



3/4/2018

RAP/RCha/AZE/11(2018)

## **EUROPEAN SOCIAL CHARTER**

11<sup>th</sup> National Report on the implementation  
of the European Social Charter

submitted by

### **THE GOVERNMENT OF AZERBAIJAN**

- Article 4, 5, 6, 21, 22, 26, 28 and 29 for the period 01/01/2013 - 31/12/2016
- Complementary information on Article 1§2, 1§4, and 9 (Conclusions 2016)

Report registered by the Secretariat on

3 April 2018

**CYCLE 2018**



**THE ELEVENTH REPORT**

**OF THE REPUBLIC OF AZERBAIJAN ON THE**

**IMPLEMENTATION OF THE**

**ARTICLES 1, 4, 5, 6, 9, 20, 21, 22, ,24, 26, 28 AND 29**

**OF THE EUROPEAN SOCIAL CHARTER REVISED**

For the period **01.01.2009 – 31.12.2012** 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>

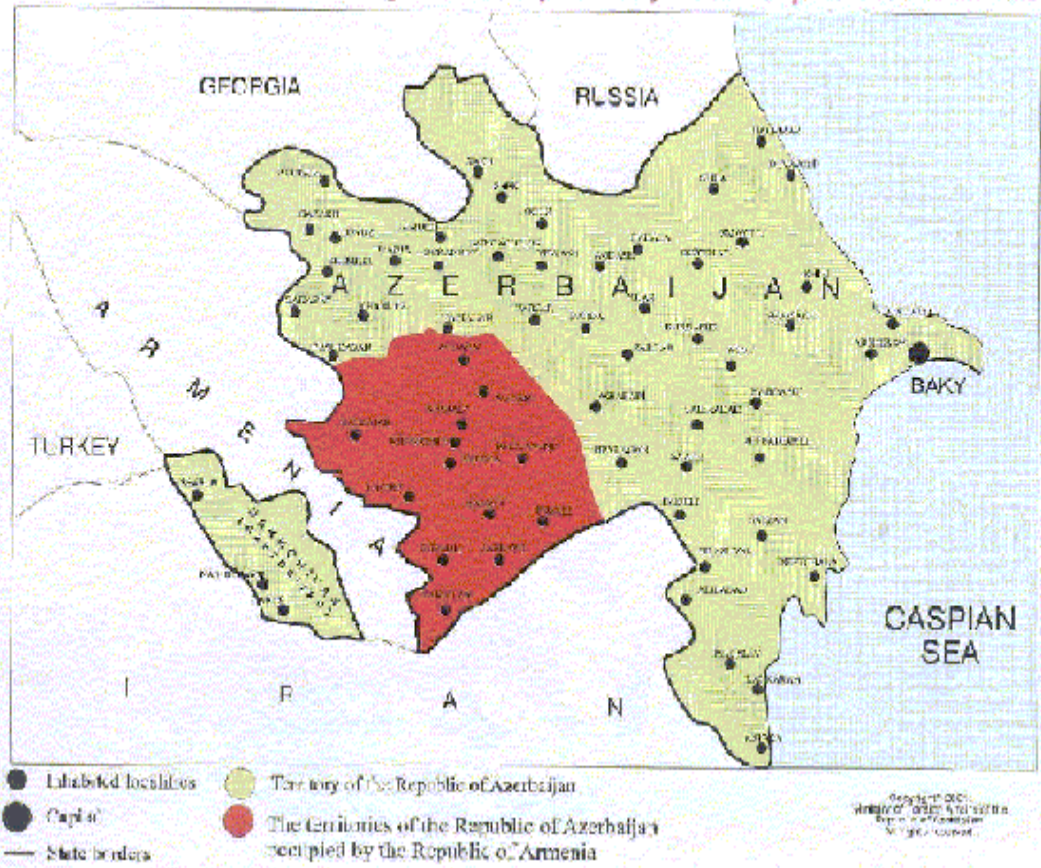
In accordance with Article C of the Revised European Social Charter and Article 23 of the European Social Charter, copies of this report have been communicated to the

- Azerbaijan Trade Unions Confederation
- National Confederation of Entrepreneurs' (Employers') Organizations of the Republic of Azerbaijan

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<sup>1</sup> The Republic of Azerbaijan declares that it will be unable to guarantee compliance with the provisions of the Charter in its territories occupied by the Republic of Armenia until these territories are liberated from that occupation ( the schematic map of the occupied territories is attached)

**Schematic map of the territories of the Republic of Azerbaijan occupied by the Republic of Armenia**



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## **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.*

### Paragraph 1 – Full employment policy

#### *Employment situation*

According to Article 35 of the Constitution of the Republic of Azerbaijan labour is the basis of individual and social welfare. Everybody has got right to choose independently a certain type of activity, occupation, employment and place of work based on his/her capability to work. Nobody can be subject to forced labour. Labour contracts are signed voluntarily. Nobody can be forced to sign labour contract. In some cases, however, involuntary labour is allowed, such as involvement to forced labour, conditions and periods of which are established by court decision, involvement to labour for fulfilling the orders of authorized persons during the military service and involvement of citizens to do the required work during a state of emergence and in times of martial law. Everybody is entitled to work in a safe and healthy environment and without any discrimination to get paid for his/her work no less than the amount of minimum wages defined by the State.

According to Article 7 of the “Employment Law” of the Republic of Azerbaijan citizens have right to freely choose their type of activity, occupation, employment and workplace. Citizens cannot be called to administrative, criminal or other account for not choosing to work. All citizens are entitled to choose freely their workplace by directly applying to employer, through unpaid mediation by the State Employment Service (SES) under the Ministry of Labour and Social Protection of Population or by other means established in the legislation.

As of January 1, 2017 men constitute 49.9%, whereas women constitute 50.1% of population in the Republic of Azerbaijan. Women constitute 48, 6% (2439, 5 thousand people), and men constitute 51, 4% (2573,2 thousand people) of economically active population. Average lifetime is 75.2 years (for men 72,8, for women 77, 6). During 2016 the number of economically active people increased 2% compared to 2015 and reached 5012, 7 thousand people. Number of employed population increased 1.9% compared to 2015 and became 4759, 9 thousand people in 2016. On April 1, 2017



number of wage workers was 1515,8 thousand people, including 889,2 thousand people in public sector and 626,6 thousand people in non-state sector. Oil sector employed 34,4 thousand people and non-oil sector employed 1481,4 thousand people.

According to the studies conducted by the International Labour Organization (ILO) national unemployment level in Azerbaijan was 17,2 % in 1995, 16,2 % according to the results of the census of population in 1999, 10,9% according to selective statistical survey on the level of economic activeness of population conducted in collaboration with the UNDP and the ILO in 2003, unemployment level in 2016 was 5.0% (the unemployment level among women is 5.9%, among men is 4.2%) and in the first three months period of 2017 it was 4.9% (According to the ILO data worldwide unemployment level was 5.7%, unemployment among women constituted 6.2% and 5.5% among men and 8.6% in EU member countries in 2016, including 8.8% among women and 8.4% among men). As of May 2017, 682 869 active notifications for men and 605 731 for women were received in the centralized electronic information system on employment contract notification of the Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan.

Several measures were taken for increasing the level of employment among youth in the civil service. Since 2007 civil service admission has been conducted through open competition and young people constitute over 80% of people admitted to civil service through this competition in the recent years.

### *Employment policy*

To ensure the socio-economic development of the country in the following years "Azerbaijan 2020: Vision to the Future" Development Concept, "Strategic roadmaps for national economy and main sectors of economy" and social state programs approved with Presidential Decrees set targets, such as improving the quality of workforce and developing highly-qualified staff based on economic diversification, improving institutional infrastructure for strengthening dynamic coordination between demand and supply in the labour market, adapting staff development system to the increasing needs of the labour market and overall ensuring the higher level of development of human capital.

To develop long-term state employment policy for ensuring effective employment based on existing demographic trends, development perspectives and economic priorities of the state "Employment Strategy of the Republic of Azerbaijan for 2017-2030" was drafted and submitted to the Cabinet of Ministers.

Proceeding from Presidential Decree dated April 7, 2016 on "Additional measures for ensuring self-employment of population" self-employment program has been launched by the Ministry of Labour and Social Protection of Population in order to ensure self-employment for able-bodied people. 1400 small-scale farms succeeded in the realization of their business ideas within this program. The program is still ongoing.

"Unemployment Insurance Law" of the Republic of Azerbaijan was approved on June 30, 2017 to strengthen social protection of the unemployed and job seeking citizens. Implementation of this law will provide wider opportunities for the organization of vocational trainings, re-training, courses on advancement of professional skills, public work, labour exchange and labour fairs, as well as extensive adoption of self-

employment projects and legalization of labour relations.

The Second Decent Work Country Program covering cooperation priorities in 2016-2020 years was signed between the Government of Azerbaijan and the ILO. The key priorities of this country program are advocating international labour norms and main principles and rights in the field of labour, developing social dialogue, increasing employment through implementation of active labour market programs, enlarging entrepreneurship opportunities, strengthening occupational safety and broadening social protection system.

On September 30, 2016 on the basis of ILO's key principle of tripartism "Tripartite Commission on Social and Economic Affairs" was established in Azerbaijan as a follow up to the policy of developing institutional structure for national tripartite social dialogue, application and strengthening of democratic principles in the country and broadening civil society participation in the national affairs.

