Article 75 of the Labor Code when entering into employment contracts the parties may define conditions for their termination, in addition to those provided in the Labor Code. The parties may not define terms for employment contract termination which degrade their honour and dignity and limit their rights as provided in the Labor Code.

### **Restrictions associated with the fight against terrorism**

The legislation of Azerbaijan Republic regulating fight against terrorism (The Law of Azerbaijan Republic on “The Fight Against Terrorism”) does not restrict citizens from any kind of employment.

### **Paragraph 3 – Free placement services**

#### **Conclusions of the European Committee of Social Rights**

The Committee takes note of the information provided in Azerbaijan's report.

The national employment service is principally responsible for providing information and implementing the employment policies, and also for counselling, offering training, finding work for unemployed job seekers and helping employers fulfil their needs. The services used by its clients are free of charge.

During the reference period the public employment services consisted of a national agency and 84 local employment centres spread over the entire territory. The Committee also notes the existence of regional training centres. It requests information on staff numbers for all public employment services.

The Committee notes a certain contradiction in the figures given by the report regarding the total number of job vacancies notified. It asks that the report confirm whether the total number of job vacancies notified to the public employment services did indeed increase during the reference period, rising from 119,498 in 2005 to 150,874 in 2006.

The Committee asks that the next report also indicate the placement rate, that is the ratio between the number of placements and the number of job vacancies notified by employers to the public employment services.

It wishes furthermore to know the average time taken to fill a vacancy. A number of private employment agencies operate in Azerbaijan. Since 2002, their activity has no longer been subject to the grant of a permit from the Ministry of Labour and Social Protection of Population. According to the report, co-ordination meetings between the Ministry and the agency managers are regularly organised.

The Committee wishes to know how the Ministry assesses whether the private agencies satisfy the conditions necessary to launch such an agency, and whether the coordination meetings allow the Ministry to evaluate how those agencies are functioning (fees, staff, etc.).

Under the 2001 Law on Employment, trade unions and employers' organisations participate in the management of the National Employment Agency and help to implement national employment policy. Social partners may set up local co-ordination committees, through which they can make known their stance on raising funds or obtaining subsidies for the creation or preservation of jobs.

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

### **Answers**

#### **Number of staff members of the State Employment Services**

Number of staff members of the State Employment Services under the Ministry of Labor and Social Protection of Population is 54, as well as 60 at employment centers of Baku city and its regions , 235 at employment centers of other cities and regions of the republic, 50 at the Employment Service of Nakhchivan Autonomous Republic and 45 staff member at Regional Vocational Training Centers (Baku, Goychay and Nakhchivan).

Number of vacancy information given by State Employment Services was on average 9958 in 2005, including 9247 units in December and these indicator for 2006 were 1257 and 11995 units respectively. At the same time it should be noted that total count of 119498 and 150874 unit vacancies in years 2005 and 2006 also reflect number of vacancies repeating themselves.

3) Present information on indicators of work of employment services, including number of registered vacancies and ratio of vacancies to employed persons to these vacancies.

**Table 6. Number of vacancies registered by employment services**

<b>2007</b>	
<b>Month</b>	<b>Information on vacancies</b>
December	12297
November	11844
October	11485
September	13284
August	12222
July	10916
June	12273
May	12097
April	11790
March	11661
February	11565
January	11612

<b>2008</b>	
<b>Month</b>	<b>Information on vacancies</b>
December	10445
November	11870
October	12603
September	15687
August	13367
July	11992
June	12230
May	11713
April	11222
March	10553
February	10438
January	10326

<b>2009</b>	
<b>Month</b>	<b>Information on vacancies</b>
December	10594
November	11722
October	11398
September	12439
August	10284
July	10032
June	9819
May	9441
April	8113
March	8564
February	8476
January	9621

<b>2010</b>	
<b>Month</b>	<b>Information on vacancies</b>
December	10654
November	9823
October	9813
September	10849
August	8972
July	7772
June	8862
May	8367
April	8363
March	8435
February	8597
January	8406

Source: State Employment Services under the Ministry of Labor and Social Protection of Population

Annual average ratio of cases of job provision to number of vacancies given by employers for 2005, 2007 and 2008 was 21 persons per 100 unit of vacancies, for 2006 it was 18 persons, 23 for 2009 and 26 for the year 2010.

There is no information available at statistics of the State Employment Services for average duration of fulfillment of vacancies. At the same time, activities are being carried out for strengthening of institutional potential of State Employment Service, including improvement of information system of labor market, in the framework of “Social Protection Development” project of the Ministry of Labor and Social Protection of Population of Azerbaijan Republic and the World Bank.

Due to the abolishment of the procedures of issuing special permittance (license) for the activities of private employment agencies since 2002, Ministry of Labour and Social Protection of Population does not coordinate, evaluate and regulate their work.

#### *Paragraph 4 – Vocational guidance, training and rehabilitation*

##### Conclusions of the European Committee of Social Rights

The Committee takes note of the information provided in Azerbaijan's report.

Under Article 1§4 of the Revised Charter, the Committee considers vocational guidance, continuing training for workers and the rehabilitation of persons with disabilities.

As Azerbaijan has accepted Article 9 of the Revised Charter (right to vocational guidance), the Committee refers to its conclusion under that article, in which it defers its conclusion. The Committee here only deals with continuing vocational training and training for persons with disabilities in view of the fact that Azerbaijan has not accepted Articles 10§3 and 15§1 of the Revised Charter. The Committee deals with the following questions under Article 1§4, looking in turn at continuing training and the guidance and training of persons with disabilities:

- the existence on the labour market of training services for employed and unemployed persons or of training aimed specifically at persons with disabilities;
- access, i.e. how many people make use of these services;
- the existence of legislation explicitly prohibiting discrimination on the ground of disability in the field of training.

##### *Continuing vocational training*

According to the employment legislation, all citizens, including the unemployed, are entitled to vocational training. The employment service co-operates with the education ministry to offer unemployed persons some fifty vocational training programmes to reflect the needs of the labour market and employers. Several public and private regional centres with modern educational facilities provided vocational training to about 1,000 unemployed persons during the reference period. However, the Committee asks for the next report to provide information on continuing vocational training for unemployed persons.

The Committee wishes to know what the demand for training placements is and whether training supply meets training demand. In the event that companies organise training courses, the Committee asks whether employees' training costs are covered by the company or the trainees themselves.

##### *Guidance and training for persons with disabilities*

Persons with disabilities receive vocational training for 24 occupations and 69 specialties in training and rehabilitation centres, to enable them to find appropriate work. Disabled persons wishing to go into business can enrol in basic business courses run by the employment services. Each year, ten blind persons receive training in the Baku regional vocational centre, leading to such occupations as bookbinding and tailoring. Similar training is organised, under the auspices of the ministry of labour and social protection, for young disabled persons in residential institutions. In 2006, 109 persons found employment, following such training.

The Committee asks whether the training on offer satisfies demand.

According to the report equal treatment is guaranteed to all the persons concerned including nationals of other states party residing or working legally in Azerbaijan, and this applies equally to persons with disabilities.

##### *Conclusion*

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

## Answers

Training and additional training of jobseekers registered by the local (city (regional) Employment Services) State Employment Services are carried out by employment services in below given cases:

- in cases when it is not possible to find relevant jobs because of absence of necessary vocational and professional skills;
- in cases when there is no job related to a jobseeker's professional skills and there is a need for re-specialization;
- in cases when a jobseeker loses ability to work with previous professional skills.

Jobseekers get trainings and re-trainings at education institutions of the Ministry of Education or in other training institutions that have contracts with Employment Services (including, Regional Vocational Training Centers under the State Employment Services and private training institutions).

A "Program for improvement of methodical basis and technical-software of vocational education system of unemployed and jobseekers" was carried out in the framework of project for "Development of National Social Protection System" signed by the Government of Azerbaijan Republic and UN Development Program in order to improve organisation of unemployed and jobseeking citizens' vocational training process in the real demands of labor market, as well as in the level of international standards. Modular training programs were developed for 15 competitive vocations and occupations, mainly for worker occupations, in the framework of above mentioned project.

Currently, vocational trainings are being carried out in Regional Vocational Training Centers of Baku, Nakhchivan and Goychay using these modular training programs to improve efficiency of training courses.

At the same time, the project of "Development of Modular Training Programs", started by the Ministry of Labor and Social Protection of Population of Azerbaijan Republic and the World Bank in April 2010, foresees elaboration of modular training programs for 30 vocations and occupations, development of national specialists on modular training programs, provide proposals for development of legal-institutional system to ensure continuation of modular training program and establishment of minimum 3 modular training centers in next 2 years.

Citizens getting unemployment benefits or with finished duration of benefits, including citizens engaged in paid public works have right for re-specialization.

According to the Law of Azerbaijan Republic on "Employment" the state ensures the following employment rights of the citizens.

- Free choice of employment, including various labor conditions;
- Legal defence according to the Labor Code for persons laid off or refused of jobs no grounds.

Besides that, the state provides out of charge professional orientation, vocational training and re-training for citizens sent by the local authorities of the State Employment Services.