With its Decree No 366, dated June 24, 2016 the Cabinet of Ministers of the Republic of Azerbaijan delegated the authority to sign joint decision of social partners for the establishment of Tripartite Commission on Social and Economic Affairs in the Republic of Azerbaijan on behalf of the Cabinet of Ministers of the Republic of Azerbaijan to the Ministry of Labour and Social Protection of Population.

The establishment of Tripartite Commission on Social and Economic Affairs in the Republic of Azerbaijan was highly commended by the ILO as a new stage in the development of institutional structure on national tripartite social dialogue.

Permanent Secretariat of the Tripartite Commission with work-rooms, meeting halls and necessary equipment has been established at the Ministry of Labour and Social Protection of Population. Main objectives of the Tripartite Commission include consulting on drafting of laws and other regulatory-legal acts in the field of social-labour relations, employment of population and their social security, coordinating work on drafting of General Collective Agreement, assisting in regulation of social-labour relations at the national level, coordinating positions of Parties regarding the main directions of social policy, at the initiative of the Parties discussing issues on the implementation of General Collective Agreement, sharing good practice on social partnership, raising public awareness of the activities of the Commission, participating at the events organized by international organizations on social-labour relations and social partnership, learning international best practice and conducting consultations on ratification and application of international labour norms.

Tripartite Commission is comprised of equal number of social partners' representatives (5 from each party). The work plan and regulations of the Commission have already been approved and projects on labour and employment, social protection are being submitted for the discussion of the Commission.

Azerbaijan has committed itself to contribute to the achievement of Sustainable Development Goals for 2016-2030 approved at the UNSustainable Development Summit held on September 25-27, 2015. "National Coordination Council on Sustainable Development" was established with Presidential Decree dated October 6, 2016. Azerbaijan submitted to the UN its first voluntary review on the implementation of 6 sustainable development goals (including SDG 5 on gender equality) in June 2017.

Paragraph 2. Freely undertaken work (to protect effectively the right of the worker to earn his living in an occupation freely entered upon)

*1. Prohibition of discrimination in employment*

The following legislative acts of the Republic of Azerbaijan include articles on prohibition of any kind of discrimination among employees and restriction of their rights and ensuring equal treatment and equal opportunities for them:

Article 25 of the Constitution of the Republic of Azerbaijan approved on November 12, 1995 establishes equal rights and liberties for all citizens irrespective of sex and prohibits restriction of human and citizen rights and liberties on grounds of sex. Additionally, principle of equality of men and women in all spheres of life has also been widely established in the legislative system of the Republic of Azerbaijan. Article 35 of the Constitution mentions that every citizen based on his/her capability is entitled to freely choose a certain type of activity, occupation, employment or workplace, to work in a safe and healthy environment and to be paid without any kind of discrimination for his/her work no less than the amount of minimum wage defined by the government.

According to Article 37 of the Constitution on "Right to Rest" everyone has a right to rest. Everyone who is employed through labour contract is entitled by law to work no more than 8 hours per day, to have weekends and holidays and get paid leave for no less than 21 calendar days at least once in a year.

According to Article 59 of the Constitution on "Right to freedom of enterprise" everyone has a right to freely use his resources, capacity and property as established by law and engage individually or jointly with others in a business activity or any other economic activity not forbidden by law.

According to Article 12 of the Labour Code of the Republic of Azerbaijan approved on June 1, 1999 an employer is obliged to ensure equal treatment and equal opportunities for all employees during recruitment, promotion, vocational training, re-training, advancement of professional skills, performance appraisal and dismissal irrespective of sex, to create equal work conditions for all employees engaged in the same type of activity, to take the same disciplinary measure for the same violation and to undertake all necessary measures for prevention of discrimination on grounds of sex and sexual harassment. Article 16 of the Labour Code prohibits any kind of discrimination among employees on grounds of citizenship, sex, race, religion, nationality, language, place of residence, property status, social-economic origin, age, marital status, convictions, political views, membership of trade-unions or other public unions, position, professional qualities, competency and other factors unrelated to the job performance, as well as direct or indirect granting of privileges and concessions and restriction of rights on these grounds. Any employer or other physical persons who permit discrimination among employees at work on ground of factors mentioned in this Article shall bear responsibility in accordance with the rules established in the legislation. An employee subject to discrimination can seek recourse in a court of law to restore his/her violated rights. Certain privileges and concessions have been

established for disabled employees which shall not be considered to be part of discrimination.

Article 16 of the Labour Code was reviewed to include prohibition of discrimination in the labour relations towards persons with HIV. The Article defines that, except types of occupations and positions in which the employment of persons with HIV is not permitted, rejection to recruit or to promote or to dismiss due to having HIV is prohibited. The employer shall not disclose the information in case he/she finds out about certain employee with HIV.

Furthermore, several norms defining principles of forbiddance of discrimination in the labour relations towards persons with scattered sclerosis were added in Article 16 of the Labour Code. The Article establishes that it is not allowed to refuse to hire or to terminate labour contract due to person's having multiple sclerosis (except cases in which the employer cannot provide relevant job or position, as well as refusal of recruitment to work places where the employment of such persons is not permitted).

Article 6.2.1 of the Employment Law of the Republic of Azerbaijan approved on July 2, 2001 for defining legal, economic and organizational foundations of the state policy, as well as determining provisions for citizens in the field of labour and social protection for the unemployed, establishes equal opportunities for all citizens to execute their rights for free choosing of type of labour and employment irrespective of their race, nationality, religion, language, sex, marital status, social-economic origin, place of residence, property status, convictions, membership to political parties, trade-unions or other public unions as one of the key directions of the state employment policy.

Article 7 titled "Duties of the employers" of the Law of the Republic of Azerbaijan on "Gender equality provisions" dated October 10, 2006 defines duties of employers in terms of discrimination at work. It establishes that an employer shall ensure the equality of men and women at work and fulfil the following duties:

- Regardless of sex to treat equally and to create equal opportunities for employees during hiring, promotion, vocational training, re-training, advancement of professional skills of employees, performance appraisal and dismissal;

- Regardless of sex to create the same working environment for all employees doing the same job;

- Regardless of sex to undertake the same disciplinary measure towards employees for the same violation;

- To undertake necessary measures for prevention of discrimination on grounds of sex and sexual harassment.

According to Article 8 titled "Duties of the employer to eliminate discrimination on grounds of sex" of the Law with the request of the employee the employer shall substantiate that the different approach to the employee was not made based on sex, in case women and men were unlikely treated during promotion at work, vocational training, re-training, advancement of professional skills, performance appraisal and dismissal. A person who was refused to be admitted to work is entitled to request a written explanation for comparing the educational background, work experience, vocational training, professional qualities and other advantages of the recruited person of opposite sex with her/his own background.

According to Article 9 titled “Equality in the payment for work” of this Law irrespective of sex all employees working in the same field, having the same specialization degrees, working in the same work environment and doing the same value of work shall be paid equal salaries, as well as equal bonuses and other payments for motivation. In case salaries, bonuses and other payments for motivation purposes are paid with varied amounts, by request of the employee the employer shall substantiate that the difference in payment has nothing to do with the sex of the employee.

According to Article 15 titled “Gender equality provisions in the economic and social relations” of the Law the state guarantees equal opportunities for men and women for the execution of their rights to property and their engagement in business activities. In addition, the state guarantees equal opportunities for women and men in execution of their rights to social security, targeted state social assistance and other social benefits. Provision of employment and protection of labour rights for persons with mental and physical disabilities has been established in the Constitution of the Republic of Azerbaijan, Labour Code, Tax Code, Administrative Offences Code, Law of the Republic of Azerbaijan on “Prevention of disability and limited health capacity of children, rehabilitation and social protection of the disabled and children with limited health capacity” and other regulatory legislative acts of the Republic of Azerbaijan.

One of the amendments made to the Constitution of the Republic of Azerbaijan as a result of referendum held on September 26, 2016 was related to the rights of persons with disabilities. According to part VI added to Article 25 titled “Right to equality” of the Constitution of the Republic of Azerbaijan persons with disabilities are entitled to all rights and have the same duties established under the Constitution, except the rights and duties difficult to execute due to limited abilities.

State’s care for persons with limited health capacity can be felt in all spheres of life and all kinds of measures are undertaken for the integration of those people to society (for example, several projects have been developed, state programs have been approved and implemented). Government takes measures for providing education, employment and individual mobility for people with limited health.

One of the key directions of state policy is to protect labour rights of each citizen regardless of their health status, as well as those citizens who particularly need social protection and those facing difficulty with finding jobs. Various regulatory legislative acts have been approved in this area and the UN Convention on the “Rights of Persons with Disabilities” has been ratified. On November 22, 2005 “Rules of application of quota for citizens in need of social protection and those facing difficulty with finding jobs” were approved with Decision No 213 of the Cabinet of Ministers and the list of organizations to which the quota requirement is not applied has been included in the rules. But for the institutions and organizations included in the list, all other institutions, enterprises and organizations irrespective of their property and organizational-legal form shall stick to quota to provide employment for citizens needing social protection and facing difficulty with finding a job. Employers who do not admit persons with disabilities under the age of 18 directed by city, and rayon (region) employment centres to the jobs defined by quota shall be brought to administrative action. The employer or office-holder shall be fined in the form of deductions from their salaries or other revenues. Labour rights of persons with disabilities in the Republic of Azerbaijan are regulated with the Law No 284 dated

August 25, 1992 of the Republic of Azerbaijan on "Prevention of disability and limited health of children, rehabilitation and social protection of the disabled and children with limited health".