One of the main directions of the state policy on employment is provision of equal opportunities for free choice labor and employment to all citizens regardless of their race, nationality, religion, language, gender, marital status, public-social origin, place of residence, property status, conviction, membership to political parties, trade unions and other social unions.

Citizens have the right to get free advice and relevant information on professional orientation, professional training, re-training and in-service education at the State Employment Services in order to choose type of employment, job place and employment terms.

According to the Law of Azerbaijan Republic on "Employment" the state provides jobseekers and unemployed citizens with the following guarantees:

- to support in choosing a relevant work and providing employment through intermediary of the State Employment Services;

- to provide free professional orientation, professional training, re-training and additional education courses with reference of the State Employment Services;
- to encourage participation of citizens in other active measures (job fairs, labour exchanges, new job places, etc.) undertaken by the State Employment Services;
- to ensure compensation of expenses sustained by citizens due to referral to other place of residence for employment (vocational courses) purposes on proposal of the State Employment Services in line with the existing legislation;
- to ensure free medical check-up at public health care facilities during admission to job or training courses on referral of the State Employment Services;

In the years 2007-2010, 14764 citizens were engaged in vocational trainings and 197 citizens of them were persons with disabilities.

According to the “State Program for Implementation of Employment Strategy of Azerbaijan Republic” (2007-2010) work is being carried out for establishment of single database of vacancies, jobseekers and unemployed citizens, at the same time for providing information on vocational training, re-training and qualification for the use of citizens. Besides that, regular activities are being carried out in direction of strengthening relations of employment service authorities, employers and vocational training institutions for staff training.

Organization of trainings by enterprises is regulated by the Labor Code.

**Article 7. Governance of Labour Relations by Law and Contracts**

5. The terms, procedures and duration of employee's training in a new profession or specialty and the parties' obligations shall be governed by an appropriate agreement or employment contract signed pursuant to the consent obtained.

According to the Law of Azerbaijan Republic on “Employment” the state ensures equal rights of employment for all citizens.

The following table presents information on statistics of persons with disabilities applied to State Employment Services in years 2007-2010, number of persons from them provided with jobs and sent to vocational trainings

**Table 7. Provision of jobs and vocational training of persons with disabilities.**

<b>Years</b>	<b>Number of persons with disabilities applied to State Employment Services</b>	<b>From them, provided with jobs</b>	<b>Sent to vocational trainings</b>
2007	475	279	75
2008	374	227	96
2009	364	210	7
2010	413	204	19
<b>Total</b>	<b>1626</b>	<b>920</b>	<b>197</b>

Source: State Employment Services under the Ministry of Labor and Social Protection of Population

Regional Vocational Training Centers opened for exploitation in 2007 in Baku, 2008 in Goychay and 2009 in Nakhchivan played huge role in engagement of unemployed and job seeking citizens to vocational training and re-training. Thus, in years 2007-2010, 4142 persons were engaged in training in Baku, 1542 persons in Goychay and 567 persons in Nakhchivan Regional Vocational Training Center for occupations “computer user”, “computer accounting”, “english language”, “sewer”, “basics of entrepreneurship”, “computer designer”, “product assembler of aluminium and plastic materials”, “barber”, “video operator”, “waiter” and with modular training program for occupations of “turner”, “carpenter”, “secretary-typist”, “milling machine operator”, “electric and gaz welder”.

At the same time, based on application of the Ministry of Culture and Tourism and the Ministry of Defence Industry, to meet the need for specialists of developing tourism and defence



industry of the country, the State Employment Services developed programs for vocational courses of 30 new occupations and continued trainings of staff members for these occupations.

7252 persons were woman out of total 14764 persons engaged in vocational trainings organized in 2007-2010 with demand of employers for occupations of “barber-manucurist”, “confectionery maker”, “computer designer”, “binder”, “computer accountant”, “sewer”, “english language”, “salesman-cashier”, “carpet weaver”, “tailor”, “secretary”, “basics of entrepreneurship”, “baker”, “waiter”, “insurance agent” and other occupations.

In a framework of “Improvement of Social Protection System Project” of Azerbaijan Government and the UN Development Program “Methodology for organization of professional orientation” and “Multimedia test software for identification of professional orientation of unemployed and job-seekers” were developed and are successfully being used by agencies of the State Employment Services.

The Article 7.15 of the “State Program for Implementation of Employment Strategy of Azerbaijan Republic” sets activities for improvement of employment of persons with disabilities as a goal. For this objective, in the year 2007 for the first time in Azerbaijan vocational training courses were organized for visually impaired persons in occupation of “Sewer” and “Computer designer” courses for deaf-mute citizens. Considering physical disadvantages of visually impaired citizens and their difficulties of using public transportation “Computer user” vocational training program with audio braille system was organized within Society of Visually Impaired Persons. Vocational training courses for “Sewer” occupation is organized in “Labor and recreational house for persons with disabilities” situated in Ramana for persons with disabilities and it is finances by the State Employment Services.

Effective cooperation was established between persons with disabilities and non-governmental organizations

To meet relevant requirements of training for persons with disabilities, specialized training room and technical equipment is planned to be established in Regional Vocational Training Centers first established in Baku in 2007, Goychay in 2008 and in Nakhchivan in the year 2009.

Azerbaijan Republic joined to the UN Convention on the “Rights of Persons with Disabilities” in October 2, 2008. According to the Convention duties were identified in direction of vocational training of persons with disabilities, improvement of their potential and provision of employment.

Implementation of the Task of “Improved Employment Services” was started by the Ministry of Labor and Social Protection of Population of Azerbaijan Republic, in the framework of “Improvement of Social Protection” project of the World Bank. The objective of this task is to provide effective state employment services to all citizens, including citizens with disabilities, assist them to re-enter to labor market, at the same time increase effectiveness of programs envisaged in the legislation and improve coverage and target area of costs. To learn international experiences a study tour was organized to Austria and Lithuanian Republic in framework of the project. As a result of the study tour, Instructions were developed for organization of job-fairs according to international standards, for cooperation with employers and for organization of job clubs and at the same time training program was developed for job seeking methodology.

## Article 9 - The right to vocational guidance

With a view to ensuring the effective exercise of the right to vocational guidance, the Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity: this assistance should be available free of charge, both to young persons, including schoolchildren, and to adults.

### Scope of the provision as interpreted by the ECSR

Article 9 establishes a right to vocational guidance in the education system, with information on training and access to that training, and concerning the labour market, with information on vocational training and retraining and career planning.

In assessing vocational guidance services, the main factors taken into account are their specific responsibilities, how they are organised and operate, how much is spent on them, their staffing and the number of persons served. Vocational guidance is particularly concerned with young persons who have left school, job seekers and the unemployed.

Vocational guidance for persons with disabilities is dealt with under Article 15 of the Charter for countries that have accepted both provisions.

Such guidance must be provided by a sufficient number of qualified staff, such as trained counsellors, psychologists and teachers, to a significant number of persons and receive appropriate State financing. The information available and the means used to disseminate it must reach the widest possible audience.

Finally, everyone, including non-nationals, must be granted equal treatment regarding vocational guidance. Pursuant to the Appendix to the Charter, nationals of other States party lawfully resident or working regularly in the country concerned must be granted equal treatment. This means that length of residence or employment conditions and reciprocity agreements are incompatible with this provision of the Charter.

### Conclusions of the European Committee of Social Rights

The Committee takes note of the information provided in Azerbaijan's report. As Azerbaijan has not accepted Article 15 of the Charter, measures relating to vocational guidance for persons with disabilities are dealt with here.

#### *Vocational guidance within the education system*

##### a. Functions, organisation and operation

Under the Employment Act, secondary school pupils and students in higher education are entitled to free vocational guidance. Counselling forms part of the public services and is provided through the vocational guidance offices in the cities of Baku, Ganja, Nakhchivan and Mingachevir.

The Committee asks for information in the next report on the organisation of vocational guidance in the education system, including for the disabled persons, and for a description of how it operates in practice. It asks whether guidance services are provided within schools and education establishments.

##### b. Expenditure, staffing and number of beneficiaries

The report states that the budget for vocational guidance and training was € 145,000 in 2005 and € 146,300 in 2006. There were five members of staff in total, spread between the centres in Baku, Ganja, Nakhchivan and Mingachevir, and they had qualifications in education, economics

and psychology. The total number of beneficiaries of vocational guidance was 2,640 in 2005 and 3,180 in 2006. The report does not state, however, what proportion of the GDP and how many staff are assigned to the school guidance system and how many people benefit from it. The Committee asks for the next report to provide detailed information on expenditure, staffing and the number of beneficiaries of vocational guidance in the education system.

#### *Vocational guidance in the labour market*

##### a. Functions, organisation and operation

Under the Employment Act, jobseekers, unemployed people and people without appropriate training are entitled to free individual or collective vocational guidance counselling in the country's vocational guidance offices or the regional branches of the national employment service.

The Committee asks whether the vocational guidance on offer satisfies demand. It also asks for information in the next report on the organisation of vocational guidance in the labour market for the disabled persons.