According to Article 15 of this Law the state guarantees necessary conditions for provision of education and vocational training for persons with disabilities and children with limited health:

- *State guarantees necessary conditions for provision of education and vocational training for persons with disabilities and children with limited health.*
- *The Ministry of Education of the Republic of Azerbaijan according to the rules established in the legislation ensure the provision of pre-school education, extracurricular education for children with limited abilities and persons with disabilities over the age of 18, and according to the decision by the psychological-medical-pedagogical or medical-social expert commission ensure curriculum-based general education, vocational education and higher education for them.*
- *The provision of education for persons with disabilities, as well as children with limited health capacities can be in various forms, including home education and individual teaching.*
- *State ensures the development of educational specialists for teaching and vocational training of persons with disabilities and children with limited health capacities.*
- *Organization of education for persons with disabilities is regulated with legislative acts.*

According to Article 21 of this Law the State Employment Service (SES) provides vocational guidance services for disabled people capable of working and children with limited health in order to identify vocational training, re-training and employment opportunities for them:

- *Vocational training and additional education for persons with disabilities and children with limited health capacity is provided at educational institutions, as well as at educational centres of SES, departments within establishments and organizations (specialized or general) and their public organizations delivering social support to disabled people and children with limited health.*
- *SES ensures the provision of vocational guidance service for persons with disabilities capable of working and children with limited health in order to identify vocational training, re-training and employment opportunities for them.*
- *Visually impaired children and children with poor vision are provided with textbooks printed with Braille script lettering, talking books, visual aids, special tape-recorders, magnifiers, sticks, hearing aids for the hearing-impaired and other necessary means. Special educational institutions and recording studios have been established and special libraries organized for them.*
- *Financial provisions for the vocational education and additional education of persons with disabilities and children with limited health capacity are ensured in accordance with the rules and conditions established in the legislation of the Republic of Azerbaijan.*

Article 23 of this Law regulates issues such as recruitment, provision of employment and protection of labour rights of persons with disabilities:

- *Combined measures for employment of persons with disabilities and persons with limited health capacity under the age of 18 include special measures for their recruitment, and establishment of concessions and provision of financial assistance in the legislation for those enterprises, institutions and organizations (regardless of the type of property) which create special jobs for those people and hire them.*

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For the purpose of realizing their creative and productive abilities Article 24 of the Law maintains the rights of persons with disabilities and persons with limited health capacity under the age of 18 to work at enterprises, institutions and organizations with regular working conditions (with consideration of individual rehabilitation programs), at specialized institutions, workshops and fields using the labour of persons with disabilities and persons with limited health capacity under the age of 18, as well as rights of those people to get engaged in business and other activities not forbidden by law. Except the cases when the health condition of persons with disabilities or children with limited health capacity does not allow to his/her fulfilment of professional duties or threatens the health and safety of other persons at work according to the assessment of medical-social expert commission, on the grounds of disability it is not allowed to refuse hiring persons with disabilities or children with limited health capacity or to refuse to promote them at work, or dismiss them upon the initiative of management or to move them to another work without their consent. Except the cases when the enterprise is closing down, it is not allowed to terminate individual labour contract upon the initiative of employer for those people who receive medical, vocational and social rehabilitation at relevant enterprises regardless of the duration of their absence.

According to Article 25 of this Law, the SES, local executive authorities, institutions, enterprises and organizations jointly with the public organizations of persons with disabilities and persons with limited health capacity under the age of 18 provide employment for persons with disabilities and persons with limited health capacity under the age of 18 through establishing enterprises and organizations that use the labour of persons with disabilities and persons with limited health capacity under the age of 18, via organizing trainings for them on special programs and undertaking other measures. Regardless of form of property job quotas are determined at institutions, enterprises and organizations as established in the legislation for persons with disabilities and persons with limited health capacity under the age of 18 and the number of employees on quota is confirmed by local executive authorities. The SES and public organizations dealing with issues of persons with disabilities and persons with limited health capacity under the age of 18 control over the employment of persons with disabilities and persons with limited health capacity under the age of 18 at enterprises and organizations. All enterprises, institutions and organizations, irrespective of their form of property, which do not obey the job quota or refuse to hire persons with disabilities and persons with limited health capacity under the age of 18

shall transfer to the state budget 3 times of national average monthly salary per each job place and for all months that they declined jobs for persons with disabilities and persons with limited health capacity under the age of 18. Local centres of the SES send persons with disabilities and persons with limited health capacity under the age of 18 to the jobs created for them and workplaces where job quotas are applied. All enterprises and organizations, irrespective of their form of property or management, are obliged to accept the notification on hiring of persons with disabilities and persons with limited health capacity under the age of 18.

According to Article 26 of this Law, enterprises, institutions, organizations, cooperatives, collective-farms and special entrepreneurs are obliged to allocate jobs or create new jobs for those employees who lost their ability or got occupational diseases as a result of industrial accident and have become a person with disabilities or a person with limited health capacity under the age of 18. Except the cases of liquidation, the enterprises shall transfer to the state budget 120 times of national average monthly salary when terminating the employment agreement with that employee and violating the above-mentioned requirement.

According to Article 28 of this Law, enterprises, institutions and organizations are entitled to concessional financing and material and technical provisions in case at least 30% of their overall employees consist of persons with disabilities and persons with limited health capacity under the age of 18. Rules and conditions of taxing, financing and providing material and technical support to the enterprises, institutions and organizations which use the labour of persons with disabilities and persons with limited health capacity under the age of 18 are defined in the legislation of the Republic of Azerbaijan.

According to Article 29 of this Law, appropriate working conditions in compliance with individual rehabilitation program shall be created for persons with disabilities and persons with limited health capacity under the age of 18 working at enterprises, institutions and organizations. Work environment, as well as salary, working hours and day-off regime, length of annual and additional leave period defined in the collective or individual labour contracts shall not, in comparison with other employees, aggravate the situation or restrict the rights of persons with disabilities and persons with limited health capacity under the age of 18. Enterprise's or organizations' management board has got right to reduce work norms for persons with disabilities and persons with limited health capacity under the age of 18 depending on their health condition and increase payment for their work instead. Working persons with disabilities shall only be involved into overtime work, night work or work during weekends, voting day or on non-working days, such as national holidays and National Mourning Day with their consent, provided these kind of work is not forbidden by medical recommendations. Annual leaves with length not less than 2 times of minimum annual leave period defined by legislation are provided for working persons with disabilities (regardless of disability group or reasons) and persons with limited health capacity under the age of 18. In accordance with the labour legislation of the Republic of Azerbaijan, unpaid leave is provided for working persons with disabilities (regardless of disability group or reasons) and persons with limited health capacity under the age of 18. Reduced working hours with no more than 36 hours per week have been defined for disabled employees belonging to I and II disability groups and employees with limited health capacity under the age of 18. During



staff reductions those employees who got work injury or occupational diseases at an enterprise, institution or organization which resulted in disability or limited health capacity for persons under the age of 18 have advantage over other employees in case they have the same professional degrees. Non-working period of time is added to the general and uninterrupted work period of those people who belong to I and II disability groups or persons with limited health under the age of 18 who have become disabled as a result of work injury.

According to Article 30 of the Law, local executive authorities create appropriate conditions for persons with disabilities and persons with limited health capacity under the age of 18 to work from home or engage in business activities through allocation of non-residence rooms, or assisting in getting raw materials and selling of products. All officials of those economic subjects (regardless of form of property) who do not take measures for employment of persons with disabilities and persons with limited health capacity under the age of 18 shall bear responsibility in accordance with the rules established in the legislation of the Republic of Azerbaijan.

As noted above, national legislation prohibits discrimination in all cases. According to Article 77.1 of the Civil Procedure Code of the Republic of Azerbaijan each party shall prove the case which he/she refers to as a basis for his/her demands or objections. According to Article 77.2 of the same Code while reviewing disputes regarding the invalidity of acts by state bodies, executive authorities or other bodies, the body which approved the acts shall substantiate the credibility of the case based on which the acts were approved.

According to Article 77.3 of the Code court can suggest the parties to submit additional evidence, in case it is impossible to continue legal proceedings based on evidence from place of work.

According to Article 78 of the Code, in case person involved in the case cannot independently obtain the necessary evidence from persons involved in the case or not involved in the case, he/she can appeal to court with petition to request those evidences. The petition shall include information on the cases defined by these evidences which are important for the court case, indications of evidences and place of evidences. When necessary the court may provide writ of execution to the person involved in the court case to get evidence. Person having the evidence requested by the court shall directly send it to the court, or hand it over to the person presenting the inquiry for taking it to the court.

The person having the evidences shall be fined in the amount of 220 AZN, if he/she does not present them without good reason established by the court. Imposing fine shall not relieve the person of the obligation to present the required evidence to the court.

It is worth noting here that according to Article 13 of the Administrative Procedure Code of the Republic of Azerbaijan courts are obligated to assist in this case. The court is obliged to assist the participants of trial process in elimination of formal mistakes made in claims, concretizing unclear allegations, replacing inaccurate allegations with accurate ones, finalising incomplete factual information, as well as in presenting evidences which are important for determining and assessing various aspects of the case. It is forbidden to destroy or conceal any evidence or prevent in any way the investigation of the evidence by participants of trial process. In case it happens, the

court may decide to reverse the burden of proof considering all aspects of the concrete case.

Article 14 of the same Code establishes burden of proof. It means that the administrative body which approved the disputed act shall prove the existence of actual conditions necessitated the approval of the act. In case of existence of claims regarding illegal intervention unrelated with the approval of the act by administrative body, but directly violating person's rights and liberties, relevant administrative body is obliged to prove the existence of actual conditions which necessitated such intervention.

Claimant is obliged to prove the existence of actual conditions necessitating the approval of the administrative act pursuant to the claims regarding the requisition to approve the act (by compulsion). However, in case administrative body refers to the existence of actual conditions exempting the approval of the administrative act desired by the claimant, the administrative body is obliged to prove the existence of such conditions.

According to Article 1.1 of the Constitutional Law dated December 28, 2001 of the Republic of Azerbaijan on "National Human Rights Commissioner" (Ombudsman) the Ombudsman position has been established to restore human rights and liberties established under the international agreements Azerbaijan is party to and violated by state and local municipal bodies and officials as well as in cases identified by this Constitutional Law.

For over 15 years now the Ombudsman institute, an independent authority employing non-court mechanisms for protection of human and citizen rights and liberties, has been successfully working towards protection of human rights and liberties, as well as labour rights, employment, training and all other rights of equal opportunities within its mandate determined in the framework of national legislation and international legal acts.

Irrespective of race, ethnicity, religion, language, sex, origin, property status, position, convictions, membership with political parties, trade unions or other public unions Ombudsman attaches great importance to the protection of rights of all humans, including persons with disabilities, the elderly, prisoners and vulnerable groups of population as established under international agreements which Azerbaijan is party to, particularly in European Social Charter (Revised).

The analysis of the labour rights appeals sent to the Ombudsman office during the reporting period (672 complaints in 2014, 960 in 2015, 958 in 2016) demonstrates that no complaint was received on cases of employment discrimination, as well as gender-based discrimination (particularly equal payment for equal work of women and men) and sexual and emotional harassment at work.

Ombudsman and representatives of Ombudsman Institute, as well as National Preventive Group regularly conduct monitorings at educational institutions, penitentiaries and other enterprises to inquire the condition of persons with disabilities, the elderly and prisoners, assign the staff members to solve their problems in the field of social rights, including labour, employment, training and other rights of equal opportunities, conduct awareness-raising of the legal ways of solution to the problems of these people and take measures for prevention of any discriminatory acts towards them.

In annual reports Ombudsman suggested to pay more attention to job quotas for

persons with disabilities as established in the legislation, undertake measures for motivation of employers who allocate jobs for those people, strengthen control over the imposition of types of administrative liability defined in the legislation on enterprises, institutions and organizations which do not obey job quotas or refuse to hire those people, as well as to establish Vocational Training Centres for disabled people in the regions and open new disability-confident workplaces for the employment of persons with disabilities.

Studying the existing international documents in the field of business and human rights and their legal enforcement is one of the priority directions of the Ombudsman Institute.

“Business and Human Rights Working Group” was established under Ombudsman approved with Decree of Ombudsman No 253 dated March 27, 2013. Currently Working Group consists of representatives of the Ministry of Economy, Ministry of Taxes, Ministry of Justice, Ministry of Agriculture, Ministry of Ecology and Natural Resources, Ministry of Emergency Situations, State Committee on Family, Women and Child Affairs, State Labour Inspection under the Ministry of Labour and Social Protection of Population, Antimonopoly Policy and Protection of Consumer’s Rights Service under the Ministry of Economy, Trade Unions Confederation of the Republic of Azerbaijan and other relevant state bodies and civil service organizations.

Members of Parliament, representatives of international organizations, and depending on the topic of discussions representatives of other state and business institutions were invited to the meetings of the Working Group. During the meetings of the Working Group broad exchange of views on topics were held, proposals and recommendations were made and discussions were organized for improving the work in this field. 14 round tables were organized by the Working Group on discussion of various topics during 2013-2017.

According to Article 27 of the Civil Service Law of the Republic of Azerbaijan approved on September 1, 2001, regardless of race, nationality, religion, language, sex, social origin, property status, place of residence, convictions, membership to public and other unions, all citizens who have reached the age of 16, have relevant professional skills to hold the claimed position and who are fluent in the official language of the Republic of Azerbaijan are entitled to be admitted to civil service. With regard to admission of foreign citizens to civil service it should be noted that Civil Service Code including a rule for civil service admission of foreigners and stateless persons was drafted.. The draft has been discussed in the meeting of Working Group consisting of representatives of state bodies. Given that the document required certain revision and in view of concurrent liquidation of the Civil Service Commission under the President of the Republic of Azerbaijan, the agency that drafted the document and its replacement with the State Examination Centre the draft has not yet been submitted to the National Assembly.

## 2. Prohibition of forced labour

### *Work of prisoners*

Four types of penal labour have been identified in the punishment enforcement legislation. Prisoners can work at manufacture fields of penitentiaries, other manufacture enterprises outside of penitentiaries, individual labour fields, as well as farming and community services. Currently prisoners are involved to public work in three types of workplaces, namely in the prison factories, self-employment workshops and farming and other areas. Prisoners who work at factories and self-employment workshops are paid based on output and prisoners who work at farms are paid per hour. Appropriate conditions have been set up in accordance with legislation for the prisoners who work at prison. Labour contracts are being signed with each prisoner and necessary measures undertaken for compliance with the health and safety rules at work. Prisoners admitted to work initially get familiar with the health and safety rules and sign in the specially designed register. According to Punishment Enforcement Code the working hours for prisoners, health and safety rules are defined in accordance with labour legislation.

There is no difference in the work conditions for prisoners working at penitentiaries.

Overall 5613 prisoners were involved into social utility labour during the 9 months of 2017 (5255 prisoners in 2016). 1114 of prisoners involved in penal labour (1158 in 2016) worked at factories, self-employment workshops and agriculture field, 2498 of them (2146 in 2016) worked at enterprises located outside of prisons, and 2001 of them (1951 in 2016) worked at economic and livelihood services. 1180 prisoners (1160 in 2016), were involved into basic vocational education and 123 prisoners (59 in 2016) were involved into short-term vocational training courses. The salaries of prisoners involved into penal labour are paid in accordance with the Decision No 149 dated September 15, 2001 of the Cabinet of Ministers of the Republic of Azerbaijan. According to this Decision, the salaries of the prisoners are paid pursuant to pay rate and based on consolidated tariff tables by applying field coefficients. The amount of monthly salary of a prisoner who worked full-time and fulfilled all his/her work duties shall not be less than the amount of national minimum wage.

According to Article 99 of the Punishment Enforcement Code, deductions are made from salaries, pensions and other revenues of prisoners. Moreover, income tax, mandatory state social insurance payment and other mandatory payments are deducted from the salaries of prisoners. Other deductions, such as payment for writ of execution and other documents are made in accordance with the rules established in the legislation. Alimony for children of young age is calculated based on the full amount of the earnings by the prisoner.

Regardless of the amount of all deductions, at least 50% of calculated amount of salary, pension and other incomes of prisoners at penitentiaries shall be transferred to the personal account of prisoner. In case of male prisoners over 60 years, female prisoners over 55 years old, prisoners belonging to I and II disability groups, teens, pregnant prisoners or women prisoners delivering children at penitentiaries at least 60% of calculated amount of salary, pension and other incomes shall be transferred to their

personal accounts.

At least 65% of overall income regardless of the amount of deductions shall be transferred to personal account of inmates of settlement-type prisons, as well as convicted women who are allowed to reside outside of prison. Prisoners are entitled to get pensions and other social benefits in accordance with legislation.

#### *Other aspects of right to earn living in an occupation freely entered upon*

Employment Law of the Republic of Azerbaijan, "Regulations on registration of the unemployed" and "Regulations on calculation and payment of unemployment benefits" regulate issues related to grant of unemployment status and appointment of unemployment benefits to citizens.

According to the Employment Law of the Republic of Azerbaijan, unemployed citizen is the able-bodied person being in working age who does not have a job or income, but ready to start working and registered as a job seeker by the relevant state authority. These citizens are entitled to get unemployment status. Pursuant to Article 4.5.3 of this Law during 10 days following the registration those citizens who do not come to the relevant state authorities without good reason or who reject two relevant jobs offered (the citizen cannot be offered the same job twice) to them during this period are not entitled to get unemployment status.

According to "Regulations on calculation and payment of unemployment benefits" unemployment assistance for the citizens with unemployment status shall be determined in the amount of 70 percent of the monthly average salary received during 12 months period at the last work place in case if he or she had paid work not less than 26 calendar weeks within 12 months period prior start of unemployment (on the day of registration as jobseekers at city or rayon employment centres). The period of payment for unemployment cannot exceed 26 calendar weeks within the period of 12 months.

The unemployed citizen is entitled to get unemployment benefit again in case he/she has not been provided with suitable job after 12 months following the grant of unemployment status. This time the amount of unemployment benefit shall be equal to the minimum amount of benefits determined earlier.

During 2015 local bodies of SES granted 3844 citizens with unemployment benefits and during 2016 this figure reached 11552, whereas during 9 months of 2017 10021 citizens were appointed to get unemployment benefits.

Pursuant to Paragraph 4.2 of Article 4 of the "Regulations on calculation and payment of unemployment benefits" approved with Decision No 12 dated January 22, 2002 the Cabinet of Ministers of the Republic of Azerbaijan unemployed citizens can appeal to court regarding the acts (or inaction) by the employees of city or rayon employment centers in case they get groundless rejection regarding the appointment of unemployment benefits, or if the payment of benefits is postponed, or he/she disagrees with the amount of payment.

#### *Minimum length of alternative military service*

The term of alternative service in Azerbaijan is 2 years.