##### b. Expenditure, staffing and number of beneficiaries

The only figures provided in the report are those of the total budget for vocational guidance and training (€ 145,000 in 2005 and € 146,300 in 2006), the total number of staff (five for the whole country) and the total number of beneficiaries (2,640 in 2005 and 3,180 in 2006); it does not give any details concerning the proportion of the budget and the staff assigned specifically to vocational guidance in the labour market or the number of beneficiaries thereof.

The Committee asks for the next report to provide detailed information on expenditure, staffing and the number of beneficiaries of vocational guidance in the labour market.

#### *Dissemination of information*

A computer programme and a multi-media tool provide advice to jobseekers on over 300 occupations and specialisations. It is used successfully by the employment services.

The Committee asks whether vocational guidance information is also available in other forms (in-house information, publications, brochures, catalogues, etc.).

#### *Equal treatment of nationals of the other States Parties*

Under Article 13 of the Labour Code and section 6.2.8 of the Employment Act, foreign nationals and stateless persons living in Azerbaijan have the same rights and duties as Azerbaijani citizens, without discrimination, in their dealings with the employment services.

#### *Conclusion*

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

## Answers

- 2) Provide information on work done (organizational, programs, plan of activities, plan of events, projects etc.) for implementation of legislative base.

“State Program for the Development of Technical Vocational Education in Azerbaijan Republic (2007-2010)” was approved with the Decree of the President of Azerbaijan Republic dated, July 3, 2007. Action Plan for implementation of the State Program was approved with the Order of the Ministry of Education of Azerbaijan Republic dated, July 30, 2007.

In the framework of the Action Plan vocational lyceums number 4, 5, 11, 12, 13, 16, 17 and 18 in Baku, Ganja Vocational Lyceum number 3, Aghdam Vocational School number 50 and Girls Vocational School number 13 were fundamentally repaired and provided with modern equipment. Qabala Tourism and Hotel Industry Vocational Education Center was established with the Orders of the Cabinet of Ministers of Azerbaijan Republic dated, October 14, 2008 and the Ministry of Education dated November 7, 2008.

“Instructions for shifting vocational schools and lyceums to 5 work day week, organizing and conducting examinations, and example curriculum” was approved with the Order number 840 of the Education Minister of Azerbaijan Republic, dated, July 1, 2008. New curriculum for vocational education institutions was approved by the Order number 1027 of the Education Minister of Azerbaijan Republic, dated, September 1, 2008.

Assessment of labor market in tourism sector was conducted in Mountainous Shirvan Region in the framework of “Vocational Education and Training Reform Strategy and Pilot Implementation in a selected region in Azerbaijan” financed by the European Union and implemented by the British Council. A Working Group for Labor Market was organized by the project to conduct assessment of labor market in the pilot region and curricula were developed for specific specializations of tourism sector. Modern vocational school was built in Ismailli district. In the framework of the project members from the Ministry of Education, the Ministry of Labor and Social Protection of Population, non-governmental organizations, local and international experts developed occupational standards and curricula for “Cook”, “Tourist agent”, “Waiter” and “Receptionist” occupations. 25 workshops and trainings were organized in topics such as occupational and education standards, strategic plans, curricula, training of teachers, assessment of labor market, etc. Close to 20 administrators of educational institutions and 100 pedagogical staff members were involved in these workshops and trainings. Methodical resources were developed for “Assessment of labor market”.

Document of “State standard and curriculum for primary special vocational training” was approved with the Decision number 77 of the Cabinet of Ministers of Azerbaijan Republic, dated, April 23, 2010.

Cabinet of Ministers of Azerbaijan Republic approved “Samples of state educational documents and rules of their issue” with the Decision number 82 dated April 29, 2010 and “Duration of implementation of education programs (curricula)” with the Decision number 104 dated June 4, 2010. Curricula and teaching materials for around 10 occupations were developed according to these documents.

“Instruction document for development of modular programs for primary special vocational training” was developed.

As a result of joint efforts of the Ministry of Education and “Baki” publishing house “Electronic Vocational Education” project is being carried out for expansion of coverage of the primary special vocational education as well as improving possibilities of qualification without leaving work or education. [www.avel.edu.az](http://www.avel.edu.az) education portal was developed in the framework of the project and electronic resources for some occupations were posted. The portal contains electronic books, video tutorials, animations, self-assessment means (test, questions, exercises), etc.

New curricula were developed for “Electric and gas welder” and “Repairer-metal smith” occupations in the framework of the project implemented together with “World Vision” organization.

Baku State Railway Lyceum has been training qualified personnel according to the agreement with the Baku Metro since 2010.

New curricula were developed for “Hotel supervisor” and “Computer operator” specializations in the framework of the project of “Improvement of vocational education in Azerbaijan” implemented according to the contract between Haydar Aliyev Foundation, Azerbaijan Government and UNESCO for improvement of vocational education, dated June 18, 2006. Curricula developed by the local and international experts were assessed by the Moscow office of UNESCO and it was decided to develop textbooks on the basis of these curricula. In the framework of the project, resource centers were established for service sector in vocational lyceums number 11 and 12 in Baku, and information and communication technology in vocational lyceums number 7 and 17 in Baku.

Assessment of engineer and pedagogical staff members of Bilasuvar vocational lyceum, identification of specializations for requirements of the region and companies was carried out and fields for vocational training were identified in the framework of project “Improvement of Vocational Schools” implemented by the Ministry of Education of Azerbaijan Republic and “Azersun Holding” Group of Companies.

### **Professional orientation services in the framework of education system and labor market**

Students of the 9-11 grades from schools of Baku and other big cities and regions are involved in professional orientation services with the assistance of local agencies of the State Employment Services (SES) according to the agreement between relevant agencies of SES and Education Departments in cities (regions). Students are presented various methodical means, questionnaires, brochures, booklets and information books.

Professional orientation counseling is assigned to specialists of local agencies (Employment Centers) of the State Employment Services.

Information on costs of professional orientation services in labor market and number of beneficiaries is given in Article 1, item 1.

Implementation of the task “Professional Orientation Services for Youth” started within the framework of the “Improvement of Social Protection” Project of the Ministry of Labor and Social Protection of Population of Azerbaijan Republic and the World Bank. The aim of this task is assisting with finding relevant work places and employment opportunities, development of employment and training programs, starting of new job places and career development counseling services, development of tests for assessments of cognitive skills and technical-vocational specialization, and to choose the most reliable and convenient one among the above mentioned methods for prevention of long term unemployment.

In the framework of this task, work was started for the establishment of Professional Orientation Center on basis of international standards. Thus, international experience for functioning of such centers was studied and international experts were involved for development of Concept regarding this matter. Wide audience of employees of Employment Services were gathered to identify counsellors for professional orientation services and group of 8-10 members were chosen as a result of query. Beside that, 50 job profiles were developed and given to discussion of the working group. 5 secondary schools from Baku and Sumgait cities were chosen for professional orientation services in the framework of the current task.

## **Article 20 - The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex**

With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

- a. access to employment, protection against dismissal and occupational reintegration;
- b. vocational guidance, training, retraining and rehabilitation;
- c. terms of employment and working conditions, including remuneration;
- d. career development, including promotion.

### Appendix to Article 20

1. It is understood that social security matters, as well as other provisions relating to unemployment benefit, old age benefit and survivor's benefit, may be excluded from the scope of this article.
2. Provisions concerning the protection of women, particularly as regards pregnancy, confinement and the post-natal period, shall not be deemed to be discrimination as referred to in this article.
3. This article shall not prevent the adoption of specific measures aimed at removing *de facto* inequalities.
4. Occupational activities which, by reason of their nature or the context in which they are carried out, can be entrusted only to persons of a particular sex may be excluded from the scope of this article or some of its provisions. This provision is not to be interpreted as requiring the Parties to embody in laws or regulations a list of occupations which, by reason of their nature or the context in which they are carried out, may be reserved to persons of a particular sex.

### Information to be submitted<sup>4</sup>

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, in particular on employment and unemployment rates by sex and percentage differences in earnings.

### Scope of the provision as interpreted by the European Committee of Social Rights

*Paragraphs a, b, c and d:* Right to equal treatment between women and men at all stages of working life - access to employment, remuneration and other working conditions, including dismissal and other forms of detriment, vocational training and guidance and promotion, as well as with respect to social security. The principle of equal treatment of women and men is understood to mean the absence of any direct or indirect discrimination on grounds of sex.

The right of women and men to equality must be guaranteed by a sufficiently detailed law. Any legislation, regulation or other administrative measure that fails to comply with the equality principle must be repealed or revoked. National legislation must provide for appropriate and effective remedies in the event of alleged discrimination. The burden of proof must be shifted. Anyone who suffers discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender. Employees who try to enforce their right to equality must be legally protected against any form of reprisals from their employers.

Occupational activities - and the training required for them - which, by their nature or the context in which they are carried out, can only be entrusted to persons of one sex may be excluded from the scope of Article 20. Provisions protecting women are not deemed to be discrimination if they are objectively justified by needs that apply exclusively to women, such as those relating to maternity (pregnancy, childbirth and the postnatal period).

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<sup>4</sup> States party that have accepted Article 20 of the European Social Charter (revised) do not have to reply to questions concerning Article 4§3, but must take account of these questions in their answers on Article 20.