### Paragraph 3. Free employment services

Employment-related services are delivered by the State Employment Service (SES) under the Ministry of Labour and Social Protection of Population and its local agencies. All the services delivered by the SES are free of charge.

<b>According to years</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>First 8 months of 2017</b>
Total number of employees at the SES	577	577	577	452	452	452	1003	1003
including								
The SES Apparatus	64	64	64	54	54	54	56	56
The SES local bodies	418	418	418	398	398	398	852	852
Nakhchivan Autonomous Republic							50	50
Regional Vocational Training Centers							45	45
Number of employees in the field of recruitment	94	94	94	89	89	89	195	195
Number of jobseeking and unemployed citizens applied to SES	43503	46467	47471	52485	47755	59252	204283	88209
Number of registered jobseeking citizens at the end of reporting period	409316	280764	227940	195030	111221	119119	227024	252284

Citizens provided with jobs	31144	28382	29399	29229	29490	28936	56631	31816
Number of vacant jobs presented to the SES	44941	39256	39459	40893	42858	41295	67717	55161
Hiring rate	69,30%	72,30%	74,51%	71,48%	68,81%	70,07%	83,63%	57,68%
Ratio of the number of employees of SES engaged in recruitment activities to the number of registered jobseeking citizens	0,00216	0,00202	0,00198	0,0017	0,00186	0,0015	0,00056	0,00058

### **Information on the labour fairs held at cities and rayons of the Republic of Azerbaijan**

Years	Number of institutions presenting vacant jobs	Number of vacant jobs	Provided with jobs						Involved into vocational training	Involved into public work
			Total	Women	Youth	Refugees and IDPs	Disabled	Quota		
2015	2241	18661	4734	1651	1676	130	50	138	477	185
2016	1663	14823	3420	1172	1007	53	11	13	160	141
2017 (10 months)	1665	16103	3257	1170	1194	97	31	84	98	114
<b>Total</b>	<b>5569</b>	<b>49587</b>	<b>11411</b>	<b>3993</b>	<b>3877</b>	<b>280</b>	<b>92</b>	<b>235</b>	<b>735</b>	<b>440</b>

#### Paragraph 4. Vocational guidance, training and rehabilitation

Relevant measures (such as organizing vocational guidance at schools, as well as for adults, establishment of career centers, etc.) were listed in the “Strategic Roadmap on development of vocational education and training” approved with Presidential Decree on December 6, 2016. Furthermore, provisions on specialized vocational orientation measures (for vulnerable groups of population) funded from the

state budget were added to the draft law on “Vocational Education” which was proposed by the Working Group established under Science and Education Committee of the Milli Malis (the Parliament) and consisting of representatives of the State Agency on Vocational Education. The above mentioned “Strategic Roadmap on development of vocational education and training” also includes measures for ensuring vocational education and advancement of professional skills for adults and recognition of knowledge, skills and experience previously acquired (recognition of informal and formal education).

Pursuant to Article 7.5 of the Employment Law of the Republic of Azerbaijan to choose the type of employment, workplace and work regime, citizens are entitled to get free of charge advice, as well as relevant information at the State Employment Service under the Ministry of Labour and Social Protection of Population with regard to vocational guidance, vocational training and additional education. According to Article 8.2.2 of the same Law state guarantees vocational guidance, vocational education and additional education free of charge for each citizen by the assignment of SES. Given the importance of vocational guidance for the future lives of the young generation and their employment, vocational guidance services for choosing the right occupation were provided for seniors at city and rayon secondary schools, as well as for job seeking young people who applied to the Employment Centers. As a result of these measures, 113.246 persons in 2014, 114.569 persons in 2015, and 117.244 persons in 2016 were involved in vocational guidance consultations.

Over these years the SES organized interactive workshops on “The role of parents in the choice of profession for their children” with participation of professional psychologists and vocational guidance experts at almost all city and rayon secondary schools. Parents taking part in these seminars received necessary recommendations and advice on the choice of occupation of their children.

For psychological adaptation and facilitation of social and labour market integration of young people deprived of parental care a vocational guidance workshop was organized for adolescents at schools and for those residing in orphanages.

Moreover, a workshop titled “Open new opportunities” was held by local offices of SES for persons with disabilities. The main objective of this workshop was to assist the vulnerable groups of adolescents in choosing future occupation or profession, to raise awareness about professions and specialties which are in greater demand in the labour market, to inform them on existing vacancies, as well as to help them to independently choose their profession, type of employment and ways of self-realization.

Vocational training courses are usually conducted in accordance with the educational plans approved by the Ministry of Education of the Republic of Azerbaijan. Considering the actual needs of employers and demands in the labour market these vocational training courses are organized for widening employment opportunities for the citizens registered at local bodies of SES as unemployed and jobseekers, development of self-employment and increasing competitiveness in the labour market.

Vocational training courses are organized on the basis of 86 traditional and 58 module educational programs at educational institutions with relevant resources in accordance with agreements signed with the Employment Centers.

Unemployed and job seeking citizens shall be involved in vocational training in the following cases:



- When it is impossible to choose suitable job due to lack of relevant professional skills;
- When it is necessary to change their profession due to unavailability of jobs matching their professional skills;
- When the ability to work at the previous profession is lost.

At Baku Regional Vocational Education Center 1228 persons in 2014, 1140 persons in 2015, 1478 persons in 2016, at Goychay Regional Vocational Education Center 331 persons in 2014, 462 persons in 2015, 507 persons in 2016, at Nakhchivan Regional Vocational Education Center 439 persons in 2014, 523 persons in 2015 and 413 persons in 2016 were involved in vocational training courses.

For the implementation of Articles 4.15 and 4.16 of the “State Program on the implementation of Employment Strategy of the Republic of Azerbaijan for 2011-2015” during 2014-2016 total of 444 prisoners were involved in various vocational training courses at Vocational Schools operating within penitentiaries for labour market adaptation of discharged prisoners.

The SES is also working towards the involvement of persons with disabilities to vocational training courses through applying specialized vocational training programs. Vocational training courses are organized by applying Braille system as requested by the Society of People with Impaired Vision. Overall 438 persons with disabilities attended vocational training courses (out of which 156 are people with impaired vision) by the SES during 2014-2016.

In the framework of cooperation between the Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan and Turkish Cooperation and Coordination Agency (TIKA) “Arici” (Bee-keeper) vocational course was organized for 12 jobseekers with disability residing in Shamakhi rayon in 2015. 10 bee colonies, bee boxes, 10 reserve bee boxes, equipment for bee-keeping, medical preparations and other means of treatment were presented by TIKA to each participant who completed the course.

The SES organized training courses on various professions which are in great demand in the labour market, including computer accountancy, computer user, computer designer, computer repair, English language, tailor, sewer, fundamentals of entrepreneurship, metal craftsman, hairdresser, cameraman, waiter, confectioner, carpet-maker, turner, carpenter, electricity-gas welder, milling-machine operator, and etc. These courses were attended by 3786 jobseekers in 2014, 4147 in 2015 and 3352 in 2016.

Law of the Republic of Azerbaijan on “Prevention of disability and impairment of the children’s health, rehabilitation and social protection of persons with disability and children with limited health capacity” approved in 1992 guarantees to widen opportunities for persons with disabilities and persons with limited health capacity under the age of 18 to participate in all spheres of social life, to determine their legal status, and protect their rights to rehabilitation, education, vocational training, employment and labour. Article 24 of this Law mentions that in order to realize the creative ability of persons with disabilities and persons with limited health capacity under the age of 18 their right to work at enterprises, institutions and organizations with regular work regime with consideration of individual rehabilitation programs, at specialized enterprises, workshops using the labour of persons with disabilities and

persons with limited health capacity under the age of 18 and to get engaged in business, as well as other activities not prohibited by law. According to “Regulations on criteria for determining disability” the main objective is to enlarge the opportunities for persons with disabilities to participate in social life and development of society, as well as to improve their financial conditions.

#### **Article 4. The right to a fair remuneration**

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

- 1 to recognize the right of workers to a remuneration such as will give them and their families a decent standard of living;
- 2 to recognize the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
- 3 to recognize the right of men and women workers to equal pay for work of equal value;
- 4 to recognize the right of all workers to a reasonable period of notice for termination of employment;
- 5 to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective contracts or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective contracts, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

#### Paragraph 1. Fair remuneration

Average monthly salary in the Republic of Azerbaijan in 2015 was 466, 9 manats, 498, 6 manats in 2016 and 523,1 manats in January-July of 2017. National minimum wage as of September 1, 2013 was 105 AZN , and 116 AZN as of January 1, 2017. Since January 1 2018 national minimum wage has increased to 130 AZN. If calculated as median, then currently the ratio of minimum median wage to average monthly salary is 49, 4 %.