Along with legislation, States party are required to take specific steps aimed at removing *de facto* inequalities affecting women's training or employment opportunities, including positive action

### Conclusions of the European Committee of Social Rights

The Committee takes note of the information provided in Azerbaijan's report.

#### *Equal rights*

The principle of equal treatment for men and women is enshrined in Article 25 of the Constitution of the Azerbaijan Republic, where it is also stated that any limitations of rights and freedoms on the ground of sex are prohibited. This principle is also embodied in the provisions of the Labour Code, the Law on Gender Equality, and other texts.

One of the main pieces of legislation in this area is the Law on Gender Equality adopted on 10 October 2006, which aims at eliminating all forms of discrimination based on sex and at creating equal opportunities for men and women in political, economic, social, cultural and other spheres of public life. Article 7 of the Law deals with equal treatment as regards access to employment, working conditions, career development and vocational training. There are provisions in the Law to ensure there is no discrimination on grounds of sex in the selection criteria for access to jobs (for example, the prohibition to set out different requirements for men and women in vacancy announcements or to ask for data on civil status or private life of the person seeking the job).

The Labour Code also deals with questions of equal treatment in employment. Article 16 stipulates that a person subject to discrimination has the right to seek recourse in a court of law. As to where the burden of proof lies in gender discrimination cases, the report states that under Article 6 of the Law on Gender Equality, when men and women are treated differently in employment, "the employer should justify, at the demand of the employee, that different treatment was not linked to sex". The Committee asks whether the latter provision refers to an adjustment of proof in a judicial process. It recalls that the burden of proof required under Article 20 consists in ensuring that where a person believes he or she has suffered as a result of non-compliance with the principle of equal treatment and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of equal treatment.

The report lacks information on three essential points concerning the legal framework on gender equality. Firstly, the Committee asks if the law makes provision for the protection of employees – against dismissal or other retaliatory action by the employer – for having complained or brought legal proceedings on grounds of a breach of the principle of equal treatment. Secondly, it also wishes to receive information on remedies available to women who have been discriminated against, and recalls that under Article 20 anyone who suffers discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender. Compensation should therefore not be subject to an upper limit as this prevents it from being proportionate to the damage suffered and hence adequate. Thirdly, the Committee asks if the right of women and men to "equal pay for work of equal value" is enshrined in legislation, as required under Article 20.

It is not prohibited under the Charter for States to entrust certain jobs and occupational activities to persons of one sex, if this is due to the nature or the conditions in which such jobs and activities are carried out. Such exceptions are however subject to strict interpretation.

The Committee notes that under Article 241 of the Labour Code, "employment of women is prohibited in labour intensive jobs, in hazardous workplaces, as well as in underground tunnels, mines and other underground work". The Committee considers that while the prohibition for women to work in mines responds historically to a concern for protection, it cannot be considered as positive action or as a measure aimed at ensuring equal opportunities, as it is not favourable for women, on the contrary it restricts their access to certain jobs. Whilst the 1961 Charter did prohibit the employment of women workers in underground mining, as well as in other dangerous,

unhealthy or arduous work, this was modified in the Revised Charter, where the prohibition for women to carry out such jobs was limited to the case of maternity. Therefore, bearing in mind social developments which have operated since the drafting of the original Charter, the Committee considers there is no longer a justification for excluding women from all labour intensive jobs or from employment in underground mining. Article 241 of the Labour Code, by containing such a prohibition, is therefore contrary to the principle of equality enshrined in Article 20 of the Revised Charter.

#### *Specific protection measures*

The Labour Code establishes that pregnancy or having a child under the age of 3 is a forbidden ground for refusing to sign an employment contract with a woman (Article 241).

#### *Position of women in employment and training*

The report states that the employment rate of women in 2006 was 48.1%. It also indicates that 51% of persons registered as unemployed that year were women. The Committee wishes to receive updated information in the next report on female employment, unemployment and part-time employment rates.

It also asks for information on any pay gap between women and men, i.e. the difference between the average pay level of male and female employees.

#### *Measures to promote equal opportunities*

The State Committee on Women's Issues was established by a Presidential Decree in 1998 with a view to implementing the State policy on gender equality (since 2006 it is called State Committee on Family, Women and Gender Issues). The main objectives and purposes of the Committee are the protection of the rights of women, and increasing the participation of women in social and political life.

In June 2000, the National Action Plan on Women Issues for 2000-2005 was adopted. This program was elaborated on the basis of Beijing Strategies taking into consideration the national priorities. It covers political, social, economic, cultural, educational and health spheres, as well as problems of refugee and internally displaced women. The National Action Plan includes both the participation of state structures and NGOs.

The Committee notes from another source<sup>5</sup> that among the reasons for the low participation of women in social, political and public life of the country are the existing traditional stereotypes of the image of woman in society, whose role is limited by the boundaries of family. This situation demands a new approach to the national gender equality strategy. The authorities are presently in the process of building the national machinery to develop gender strategies and to incorporate a gender component in practical activities within the Government.

In this respect, the gender focal points in ministries form part of the working group under the State Committee for Women's Issues which meets every month to elaborate a new gender policy within each ministry, and to discuss what has been done in this field. The Committee asks the next report to provide information on any steps or measures taken to ensure that more attention is paid to equal pay for men and women in national plans and/or collective agreements.

#### *Conclusion*

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 20 of the Revised Charter on the ground that legislation prohibits the employment of women in underground mining and all other labour intensive jobs.

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<sup>5</sup>Ministry of Foreign Affairs, Gender issues, on:  
[http://www.mfa.gov.az/eng/foreign\\_policy/inter\\_affairs/human/gender.shtml](http://www.mfa.gov.az/eng/foreign_policy/inter_affairs/human/gender.shtml)



## **Answers**

Answer to the questions regarding violation cases of equal rights is given in the second paragraph of the first article.

According to the Article 9 of the Law of Azerbaijan Republic on “Guarantees of gender (Women and Men) equality” equal salaries, bonuses and other encouraging payments should apply to employees working in the same company, with the same specialization level, at the same work conditions and fulfilling the same valued job irrespective of their gender. If salaries, bonuses and other encouraging payments are not the same for both genders, by the request of an employee the employer must prove that the wage difference is not based on the ground of gender. According to the Article 1 of the Labor Code labor law system of Azerbaijan Republic consists of relevant laws, including the Law on “Guarantees of gender (Women and Men) equality” and employers shall apply requirements of the Article 9 of the Law.

In some sectors of economy average salaries of women is lower than men and also number of women working in these sectors is lower than men. But this situation should not be seen as discrimination in the amounts of salary. These cases occur because of objective reasons such as women tend to choose in less heavy works, do not work at places requiring overtime, do not work at piece-rate systems, etc.

To provide equal opportunities for employment, relevant proposals were developed in agreement with relevant government agencies and presented for adoption to the Cabinet of Ministers for abolishment of the “List of productions, occupations (positions), as well as underground works with hard and harmful working conditions in which employment of women is prohibited” given in the Part 6 of the Article 241 of the Labor Code and adopted by the Decision number 170 of the Cabinet of Ministers of Azerbaijan Republic, dated October 20, 1999.

## **Position of women in employment and training**

Reviewed information on level of employment and unemployment among female citizens is given in Paragraph 1 of Article 1.

## Article 24 - Right of workers to protection in cases of termination of employment

With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

- a. the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;
- b. the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body.

### Appendix to Article 24

1. It is understood that for the purposes of this article the terms "termination of employment" and "terminated" mean termination of employment at the initiative of the employer.
2. It is understood that this article covers all workers but that a Party may exclude from some or all of its protection the following categories of employed persons:
  - a. workers engaged under a contract of employment for a specified period of time or a specified task;
  - b. workers undergoing a period of probation or a qualifying period of employment, provided that this is determined in advance and is of a reasonable duration;
  - c. workers engaged on a casual basis for a short period.
3. or the purpose of this article the following, in particular, shall not constitute valid reasons for termination of employment:
  - a. trade union membership or participation in union activities outside working hours, or, with the consent of the employer, within working hours;
  - b. seeking office as, acting or having acted in the capacity of a workers' representative;
  - c. the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
  - d. race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
  - e. maternity or parental leave;
  - f. temporary absence from work due to illness or injury.
4. It is understood that compensation or other appropriate relief in case of termination of employment without valid reasons shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

### Information to be submitted

- 1) Please describe the general legal framework, including decisions by courts and other judicial bodies, if possible. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

### Scope of the provision as interpreted by the European Committee of Social Rights

Under Article 24, the following are regarded as valid reasons for termination of an employment contract:

- i) reasons connected with the capacity or conduct of the employee certain economic reasons;
- ii) these must be reasons "based on the operational requirements of the undertaking, establishment or service"

The appendix to Article 24 lists reasons for which it is prohibited to terminate employment.

Prohibition to terminate employment for most of these reasons is also a requirement for conformity with other Articles of the Charter.

Two reasons are examined only under Article 24, namely:

- a. the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities.  
National legislation or case-law must contain express safeguards against retaliatory dismissal.
- b. temporary absence from work due to illness or injury. A time limit can be placed on protection against dismissal in such cases.