#### **Information on national net minimum wage and net average monthly salary**

<b>Indicators</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017 (6 months)</b>
National subsistence minimum	125,0	131,0	136,0	155,0
Average monthly salary - manats	444,5	466,9	499,8	520,1

Minimum wage - manats	105,0	105,0	105,0	116,0
Mandatory state social protection deductions from salary (percentage)	3	3	3	3
Trade union payments (percentage)	2	2	2	2
Income tax from wage workers with monthly salary up to 2500 manats (percentage)	14	14	14	14
The amount of monthly salary exempt from income tax of those wage workers with monthly salary up to 2500 manats (National subsistence minimum)	125,0	131,0	136,0	155,0
Net minimum wage	99,8	99,8	99,8	110,2
Net average monthly salary	377,5	396,5	423,9	443,0
Net minimum wage to net average monthly salary ratio	26,4	25,2	23,5	24,9

### Average monthly nominal salary per types of economic activities, manats

Types of economic activities	2014	2015	2016
National - total	444,5	466,9	499,8
Agriculture, forestry, fishery	241,3	245,8	253,8
Mining industry	1753,8	2171,1	2807,2
Processing industry	495,4	527,9	542,9
Electricity, gas and steam production, distribution and supply	489,3	513,2	504,7
Water supply, waste management and recycling	331,8	333,3	321,4
Construction	626,9	677,7	812,9
Trade, vehicle maintenance	374,0	378,1	382,3
Vehicle and storage economy	530,3	575,8	649,3
Tourist accommodation and public catering	463,9	464,6	476,1
Information and communication	735,0	747,2	782,0
Finance and insurance	1198,8	1210,9	1229,2
Real estate operations	308,2	308,2	337,0
Professional, scientific and technical activities	669,7	752,4	886,5
Administrative and auxiliary services	566,6	542,6	543,6
State management and defence, social security	479,6	494,7	510,6
Education	298,0	301,1	307,0
Public health and social services	197,8	204,2	214,8
Recreation, entertainment and art	250,1	252,7	258,9
Services in other areas	400,2	441,9	473,4

### Average monthly nominal salary of civil servants per country and economic regions, manats

	2014	2015	2016
Per country - total	617,6	611,9	634,3
Baku city	782,0	776,0	795,4
Absheron economic region	461,6	446,9	496,3
Ganja-Gazakh economic region	477,0	470,3	487,5
Shaki-Zagatala economic region	489,6	480,3	499,6

Lankaran economic region	490,1	479,1	494,0
Guba-Khachmaz economic region	474,2	464,8	496,7
Aran economic region	477,5	464,5	481,9
Upper Karabagh economic region	510,6	491,3	507,7
Kalbajar-Lachin economic region	492,4	482,6	504,4
Mountainous Shirvan economic region	482,9	461,3	504,5
Nakhchivan Autonomus Republic	541,6	574,0	574,0

*Paragraph 2. Increased rate of remuneration for overtime work*

Employees shall be paid for overtime work. According to Article 165 of the Labour Code of the Republic of Azerbaijan the amount of payment for overtime work shall not be less than double the amount of hourly base (position) pay of the employee. The same form of payment for overtime work shall be determined for all employees regardless of their position. Moreover, the above-mentioned Article of the Law prohibits the substitution of overtime work with day-off. Employees who worked at weekends, on voting day, national holidays and national mourning day can be provided at their request with additional day-offs instead of salary determined under Article 164 of the Law. According to Article 96 of the Labour Code total working hours can be applied during the period of record in case length of working hours do not exceed the length of working hours determined by legislation. But in this case period of record must not exceed one year and daily work (shift) period cannot exceed 12 hours. The procedures for the use of total working hours shall be regulated by collective agreement, rules governing the work schedule at an enterprise or labour contract. According to Article 102 of the Labour Code, employer is obliged to hold accurate and honest account of working hours and overtime working hours of each employee. Employer shall determine the form and method of calculating of working hours. For every 8 hours of overtime work one day-off shall be provided for each employee.

*Paragraph 3. Prohibition of unequal pay to women and men for the work of equal value*

Article 16 of the Labour Code prohibits any kind of discrimination among employees on grounds of citizenship, sex, race, religion, nationality, language, place of residence, property status, social-economic origin, age, marital status, conviction, political views, membership of trade-unions or other public unions, position, professional qualities, competency and other factors unrelated with the results of work, as well as direct or indirect granting of privileges and concessions and restriction of rights on the basis of these factors. National legislation prohibits discrimination in all its forms. Equal employment opportunities for women and men have been established in the legislation of the Republic of Azerbaijan. Azerbaijan joined the ILO Conventions on gender equality, and incorporated all obligations arising from these conventions in the national labour legislation.

Analyses and experience show that women do not prefer working at jobs requiring physical labour, or special attire or overtime work. They prefer instead lighter jobs with less responsibility. Currently, more than half of wage workers work at state-

funded areas where salaries are less than the national average monthly salary (for example, education, culture, health, recreation and art). However, this shall not be assessed as discrimination in payment of salaries. Women's average monthly salary to men's average monthly salary ratio was 54,7 % in 2014, 53,9 % in 2015 and 50,3 % in 2016.

Equal payment for the same job (position) has been determined in civil service by a single act without making any discrimination. The analysis of appeals regarding labour rights made to the Commissioner for Human Rights of the Republic of Azerbaijan (Ombudsman) (672 appeals in 2014, 960 in 2015, 958 in 2016) shows that no appeal was received on discrimination in employment, including gender-based discrimination (particularly, in terms of equal payment for equal work of women and men employees) and sexual and emotional harassment.

From 2014 to June of 2017 none of court cases was on labour disputes based on discrimination (based on gender equality and sexual orientation).

### **Average monthly nominal salaries of wage workers**

Years	Average monthly nominal salaries, AZN		Women's average monthly nominal salaries to men's average monthly nominal salaries ratio, percentage
	women	men	
2014	299,7	547,9	54,7
2015	310,5	576,0	53,9
2016	316,8	629,6	50,3

#### Paragraph 4. Reasonable period of notice for termination of employment

Article 77 of the Labour Code of the Republic of Azerbaijan defines certain provisions for employees for the termination of their employment. During staff redundancy the employer shall officially notify the employee at least two months prior to termination of his/her contract according to Paragraph b of Article 70 of the Labour Code. During the notice period at least one day a week the employee shall be exempt from doing work functions (but still get salary) for job search purposes. According to Article 56 of the Labour Code in case of necessity to do changes in the organization of production and labour, it is allowed to change work conditions while employee keeps working on his/her profession, speciality and position. In this case employer shall notify

the employee in writing (order or decree) at least one month prior to changing work conditions (except those mentioned in Article 55 of the Labour Code). If employee disagrees to continue working under new conditions, he/she shall be transferred to another job or if impossible his/her labour contract can be terminated according to paragraph c of the second part of Article 68 of the Labour Code. According to part 3 of Article 77 of the Labour Code, when labour contract is terminated under “a” (liquidation of the enterprise) and “b” (staff redundancy) paragraphs of Article 70 of the Labour Code employees shall be paid:

- Severance benefit not lower than the average monthly wage;
- The average monthly wage for the second and third months after dismissal until he/she starts a new job.

During the notice period the employee shall be paid monthly salary. The following were determined according to Law No 675-VQD, dated May 31, 2017 on “Making Amendments to the Labour Code of the Republic of Azerbaijan” which entered into force from January 1, 2018.

Labour contracts can be with fixed term or termless. Fixed-term contracts cover the period agreed by both parties. At times of staff redundancy according to paragraph b of Article 70 of Labour Code prior to termination of labour contract employer shall officially notify the employee depending on the his/her length of service:

- At least two calendar weeks - in case the length of service is up to one year;
- At least four calendar weeks - in case the length of service is 1-5 years;
- At least six calendar weeks - in case the length of service is 5-10 years;
- At least ten calendar weeks - in case the length of service is more than 10 years.

If labour contract is terminated in accordance with paragraphs a and b of Article 70 of the Labour Code, depending on the length of service employer shall pay severance benefit in the following amounts:

- Average monthly salary - if length of service is up to one year;
- At least 1.4-fold the amount of average monthly salary – if length of service is 1-5 years;
- At least 1.7-fold the amount of average monthly salary - if length of service is 5-10 years;
- At least 2-fold the amount of average monthly salary - if length of service is over 10 years.

With consent of employee employer can terminate labour contract by paying 0.5-fold the amount of average monthly salary instead of notice period for at least two calendar weeks determined by the first part of this Article, 0.9-fold the amount of average monthly salary instead of at least four calendar weeks’ notice period, 1.4-fold the amount of average monthly salary instead of notice period for at least six calendar weeks, 2-fold the amount of average monthly salary instead of at least nine calendar weeks of notice period and lump-sum salary with amount not less than average monthly salary instead of notice period defined in the second part of Article 56 of the Labour Code. In this case the amount of substitute payment to employees whose labour

contracts are terminated during notice period is reduced proportionally to the expired part of notice period.

More concessions at work and related with socio-economic conditions (than established in labour legislation) can be determined in the collective labour contracts signed at enterprises considering their economic resources. These contracts can provide more day-offs (several days while keeping their salaries for those days) for the employees during the working week of the notice period than established in the Labour Code for the purpose of finding a new job.

During the period of notice employer can terminate labour contract with consent of employee by paying indemnity determined in the legislation. This case is regulated by part 4 of Article 77 (An employer may terminate an employment contract by paying the employee indemnity according to subsection 1 of this Section and Section 56 of this Code if the employee is dismissed, instead of applying the notice period defined in subsection 1 of this Section) of Labour Code.

#### Paragraph 5. Restrictions regarding deductions from wages

Article 202 of the Labour Code of the Republic of Azerbaijan indicates that amount of damage inflicted upon employer is determined based on actual losses. In cases of loss of property which is considered the main source of employer's business or if his/her property is damaged or stolen, its financial value shall be calculated at base prices considering relevant depreciation rates. In other cases, the amount of damage is calculated based on market value of the property at the time of damage. At request of employer the monetary value of nonmaterial damage caused to an employer shall be determined by the court in accordance with the principle established in the third part of Article 290 of the Labour Code. According to Article 205 of the Labour Code if the amount of damage inflicted upon employer does not exceed the amount of average monthly salary of the employee the deductions from salary are made in accordance with employer's order (decree, decision). In cases if employee bears full financial liability for the damage inflicted upon employer and the amount of damage exceeds his/her average monthly income, and employee refuses to pay the damage voluntarily, then the employer shall file suit in court to resolve the case and the cost may be paid by court order. In case employee disagrees with the order (decree, decision) of employer regarding the damage compensation, then he/she can file a suit in accordance with established rules.