Any employee who considers him- or herself to have been dismissed without valid reason must have the right to appeal to an impartial body. Employees dismissed without valid reason must be granted adequate compensation or other appropriate relief. Compensation systems are considered appropriate if they include the following provisions:

- reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body, the possibility of reinstatement;
- and/or compensation of a high enough level to dissuade the employer and make good the damage suffered by the employee.

### Conclusions of the European Committee of Social Rights

The Committee takes note of the information provided in Azerbaijan's report.

Article 24 of the Revised Charter obliges states to establish regulations with respect to termination of employment (at the initiative of the employer) for all workers who have signed an employment contract. To assess whether the regulations applied in cases of termination of employment are in conformity with Article 24, the Committee's examination will be based on:

- the validity of the grounds for dismissal under the general rules on termination of employment and increased protection against dismissal based on certain grounds (Article 24a and the Appendix to Article 24);
- sanctions and compensation in cases of unfair dismissal and the status of the body empowered to rule on such cases (Article 24b).

### *Scope*

Pursuant to Sections 51 and 54 of the Labour Code, employment contracts may be subject to a probationary period of a maximum of three months. Either party may terminate the contract at the end of the probationary period by giving the other party a three days written notice.

It appears from the information provided in the report, that apart from the exception of probationary periods, the provisions of the Labour Code governing termination of employment apply to all employment relationships governed by an employment contract and the Committee asks the next report to confirm that this is actually the case.

### *Obligation to provide a valid reason for termination of employment*

Section 70 of the Labour Code enumerates the grounds upon which an employment contract may be terminated at the employer's initiative, like in the event:

- "a) the enterprise is liquidated;
- b) there is a cutback in the number of employees in the enterprise;
- c) a competent body decides that the employee does not have the professional skills for the job he holds;
- d) the employee does not fulfil his job description or fails to perform his duties as defined by the employment contract and job description."

As regards termination of employment contracts following liquidation of the enterprise or because of a cutback of personnel (Section 70 a and b of the Labour Code), i.e. termination based on economic reasons, Section 71 of the Labour Code specifies that if an enterprise is split up, merged with another enterprise, reorganized, its organizational or legal form is changed or the number of employees is reduced, or positions abolished, the possibility of transferring the employee

to another job must be looked into by the employer. It appears that only if there is no such possibility the employment contract may be terminated. Furthermore, Section 78 provides for rules on the order in which certain categories of employees should be made redundant or be retained in the event of personnel cutbacks.

As regards the reasons for termination of employment under Section 70 d related to the capacity or conduct of the employee (violation of contract), Section 71 specifies that termination in this context is possible in the event an employee has deliberately or negligently violated his obligations resulting from the employment contract or applicable law. Section 72 of the Labour Code enumerates cases constituting gross violations of work obligations in accordance with the job description. According to Section 186 para. d), cancellation of the employment contract in accordance with subsection c of Section 70 is considered as being a disciplinary action. Concerning termination of employment due to lack of professional skills to perform the job (Section 70 c), it is specified that such incapacity has to be decided upon the employers request by the "Certification Commission" as described in Section 65 of the Labour Code, consisting of professionals and trade union representatives. Neither the employer nor the employee's supervisor may be a member of the Commission. Pursuant to Section 67 of the Labour Code, the employment contract of an employee for whom the Certification Commission has rendered a decision on non-compliance with his position may be terminated by an employer in accordance with Article 70. Employers may also transfer employees to another appropriate position with the employee's consent by taking into account the Certification Commission's recommendations. The Committee notes that the decisions of the Certification Commission may be appealed against with the courts. It asks the next report to provide further information on the work and composition of the Certification Commission in particular on how its independence from the employer is ensured. It further asks whether the decision of the Commission on the incapacity of the employee serves as a prima facie evidence that a dismissal was justified on the occasion of a court procedure regarding a dismissal.

Section 74 of the Labour Code furthermore lists a number of grounds of termination of an employment contract which are described as "not depending on the will of the parties" such as in the event:

- a) the employee is called for military or alternative service;
- b) the person who held the job previously is reinstated by a legally valid court ruling;
- c) the employee cannot perform his job for more than six months because of full and permanent disability unless the law sets a longer period;
- c) a court decision that deprives an employee from the right of driving a vehicle, the right of taking certain positions or engage in certain activities, or that sentences the employee to prison;
- d) the employee's incompetence is confirmed by a court decision that has taken legal effect."

The Committee understands that in these cases even though the termination is "not depending on the will of the parties" it is nevertheless in the employer's discretion whether he wants to terminate the employment contract or not and thus termination is effected at the employer's initiative. As regards termination following a call for military or alternative service (Section 74 a) the Committee asks whether employees have a right to be reinstated after having completed their service. Concerning termination of an employment relationship because of reinstatement of the person previously holding the post (Section 74 b), the Committee asks whether an employee may be dismissed even though reinstatement of the previous holder of the post occurs several months or years after he has taken over the post.

The Committee further notes that in the event employment is terminated because the employee can not perform his/her function due to a complete loss of labour capacity for longer than six months (Section 74 c), the Medical and Social Expert Commission, a Government Agency, establishes the category of disability and the employee is considered to be incapable to perform his/her post for at least a year. The Committee asks to what extent the decisions of this Commission are subject to judicial review. It notes from the report that there is a number of court case examples

in this respect by employees claiming their employment relationships have been terminated unlawfully in this context and asks the next report to provide information in this respect.

The Committee recalls that when assessing the conformity of the situation as regards dismissal without notice in the event of permanent disability, it will take account of the following factors and asks relevant information to be included in the next report:

- is dismissal without notice for reasons of permanent invalidity permitted regardless of the origin of the invalidity? In particular, may this occur in cases of employment injuries or occupational diseases?
- are employers required to pay compensation for termination in cases of permanent injury?
- if, despite the permanent invalidity, the worker can still carry out light work, is the employer required to offer a different placement? If the employer is unable to meet this requirement, what alternatives are available?

It notes in this respect that Section 77 para. 7 of the Labour Code stipulates that in the event an employment relationship is terminated because of permanent disability, the employer is obliged to pay to the employee an allowance equal to twice the average monthly wage.

Finally, the Committee recalls that a prison sentence delivered by a court, can be a valid ground for termination if such sentence is delivered for employment-related offences. This is not the case with prison sentences for offences unrelated with the person's employment, which cannot be considered valid reasons unless the length of the custodial sentence prevents the person from carrying out their work (Conclusions 2005, Estonia). The report states in this respect that dismissal is permitted on the ground of prison sentences for offences unrelated with the employee's employment in the event of a life sentence or sentences for a certain period of time. The Committee asks the next report to specify as from which duration a prison sentence for reasons not related with the employment would justify termination of employment.

The Committee takes note of the summary of decisions of national courts in dismissal cases showing how the aforementioned valid grounds for termination of employment are interpreted in practice. It notes in particular from the information provided that courts are empowered to review the facts underlying a dismissal that is based on economic grounds invoked by the employer.

Furthermore, the Committee asks whether Azerbaijani law provides for termination of the employment relationship on the grounds of age. In this context it wishes to know how retirement ages (mandatory retirement ages set by statute, contract or through collective bargaining) and pensionable age are fixed in Azerbaijan and what is the consequence on the employment relationship once an employee has reached retirement and/or pensionable age. The Committee asks in particular whether the law prescribes or provides for termination of the employment relationship on the grounds that an employee has reached the retirement age and whether there are specific procedures to be followed or conditions to be fulfilled once an employee reaches the retirement age or whether employees who reach this age are automatically dismissed.

The Committee holds that dismissal on the grounds of age will not constitute a valid reason for termination of employment unless a termination is, within the context of national law, objectively and reasonably justified by a legitimate aim such as legitimate employment policy, labour market objectives or the operational requirements of the undertaking, establishment or service and provided that the means of achieving that aim are appropriate and necessary. It wishes the next report to provide information on whether and how the legal framework complies with this approach.

Sections 83 and 84 of the Labour Code stipulate that notice of termination of an employment contract has to be effected in writing and indicate the grounds for the termination.

#### *Prohibited dismissals*

The Committee points out that a series of provisions in the Charter and Revised Charter require more rigorous safeguards against dismissal on certain grounds:

- Articles 1§2; 4 §3 and 20: discrimination;
- Article 5: trade union activity;

- Article 6§4: participation in a strike;
- Article 8§2: maternity;
- Article 15: disability;
- Article 27: family responsibilities;
- Article 28: workers' representation.

Most of these reasons are also listed in the Appendix under Article 24 as reasons which do not justify dismissal. However, the Committee will continue to check whether national situations are in conformity with the Revised Charter in regard to these reasons when it examines the reports on each of these provisions. It thus restricts its examination of more rigorous protection against dismissal to the reasons listed in the Appendix under Article 24 which are not referred to elsewhere in the Revised Charter, namely:

- "the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities". The Committee considers that national legislation should contain an express safeguard, in law or case law, which protects employees against retaliatory dismissal if they turn to the courts or another competent authority to enforce their rights;
- "temporary absence from work due to illness or injury".