According to Article 173 of the Labour Code employers shall draw up all payment documents (books, lists, check books) for employees reflecting all accounting statements relating to the calculations of salaries, payment of salaries and deductions from them.

Pursuant to Article 175 of the Labour Code relevant deductions from salary of employee (except the cases determined by this Article) may be taken only with his/her written consent or on the basis of document produced by order of a court of law. Only the following deductions may be taken from the salary of an employee with due order of employer:

a) Relevant taxes, social insurance and other mandatory payments established by legislation;

- b) Amounts specified in documents produced by order of a court of law;
- c) Losses incurred by an employer through employee's fault (except the cases in which employee bears full material responsibility for damages inflicted) which does not exceed the amount of average monthly income of an employee;
- d) Portion of the vacation pay proportionate to the vacation days lost as result of the employee's early resignation;
- e) The amount of remaining per diem (after the business trip is over) which was paid in advance to the employee sent on business trip;
- f) Overpayments to the employee as a result of incorrect calculations by book-keeper;
- c) The unused portion of money paid to the employee for purchase of goods, commodities;
- h) Amounts determined in cases stipulated in collective agreements;
- i) Trade-union membership payments deducted from the salaries of trade-union member employees and which are transferred to the special account of trade-union organization of an enterprise within 4 working days.

According to part 3 of Article 174 of the Labour Code with the consent of an employee up to 20% of his/her salary may be substituted with consumer goods produced at the enterprise, excluding products, such as alcoholic beverages, tobacco, drugs, psychotropic substances and other products with restricted civil turnover. Deductions from salaries stipulated by legislation shall be taken without consent of employees and they cannot refuse it. If deductions from salaries of employees taken in accordance with legislation may lead to the violation of their rights to minimum wage (such cases are never met in practice), the dispute shall be resolved at court.

According to the second part of Article 176 of the Labour Code, while deducting certain amounts from the salary of an employee required by legal documents, 50% of the salary of employee shall be maintained in all cases. According to the amendments made to the Tax Code the amount of 1-fold the amount of national minimum wage is exempt from income tax if the amount of monthly income of physical persons acquired through hired labour is up to 2500 manats (prior to amendments: 1-fold the amount of minimum wage), the amount of 12-fold the amount of minimum subsistence (prior to amendments: 12-fold the amount of minimum wages) if the amount of annual income is up to 30000 manats.

It is worth noting here that during 2014-2017 the amount of national minimum subsistence and minimum wages increased respectively from 125 manats to 155 manats and from 105 manats to 116 AZN.

## **Article 5. The right to organize**

*With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organizations for the protection of their economic and social interests and to join those organizations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to*



*which they shall apply to persons in this category shall equally be determined by national laws or regulations.*

Article 58 of the Constitution of the Republic of Azerbaijan defines the principles of rights of citizens to unite. According to this Article, everyone is entitled to unite with others. Everybody has got right to establish any kind of union, including political party, trade-unions and other public unions or enter existing unions. All unions' independent activity is guaranteed.

According to Article 19 of the Labour Code of the Republic of Azerbaijan, trade-union organizations can be established without making any discrimination among employees and without getting any kind of permission from employer in advance, based on mere voluntarism principle. Employees can become members of trade-unions and get engaged in its activities for protecting their labour, social, economic rights and legal interests. Rights, duties and mandate of trade-unions are determined by the Law of the Republic of Azerbaijan on "Trade-unions" and their statutes.

Moreover, according to Article 21 of the Labour Code alongside trade-union organizations other representative public self-governance bodies of employees, as well as representative agencies of employer can be set up at enterprises in accordance with the rules established in the legislation and operate based on their statutes. "Public self-governance bodies" here shall mean labour team council, board of chairs (directors), inventors, rationalizers, women and veterans' societies, creative associations and other public unions set up by employees in accordance with relevant regulatory-legal acts. Civil Service Law of the Republic of Azerbaijan determines the right of civil servants to unite in the trade-unions. According to Article 19 of this Law uniting in trade-unions has been included in the major rights of civil servants.

Commission for Regulation and Coordination of Labour Relations was established with Presidential Decree No 2760 dated March 17, 2017 for the purpose of strengthening the social protection of employees, formalization of employer-employee relations, improving control mechanisms of organization of labour payment, ensuring effective protection of labour rights and provisions of participants of labour relations and implementing coordinated policy in these areas among state bodies.

Regarding the right to organize trade-unions at multinational companies, it is worth noting that with the signing of the "Contract of the Century" favourable conditions were set up for the inflow of foreign investments to the oil industry and for the operation of transnational companies in the territory of Azerbaijan. With the development of a new economic structure a necessity emerged for protection of labour and socio-economic interests of people working there, as well as members of trade-unions. The establishment of trade-unions at enterprises operating with foreign capital became the main objective. Guided by the Law of the Republic of Azerbaijan on "Trade-unions", recommendations of the ILO and Revised European Social Charter Trade-unions Confederation of the Republic of Azerbaijan (TCRA) and member organizations conducted several organizational and promotional activities for the establishment of trade-union organizations at those

multinational companies. As a result of all measures, trade-unions were set up in several multinational companies and they still continue operating today. However, the level of organizational work at multinational companies is not satisfactory yet. The main reason for this is that the employers in this sector hinder the establishment and operation of trade-unions on grounds that trade-unions are not “attractive for employees”. Employees are kept under pressure and get warnings on dismissal in case they become members of trade-unions. Unawareness of trade-unions about the agreements signed by the government for the operation of multinational companies in the territory of Azerbaijan and lack of statistical information on their number create difficulties for the establishment of trade-unions at those enterprises. In some cases negative attitude exists towards the trade-unions established in multinational companies and their activities are impeded. Despite all this, TCRA and its member organizations are persistent in their activities towards establishment of trade-unions at multinational companies, as well as foreign joint private companies and enterprises.

Currently, trade-unions at 3533 foreign, joint and private enterprises consisting of 125881 people successfully operate for protection of social-economic and labour rights of their members.

## **Article 6. The right to bargain collectively**

*In order to ensure effective exercise of the right to collectively bargain the parties shall assume the following obligations:*

- 1) to encourage joint consultations between employees and employers;*
- 2) to support the mechanism of voluntary negotiations between employers or their organizations and the employee organizations for the purpose of regulation of working environment and conditions by means of collective bargaining agreements when appropriate;*
- 3) to support creation and use of conciliation and voluntary arbitration mechanisms for the purpose of settlement of labour disputes;*
- 4) in case of conflict of interests to acknowledge the right to get involved in collective activities including participation in strikes subject to obligations provided for in collective bargaining agreements made by employees and employers.*

### Paragraph 1. Joint consultations

Right to bargain collectively has been established by the Articles 25 and 28 of the Labour Code, as well as by Article 14 of the Law of the Republic of Azerbaijan on “Trade-unions”. Staff of enterprises, institutions and organizations is entitled to establish their representative bodies, as well as protection of labour, social, economic rights of employees.

As a result of prevention and monitoring work conducted by the authorized representatives of trade-union committees, several violations were

detected and negotiations were launched with employers regarding those violations at the completion of which proposals were added to the collective agreements. In such a way, in 2015 work conditions of 1411 employees were improved, 338 pieces of technological equipment were adjusted to safety norms and requirements and threat to health of one in every 17 of employees of enterprises was eliminated.

General Collective Agreement signed with joint decision of the Cabinet of Ministers of the Republic of Azerbaijan, Trade-unions Confederation of the Republic of Azerbaijan and National Confederation of Entrepreneurs (Employers) of the Republic of Azerbaijan No 154, dated April 15, 2016 was in force during 2016-2017.

Upon initiative of social partners Tripartite Commission on Social and Economic Affairs was established in the Republic of Azerbaijan with joint decision of the Cabinet of Ministers of the Republic of Azerbaijan, Trade-unions Confederation of the Republic of Azerbaijan and National Confederation of Entrepreneurs (Employers) of the Republic of Azerbaijan No 6, dated September 30, 2016 for the purpose of reviewing social and economic issues with participation of social partners and further developing social partnership in the country.

### Paragraph 2. Negotiation procedures

According to Article 25 of the Labour Code of the Republic of Azerbaijan trade-union organizations, labour collectives, employers and relevant executive authority and representative bodies of employers within their mandate are entitled to initiate collective bargaining with regard to drafting of collective agreement, its signing and making amendments to it. The Party receiving written proposal to start collective bargaining shall start negotiations within 10 calendar days and send to the other Party initiating the collective bargaining information on their representatives who will take part in the bargaining. Collective bargaining starts on the day after the Party initiating the collective bargaining receives the response letter. In case there is no trade-union organization at an enterprise, the labour team shall set up a commission with special bargaining authority. If there are several trade-union organizations at the national, territorial and district level, a commission shall be established proportional to employee members to conduct bargaining. Employers, as well as individuals representing executive bodies, local municipalities and organizations that are established and funded by them shall not be permitted to conduct bargaining or sign collective treaties and agreements on behalf of workers.