Section 74 of the Labour Code specifies that temporary disability for a period of less than 6 months shall not be a valid ground for termination of the employment contract and workers temporarily disabled shall be paid a mandatory social insurance allowance and their workplace and position shall be retained. Section 79 of the Labour Code explicitly prohibits the dismissal of employees that are temporarily disabled and the report indicates that this covers any temporary loss of labour capacity which is understood to cover illness.

As regards retaliatory dismissals the report states that such a dismissal would not be based on the valid reasons for termination of employment as set out in the Labour Code and would therefore be considered as being unlawful by the courts. The Committee asks the next report to provide examples of pertinent case law, establishing that employees are protected against retaliatory dismissal if they turn to the courts or another competent authority to enforce their rights.

#### *Remedies and sanctions*

Employees considering that their rights and legally protected interests have been violated may have recourse to the courts (Sections 9 (q), 288, 292, 294 and 295 of the Labour Code). Pursuant to Section 71 (3) the employer shall be obliged to prove the necessity of terminating the employment contract on the grounds as set out in Section 70 of the Labour Code. Section 195 of the Labour Code stipulates that employers shall bear full financial liability for damages in the event a court decision has established that the dismissal was unlawful and have to pay compensation for financial and moral damage in the amount set out in the court decision. The Committee asks whether the law provides for a cap on compensation ordered by a court in the case of an unfair dismissal. Section 300 of the Labour Code further specifies that in the event of an unlawful dismissal at the initiative of the employer, the court shall decide on the reinstatement of the employee.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Azerbaijan is in conformity with Article 24 of the Revised Charter.

## Answers

### **Existence of reasons according to general rules for termination of Employment Contracts and strengthening of protection against layoffs for certain grounds (article 24 and additions to the article 24)**

According to the Part 1 of the Article 84 of the Labor Code on “Content of the Order on Terminating an Employment Contract” together with other information the order (decree, decision) terminating an employment contract must contain grounds of termination of contract and official documents considered as grounds for terminating the employment contract must be added to the order (decree, decision). In relation to query of the European Committee on Social Rights, it should be noted that, without grounds given in the Labor Code and addition of an official document considered as grounds employment contract cannot be terminated. Orders not meeting these requirements shall be considered illegal. According to the Part 2 of the Article 84 of the Labor Code an order (decree, decision) lacking any of the information for termination of Employment Contract may be declared invalid by the court resolving the Labour dispute.

Social partners in Azerbaijan Republic, especially Azerbaijan Confederation of Trade Unions as supreme representative of employees, consider cases of termination of employment contract at initiative of employers as cases aggravating conditions of employees and activities are being carried out to improve legislation for strengthening measures protecting rights of employees. As an example, it should be noted that the Article 80 of the Labor Code of Azerbaijan Republic on “Agreements when Employment Contracts are Terminated by Employers” entered into force in July 1, 1999, was improved with initiative of Azerbaijan Confederation of Trade Unions, according to the Laws 152-IIIQD, dated October 10, 2006 and 608-IIIQD, dated May 16, 2008. The final version of the Article is as following:

#### **Article 80. Agreements when Employment Contracts are Terminated by Employers**

1. An employment contract of the employee who is a member of the trade union is terminated by the employer on the grounds indicated in Parts “b” and “c” of Article 70 of the Labour Code through getting agreement of the trade union functioning at the enterprise in advance.
2. The employer willing to terminate the employment contract of the employee who is a member of the trade unions on the basis of provisions stipulated at Part 1 of this Article, should submit written justified application to the trade union functioning at the enterprise. Relevant explanatory references are attached to the application. The trade union should submit its written justified decision to the employer within 10 days after receipt of the application.
3. In all other cases, except for those mentioned above, prior agreement of trade unions is not required while terminating employment contracts by the employer.

Additions were made to the Article 79 of the Labor Code on “Employees Whose Employment Contracts May Not be Terminated” according to the Law 771-IIIQD, dated February 24, 2009. It identifies that employment contracts of men upbringing a child under three years of age alone (added for gender equality), employees with disabled persons under 18 years of age or with persons of first group of disability in family cannot be terminated.

The following additions were made to the Article 45.5 of the Labor Code to prevent unjustified time bound contracts with employees and termination of employment contracts on unjustified expiry of employment contracts in permanent job places.

“ 5. Time-bound contracts continuing for more than 5 years without interruption are considered as permanent contracts”.

In order to clarify the basis of termination of employment contracts by employers items d and e, identifying basis of termination of employment contract, were added to the Article 70 of the Labor

Code on “Grounds for Termination of an Employment Contract at the Employer's Initiative” according to the Law 771-IIIQD dated February 24, 2009.

"d) in cases of employee not meeting expectation during probation period;

e) when the employee of public-financed institution reaches to the working age limit.”

### **Sanctions and compensation for unjustified firing of an employee and the status of the agency empowered to identify such decisions (Article 24b)**

According to the Article 15 of the Labor Code, the State Labor Inspectorate Service (SLIS) under the Ministry of Labor and Social Protection of Population implementing state control over the execution of Labor legislation shall have the right to require those persons guilty of Labour legislation violations to cease their violations of the law, to hold these persons accountable in cases and the manner determined in the Code of Administrative Offences of Azerbaijan Republic and to table before the relevant authorities whether to hold said persons liable for other infringements. Including, according to the Statute of the SLIS, it has right to disclose and apply punishment to cases of illegal termination of employment contracts.

According to the Article 53.6 of the Code of Administrative Offences of Azerbaijan Republic SLIS “Shall involve penalization on officials at the rate of one thousand five hundred to two thousand manats for termination of an employment contract with the employee with violations of labor legislation.”

According to the “Note” part of the Article 16 of the Code of Administrative Offences of Azerbaijan Republic «The officials» mean persons who carry out duties of a representative of the state power, persons working permanently or temporarily at economic-administering positions at state authorities, institutions of local governing, Armed Forces of the Azerbaijan Republic, at other bodies of troops established in accordance with the legislation of the Azerbaijan Republic, at state and non-state organisations, establishments and enterprises, or persons who perform similar duties in view of special authority, also natural persons who perform such duties dealing with business undertakings without establishing a legal person.

In cases of unjustified termination of employment contracts the court has the power to decide restoration of employee to previous position, payment of employee salary for the period of forced absence and in case of a claim payment of moral damages. Thus, according to the item A of the Article 288 of the Labor Code cancellation of an employment contract is considered as a subject of individual labor dispute. According to the item 2 of the Article 292 of the Labor Code in order to regain his violated rights, an employee may appeal to the court or to the relevant agency handling Labour disputes before appealing to the court, as stipulated in Article 294 hereof, or he may go on strike by himself in the manner established in Article 295 hereof. According to the item 2 of the Article 294 in the situation indicated in collective agreements with entities, a body may be created within the framework of a trade union to look into individual disputes prior to going to court. The establishment and functioning of this body may be defined by collective agreements.

An institution looking into individual disputes prior to court can make decisions about cases of termination of employment contracts by violation of labor legislation. According to the item 1 of the Article 294 of the Labor Code in case of not establishing institution looking into individual disputes prior to court, all individual Labour disputes on termination of employment contracts by violation of labor legislation shall be handled by the courts.

### **Termination of employment contracts during probation period**

According to the item “d” of the Labour Code of the Republic of Azerbaijan, employment contract shall be terminated in cases of employee not meeting expectation during probation period.



As it was mentioned above, this ground of termination of employment contract was added to the Labor Code by the Law number 771-IIIQD, dated February 24, 2009. Before this addition to the Code, employees not meeting expectation during their probation period were laid off on grounds given in item “d” (the employee does not fulfill his job description or fails to perform his duties as defined by the employment contract and job description as indicated in Section 72 hereof) of the Article 70 of the Labor Code, if not fired on his/her own will. This reasoning written in employee’s record book, created difficulties in new employment contracts. The item “d” mentioned above was added to the Article 70 of the Labor Code for protection of employees. At the same time, it should be noted that, after addition of this item, termination of employment contract during probation period can be reasoned to other items given in the Labor Code.

### **Activities and content of Certification Commission and information on how to provide its independence from employers**

According to the Article 65 of the Labor Code of Azerbaijan Republic a Certification Commission consisting of experienced, objective and impartial persons with highly professional skills, as well as a representative from the trade union shall be established pursuant to the employer's order (instructions). Neither the employer nor the employee's supervisor at his workplace may be a member of the aforesaid Certification Commission. The Certification Commission shall consist of at least 5 persons and in all cases the number of its staff must be odd numbers. The term of authority of the Certification Commission shall be determined in the proper order (instructions) concerning its establishment.

The members of the Certification Commission may question an employee regarding his position (occupation), function, specialty (profession), the jobs performed by him/her and their results, as well as on issues concerning his rights and obligations under an employment contract in order to determine his compliance with his position (profession). The professional standing of an employee that is certified may not be evaluated according to his political outlook, spiritual or moral maturation, personality, faith and other personal qualities including his degree of discipline.

The Certification Commission's activity shall be carried out openly, objectively, impartially and in compliance with the requirements of Legislation. The Certification Commission shall adopt its decision by a majority vote obtained during open or secret ballot. The desire of Labour collective representatives to participate as observers at the Certification Commission's meeting must be accommodated.

The Certification Commission shall adopt only one decision: whether or not an employee complies with his position (profession). Moreover, the Certification Commission may submit recommendations to the employer on the expediency of utilizing said employee in another position (profession).

In addition to general norms identified in the Labor Code regarding the Certification Commission, the Cabinet of Ministers of Azerbaijan Republic adopted “Rules of certification of employees in Azerbaijan Republic” by the Decision number 97, dated May 23, 2001. According to these rules exact duration and conduction rules shall be approved by management of enterprises before the start of calendar year and employees to be certified shall be noted no later than 1 month prior to certification.

In cases when there is no higher qualified specialists are available in an enterprise for certification of positions requiring special knowledge (medical staff, pedagogical staff, other household employees) the Certification Commission shall contain specialist from higher bodies or from relevant profile agencies with the required specialization.

Certification Commission for certification of scientific workers shall contain members from science commission of an organization.

Certification of employees of nomenclature shall be carried out by Certification Commission of agencies nominating or approving them to job.

Certification of employers of minority enterprises shall be carried out by Certification Commission of higher agencies. List of these enterprises is identified by higher agencies.

Certification of Certification Commission is carried out together with the staff of their units. In this case, certified Certification Commission member do not participate in voting.

Enterprises with many employees are allowed to establish more than one Certification Commission with equal rights. Commissioners shall provide objective assessment of employers and approach with professional principals to make recommendations about opportunities of using employees for a certain position.

Certification of an employee can be conducted together with the head of a structural department. Certification Commission listens to information about examinees work and reviews provided documents. Examinee's discussion in commission shall be conducted conditions of exactingness and objectivity.

Examinees not attending to Certification Commission meeting for excusable reason shall be re-scheduled in accordance to new schedule on the basis of relevant documents.

The members of the Certification Commission may question an employee regarding his position (occupation), function, specialty (profession), the jobs performed by him/her and their results, as well as on issues concerning his rights and obligations under an employment contract in order to determine his compliance with his position (profession). The professional standing of an employee that is certified may not be evaluated according to his political outlook, spiritual or moral maturation, personality, faith and other personal qualities including his degree of discipline.

The Certification Commission shall adopt its decision by a majority vote obtained during open or secret ballot. The desire of Labour collective representatives to participate as observers at the Certification Commission's meeting must be accommodated.

The Certification Commission shall adopt only one decision out of two choices, whether or not the employee is suitable for the position (profession) he/she is holding:

- a) suitable for the position
- b) not suitable for position

Moreover, the Certification Commission may submit recommendations to the employer on encouragement of an employee, increase decree of qualification and payment level, change amount of salary in an employment agreement (not being less than amount identified in legislation), make amendments, send for qualification, enter an employee to the list of promotions, change position with the consent of an employee, lay-off if an employee is not suitable for position, decrees payment level at the same time recommend expediency of utilizing said employee in another position (profession). On basis of result of certification, in exceptional cases, the Certification commission can recommend possibility of appointing employees to positions requiring special training and experience, who are not meeting special training requirements and work experience of a position but carrying out imposed duties with quality and with practical experience. However, Certification Commission has to present reasoning of this recommendation.

Results of certification (assessment and recommendations, short content of questions asked from examinee and answers) are written in one copy of attestation paper and the paper is signed by the chairman and members of the commission and examinee.

Certification Commission fills in certification paper for each employee.

Certification paper is kept in personal file of an employee.

The decision of Certification Commission is announced to employees after the commission meeting.

The results of Certification are given to enterprise management within a week after the certification of employees of a certain unit. Management of an enterprise makes relevant decision on the basis of certification results in frame of requirements of legislation.

Recommendations of the Certification Commission should be met by an enterprise within 30 calendar days. Decreasing specialization or payment level as well as salary and additions to salary, or cancellation of additions, demotion or firing after the given duration is prohibited.

Sick leaves, vacations and assignment trips are not considered in these 30 days.

Higher agencies provide proper conduct of certification, supervise and carry out activities for improvement of certification of staff members, for learning certification deeply and expand good practice.

Disputes regarding certification, including firing or change of position (profession) due to results of certification shall be resolved in courts in accordance to the legislation.

### **Use of certification commission's decision as an evidence justifying firing of an employee due to insufficiency of professional level**

As an answer to the query of a Committee, it should be noted that certification commission's decision justifying firing of an employee due to insufficiency of professional level may and may not be used as an evidence in court. In all cases the court will issue decision after investigating the case. If the court reveals biased nature of the decision of certification commission, then the decision will not be accepted as justification of firing of an employee. Use of certification commission's decision as an evidence justifying firing of an employee is not directly regulated in legislation.

### **Restoration of positions of employees after finishing military service**

According to the item 9 of the Article 77 of the Labor Code on "Employee Guarantees upon Termination of an Employment Contract" regardless of the type of ownership and organizational-legal form of enterprise, the workplace and position of the employee shall be retained within the period of the mandatory military service, except for the liquidation of the enterprise, in order stipulated by the legislation. Individuals who were working for the enterprise before the statutory military service, shall be reinstated to the same or equal position at the same enterprise within the period not exceeding 60 calendar days upon returning from the statutory military service.

According to the item "b" of the Article 74 of the Labor Code an individual employment contract shall be terminated if the person who held the job previously is reinstated by a legally valid court ruling and this is considered as independent of the will or wishes of the parties. Because no time duration is defined by legislation for this case, employment contract of an employee, working in place of restored person, shall be terminated regardless of duration of working period.

According to the Article 75 of the Labor Code when entering into employment contracts the parties may define conditions for their termination, in addition to those provided in the Code. The following additional cases concerning the termination of employment contracts may be stipulated in employment contracts pursuant to the Parties' mutual consent:

- the opinion of a health enterprise that occupying a certain position (occupation) poses a danger to an employee's health;
- in cases when there is a high probability of falling ill with occupational disease at a given workplace during the discharge of an employee's duties within a certain time period.

If above mentioned cases are not stipulated in an employment contract, according to the item "c" of the Article 74 of the Labor Code, employment contract shall be terminated if the employee cannot perform his job for more than six months because of full and permanent disability. Permanent disability shall be determined by an opinion of the Medical Social Expert Commission. Permanent disability shall be defined as the disability of an employee for at least one year. Temporary disability for a period of less than 6 months shall not be ground for termination of the employment contract.

According to the Law of Azerbaijan Republic on "Procedures for review of citizen applications" decisions of the Medical Social Expert Commission on granting disability may be appealed to the court.

## Article 9. Right of appeal

Citizen, who does not agree with decision, made on his proposal, application, complaint shall be entitled to appeal against the decision in the authority or before public officials, to which the decision making authority, entity, organization, enterprise or public official is subordinated.

Complaints may be submitted to court in accordance with procedures of legislation.

According to the Article 24 of the Law of the Republic of Azerbaijan “On prevention of disabilities and impaired health of children and rehabilitation and social protection of the disabled and children with impaired health” with exception of cases when according to the decision of Medical Social Expert Commission persons with disabilities and children with impaired health have difficulties for fulfilling professional duties or are threat to health and occupational safety, refusal of employment contracts with persons with disabilities or children with impaired health due to health impairment issues or refusal of promotion and firing without their own consent is prohibited by the legislation.

As an answer to the query of the Commission, if an employee who is permanently disabled (got disability level) due to long term sickness decides to continue labor relations, in other words an employee is not willing to be fired from the job, in this case according to the above mentioned, an employee can work in previous position (profession) or less heavy position with a decision of Medical Social Expert Commission. If the Medical Social Expert Commission decides not to allow an employee to his/her previous position (profession) and allows him/her to easier works, then an employer can appoint an employee to easier position (profession) if possible. If not possible, then an employer can terminate employment contract according to the item “c” of the Article 74 of the Labor code, namely, not due to persons disability and will of parties. According to the Part 2 of the Article 74 of the Labor Code, if an employee illegally dismissed from his place of work appeals to a court of law and the court accepts his claim and rules to reinstate his job, the employer must carry out the court ruling immediately and reinstate him in his previous job or in another job with his consent. The employment contract for the employee put into this employee's position may be terminated by the procedure defined in Part 1 of the Article 71 hereof. In this case an employee whose employment contract is terminated, shall receive at least two fold of the monthly salary, according to the Part 7 of the Article 77 of the Labor Code.

In case of disability of a person occurred due to labor injury or occupational disease, the following guarantee shall be paid to persons with disabilities, regardless of employment:

- disability pensions by the state;
- monthly payments from guilty enterprises for caused damage (percent of the average monthly salary in the amount of loss of ability to work) or insurance payments by insurance companies if an employee had compulsory insurance for accidents.

According to the item “ç” of the Article 74 of the Labor Code an individual employment contract shall be terminated independent of the will or wishes of the parties in case a court sentences the employee to prison for certain period or for life.

Because the Labor Code of Azerbaijan Republic does not define for which duration of sentencing for prison (regardless of being related to labor function) shall terminate employment contract, in this cases employment contracts are terminated on grounds not depending on will of parties.

**About existence of duration in legislation of Azerbaijan Republic for termination of employment relation due to age and ways of termination of employment relations when an employee reaches to retirement age**

With the Law number 127-IVQD of Azerbaijan Republic dated to May 17, 2011, addition of Article 10-1 was made to the Labor Code with the name “Age limit of working at the state budget-funded institutions” and the following content:

“10-1.1. Age limit of employee working at the state budget-funded institutions is 65.

10-1.2. Period of employment of an employee reaching age 65 at the enterprise can be prolonged by the head of the state organ with the period of no more than one year each time. Prolonging employment period more than five years is prohibited.

10-1.3. Persons reaching age 65 at the state budget-funded institution who has special merits in the development of science, culture, public health and formations, can be prolonged by the relevant state authority for more than it is provided in Article 10-1.2 of the Law.

10-1.4. Number of persons in relevant sector at the state budget-funded institution with prolonged employment period according to Article 10-1.2 and 10-1.3 cannot be more than 15% of the total number of employees in that sector at the state budget-funded institutions.

10-1.5. Number of persons in any state budget-funded institution in relevant sector with prolonged employment period cannot be more than 2% of total number of employees in that institution. For institutions with less than 100 employees, this number is rounded up to 2 unit staff members.

10-1.6. Period of employment of employees at the state budget-funded institutions can be prolonged only with the consent of employee.

Article 32-1 with the following additions were made to the Law of Azerbaijan Republic on "Civil Service" with the Law number № 126-IVQD of Azerbaijan Republic, dated May 17, 2011.

Article 32-1. Age limit for tenure in civil service

32-1.1. The age limit of tenure of a civil servant in civil service is 65.

32-1.2. The period of tenure in civil service for civil servant attaining 65 may be extended for no more than 1 year each time by a head of the relevant state body. Period of tenure in civil service for civil servant shall not be extended for more than 5 years.

32-1.3. The period of tenure in civil service for civil servants serving in administrative positions referring to the 1st-4th classification can be extended more than provided in article 32-1.2 of this Law with consent of the relevant state body.

32-1.4. Number of civil servants whose working period in civil service in the field related to the state body is extended under article 32-1.2 of this Law shall not exceed 15 percent of total number of employees of the institutions organizing single system of this state body.

32-1.5. Number of employees of the offices or subordinated structures of state body whose working period was extended shall not exceed 2 percent of number of the employees accordingly working in the offices or subordinated structures of such state body.

32-1.6. If number of civil servants in the offices or subordinated structures of state body is less than 100, the number of employees with extended working period shall be rounded off up to 2 staff units.

32-1.7. Prolongation of the tenure of a civil servant in civil service is allowed with his/her consent.

32-1.8. The following shall be taken into consideration during implementation of article 32-1.2 of this Law:

32-1.8.1. non-application of disciplinary actions in civil service;

32-1.8.2. availability of academic degree or title;

32-1.8.3. state award;

32-1.8.4. successfully passing the attestation for three times.

With regard to above mentioned, following content was added to the Law of Azerbaijan Republic on "Civil Service" as a basis for termination of civil service :

"33.1.12. when attaining age limit of tenure in civil service".

According to the Article 16 of the Labor Code beside other criteria, no discrimination among employees shall be permitted based on employee's gender and other factors unrelated to the professional qualifications, professional skills or job performance of an employee. For this reason it should be clarified that with exception of above identified cases given in Labor Code and the Law on "Civil Service", in other cases, termination of employment contract in when attaining to pension age is prohibited.

As answer to the query of the Committee, the following cases are given as samples from Labor Code on right of applying to the court or other agencies:

According to the items “q” and “k” of the Article 9 on “Basic Employee Rights Related to Employment Agreements” the employee shall have right to appeal to a court for protection of his Labour rights and “k” to join trade unions or other representative bodies or public organizations, and to take part in strikes, meetings, gatherings and other mass actions implemented by said organizations or by the Labour team that are not prohibited by law.

According to the Part 4 of the Article 16 on “Unacceptability of Discrimination in Labour Relations” a person subject to the discrimination during his employment may apply to the court for restoration of his rights.

According to the Part 5 of the Article 62 on “Employee Dismissal” should an employee consider his dismissal illegal and groundless as a result of malice, false documentation or other facts, he may appeal to a court to restore his violated rights and defend his honour.

According to the Parts 5 and 6 of the Article 67 on “Regulation of Employee Performance and Workplace Certification” persons who consider the decisions of the Certification Commission on employee and workplace certification to be groundless, illegal, ill-intentioned and biased may appeal to a court. In the manner established by this Code, courts alone may consider individual Labour dispute based on the claim of an employee whose employment contract has been cancelled or he/she has been transferred to another position (profession) by an employer due to non-compliance with his position on the basis of the Certification Commission's decision.

According to the Part 3 of the Article 190 on “Term of Disciplinary Action and its Advance Repeal” if the employee claims, while subject to disciplinary action, that the employer has violated legal requirements and his rights, the employee may appeal to a court for resolution of an individual Labour dispute pursuant to this Code.

According to the Parts 2 and 3 of the Article 197 on “Assessment of the Damage to the Employee” if the employee cannot reach total or partial agreement with the employer on his decision or if he does not receive an answer, he may take the dispute to court to seek compensation for damages. To avoid going to court, the parties may reach a bilateral agreement on a different ways to solve the conflict out of court. This shall not limit the employee's right to court appeal.

According to the Part 2 of the Article 240 on “Specifics of signing of Employment contracts with women who are pregnant or have children under the age of three” if an employer refuses to sign a Employment contract with a woman who is pregnant or has a child under the age of three has to explain to said woman in writing the reason behind his decision. For reasons of refusal from signing Labour contract the lady can seek justice from a court of law in order to protect her rights.

According to the Part 1 of the Article 285 on “Investigation of Legality of a Lockout and Employer Liability” upon the request of employees, the court shall decide if a lockout is legal and declared in accordance with law.

According to the Article 292 on “Employee's Right to File a Claim for a Right Which Has Been Violated” with respect to the matters described in the Article 288 hereof, if an employee proves that his rights or legal interests have been violated, he can appeal to the relevant bodies which deal with individual Labour disputes by the procedure described herein and request that his rights be reinstated. In order to regain his violated rights, an employee may appeal to the court or to the relevant agency handling Labour disputes before appealing to the court, as stipulated in the Article 294 hereof, or he may go on strike by himself in the manner established in the Article 295 hereof. In order to regain his violated rights, an employee may also appeal through his legal representative to the relevant body which handles Labour disputes. In order for the representative to defend his rights the employee should give a power of attorney to his representative, in accordance with established procedure.

According to the Part 4 of the Article 294 on “Oversight for Individual Labour Disputes” if the decision of the body reviewing Labour disputes before the court does not satisfy one of the parties, it may appeal to the court to resolve the dispute.

According to the Part 1 of the Article 300 on “Legal Consequences of an Employer's Failure to Comply With the Rules for Terminating an Employment Contract” if an employer terminates employment relations with an employee in violation of the Articles 68, 69, 70, 73, 74 and 75 hereof on the cancellation of employment contracts or does not comply with the provisions of Articles 71 and 76 or is in violation of the provisions of Article 79, the court which deals with Labour disputes shall, upon a petition on the claim and upon investigating the facts of the case, pass a decision on the reinstatement of said employee by retaining his salary for being away from work obligatorily or by approving the parties' reconciliation agreement. In its judgement the court also may stipulate payment by the employer of the amount of damage caused to the employee due to his claim.

Regarding identification of maximum amount of compensation for illegal dismissal of an employee, it should be noted that according to the Article 300 of the Labor Code if an employer terminates employment relations with an employee in violation of Articles 68, 69, 70, 73, 74 and 75 hereof on the cancellation of employment contracts or does not comply with the provisions of Articles 71 and 76 or is in violation of the provisions of Article 79, the court which deals with Labour disputes shall, upon a petition on the claim and upon investigating the facts of the case, pass a decision on the reinstatement of said employee by retaining his salary for being away from work obligatorily or by approving the parties' reconciliation agreement. In its judgement the court also may stipulate payment by the employer of the amount of damage caused to the employee due to his claim. According to the Part 5 of the Article 196 and Part 3 of the Article 202 the monetary amount for damage caused to an employee shall be determined in the manner stipulated in Part 3 of the Article 290 hereof. According to the Part 3 of the Article 290 employers shall bear material liability for moral damage caused to employees in the course of Labour relations. An employee who claims that moral damage has been caused to him must indicate the monetary amount of his claim in his application. The monetary amount of the moral damage caused an employee shall be determined by the court on the basis of the employee's application pursuant to the degree of public danger of said damage, the personality of the employer and employee, the actual arguments of the case and other objective factors for the adoption of a fair decision. The term "moral damage caused to an employee " shall mean the defamation and humiliation of the employee's honour and dignity, the casting of aspersions on him, insulting his person and spreading false information to disgrace him among the members of the collective or other actions offensive to his morality, ethics, national dignity and faith.

As it is cleared by above given information, neither Labor Code nor other legislative acts determine maximum amount of compensation penalties for damages of illegal dismissal of an employee, but fair criteria for identification of the amount are identified above.