The Rules of collective bargaining are established in Article 26 of the Labour Code. According to this Article, the parties shall set up a commission consisting of an equal number of representatives from each party to bargain for the purpose of drafting a collective contract or agreement or amendment to it. The structure of the commission, the agenda, venue and time of bargaining is determined by mutual consent of the parties. The parties are free to choose and discuss issues regarding the contents of collective agreement or contract. At the request of the commission the parties shall present necessary information for bargaining within five days. The bargaining parties shall be liable under the law for

disseminating state or trade secret in accordance with legislation. In case of disagreement between parties during negotiations, protocol shall be drafted on cleavage of opinion. Final proposals of the parties on eliminating divergence of opinions, as well as date of resuming of bargaining are included in the Protocol. With a view to ensuring exercise of the right of workers to take part in the determination and improvement of working conditions and working environment trade-union organizations succeed in including commitments, such as organization of socio-cultural facilities, utilization of those facilities, organization of cultural events with workers and their family members within the undertaking, etc. in the collective agreements with the employers. According to Article 32 of the Labour Code, a collective contract may be prolonged. The duration of a collective contract may be from 1 to 3 years. A collective contract take effect from the day of signing or the date indicated in contract. After the expiry of the specified period, a collective contract shall remain in effect until a new one is executed, but not exceeding 3 years. A collective contract shall not be void due to organizational-structural changes at the enterprise, termination of labour contract with the employer, as well as termination of activities of trade-union organizations, except the cases when the ownership of an enterprise changes or it is liquidated. In case the ownership of an enterprise changes, a collective contract remains valid for three months. Within this period parties shall start negotiations regarding the signing of a new collective contract or validating the previous one and making amendments or additions to it. The collective bargain remains valid during the period of liquidation or re-organization, in case the enterprise is liquidated, or merged, or divided or separated in accordance with rules and conditions established in the legislation.

### Paragraph 3. Conciliation and voluntary arbitration

The issues which are not mentioned in the Law of the Republic of Azerbaijan on “Civil Service” are referred in the Labour Code of the Republic of Azerbaijan. According to Article 265 of the Labour Code conciliatory commission, mediator and labour arbitration can be used for the settlement of collective labour disputes.

“Regulations on Forced Arbitration” was approved with Decision No 10-1, dated March 25, 1999 of the Board of the Ministry of Labour and Social Protection of Population and registered under No.154, Apr., 1999 by the Ministry of Justice of the Republic of Azerbaijan. Forced arbitration is set up under the Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan and operates in accordance with these Regulations.

An official request sent to the Administration of the Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan by one of the parties is sufficient for the resolution of collective labour dispute through Forced Arbitration. The members of the Forced Arbitration dealing with labour dispute are confirmed by the Minister of Labour and Social Protection of the Republic of Azerbaijan at an odd number of no less than 5 people (chairman and arbiters) with due consent of the disputing parties. The chairman of the Forced Arbitration is elected with majority of

voices among the arbiters through open voting.

Forced Arbitration has a permanent secretariat under the Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan. The Secretariat consists of lawyers and experts on issues of labour. The secretary and other employees of the Secretariat are appointed from among the employees of the Apparatus of the Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan. However, they are not exempt from exercising their duties at their principal jobs and are paid additionally 25% of their salary during the times of hearings on collective labour disputes.

According to Article 259 of the Labour Code the rules of settlement of collective labour disputes among civil servants are regulated with relevant regulatory- legal act in accordance with the norms established by this Code. In case of a collective labour dispute in the public sector permanent Secretariat under the Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan can be consulted with, which is also stipulated in the Regulations about Forced Arbitration.

#### Paragraph 4. Collective action

According to section II of the Labour Code titled “Collective agreement and contract” trade-union organizations, labour collectives, employers and relevant executive authority and representative bodies of employers within their mandate are entitled to initiate collective bargaining regarding the drafting of collective agreement, its signing and making amendments to it.

Trade-union organizations shall decide on the need for drafting and signing a collective contract. In case of absence of trade-union organization at an enterprise the decision on the conduct of bargaining, drafting and signing of a collective contract is made at the general assembly of the workforce. According to Article 271 of the Labour Code decision on striking is made by trade-union organization at the workers’ conference or in the way stipulated by Article 262 of the Labour Code. Collective requests regarding non-fulfilment or partial fulfilment of a collective agreement or contract, as well as other labour and social issues are proposed at the general assembly (conference) of workers or trade-union organization. Decision is made with majority of votes of the staff, in trade-union organization - in the way established in its statute for making other decisions. Employees can appoint their representative to participate in negotiations with employer and propose collective request on their behalf or they may commission trade-union organization with conducting bargaining. Requests not fitting the economic resources of employer are not allowed. In case requests do not fit the economic capacity of the enterprise, the employer shall prove it based on audit opinion.

## **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.*

Relevant measures are undertaken by local agencies of the SES under the Ministry of Labour and Social Protection of Population to integrate into society and ensure employment of groups of population in need of special social protection, as well as persons with disabilities. Constitutional rights of everyone, including all categories of citizens, persons with disabilities are established in relevant law and regulatory-legal documents.

Law of the Republic of Azerbaijan on "Prevention of disability and limited health capacity of children, rehabilitation and social protection of persons with disabilities and children with limited health capacity", Employment Law of the Republic of Azerbaijan, and documents such as, "Model regulations on specialized workplace standards for using labour of the persons with disabilities", "List of worker and servant jobs which are competitive at labour market and more suitable for persons with disabilities", and "List of production areas in which labour of persons with disabilities is prohibited" approved by the Ministry of Labour and Social Protection of Population within its mandate determine legal norms of rehabilitation of persons with disabilities, their social protection, pension provisions, special aspects of use of their labour and their employment.

Article 16 of the Labour Code prohibits any kind of discrimination among employees on grounds of citizenship, sex, race, religion, nationality, language, place of residence, property status, social-economic origin, age, marital status, conviction, political views, membership in trade-unions or other public unions, position, professional qualities, competency and other factors unrelated with job performance, as well as direct or indirect granting of privileges and concessions and restriction of rights on the basis of these factors

Except types of occupations and positions in which the employment of persons with HIV is not allowed, rejection to hire or promote or dismiss them due to having HIV is prohibited. The employer shall not disclose the information in case he/she finds out about certain employee having HIV.

It is not allowed to refuse to sign a labour contract or to terminate labour contract due to person's having multiple sclerosis (except cases in which the employer cannot provide relevant job or position, as well as refusal of hiring to work places where the employment of such persons is not allowed).

Determination of concessions, privileges and additional provisions in labour relations for women, disabled people and persons under the age of 18 who need special social protection is not considered as discrimination.

An employee who experienced discrimination can appeal to court with request to restore his/her violated rights. According to Article 12 of the Labour Code employer violating rights of employees, not fulfilling commitments arising from employment contract, employing persons under the age of 15, involving children to work which may threaten their lives, health and morality and not complying with the requirements of this Code shall be liable in accordance with the rules established in the legislation. According to Article 15 of the Law of the Republic of Azerbaijan on "Prevention of disability and limited health capacity of children, rehabilitation and social protection of persons with disabilities and children with limited health capacity" the state guarantees the establishment of necessary conditions for provision of education and vocational training for persons with disabilities and children with limited health capacity:

- State guarantees the creation of necessary conditions for provision of education and vocational training for persons with disabilities and children with limited health capacity;
- *The Ministry of Education of the Republic of Azerbaijan according to the rules established in the legislation ensure the provision of pre-school education, extracurricular education for children with limited abilities and persons with disabilities over the age of 18, and according to the decision by the psychological-medical-pedagogical or medical-social expert commission ensure curriculum-based general education, vocational education and higher education for them;*
- *The provision of education for persons with disabilities, as well as children with limited health capacity can be in various forms, including home education and individual teaching;*
- *State ensures the development of educational specialists for teaching and vocational training of persons with disabilities and children with limited health capacity*
- *Organization of education for persons with disabilities is regulated with legislative acts.*

According to Article 21 of the above-mentioned Law, SES provides vocational guidance services for persons with disabilities capable of working and children with limited health capacity in order to identify vocational training, re-training and employment opportunities for them.

For the purpose of realizing their creative and productive abilities Article 24 of the Law maintains the rights of persons with disabilities and persons with limited health capacity under the age of 18 to work at enterprises, institutions and organizations with regular working conditions (with consideration of individual rehabilitation programs), at specialized institutions, workshops and fields using the labour of persons with disabilities and persons with limited health capacity under the age of 18, as well as rights of those people to get engaged in business and other activities not forbidden by law.

Except the cases when the health condition of persons with disabilities or children with limited health capacity does not allow them

to fulfil their professional duties or threatens the health and safety of other persons at work according to the opinion of medical-social expert commission, it is not allowed to refuse to conclude labour contract with persons with disabilities or children with limited health capacity on the grounds of disability or to refuse to promote them at work, or dismiss them with the initiative of management or to transfer them to another job without their consent.

As a result of analysis of statistical data on labour disputes taken to court, during 2014, 2015, 2016 and first 6 months of 2017, only Mingachevir City Court received 1 case on discrimination on grounds of disability.

From 2014 to June of 2017 none of court cases was on labour disputes based on discrimination (on the grounds of gender equality and sexual orientation). According to Article 15 of the Labour Code of the Republic of Azerbaijan the body overseeing the compliance with labour legislation is entitled to demand those persons guilty of labour legislation violations to cease their violations of the law, to hold these persons accountable in the manner established by Code of Administrative Offences of the Republic of Azerbaijan, as well as to raise the issue in front of relevant bodies for holding them accountable.

It is obligatory for employers and employees, as well as other participants of labour relations to obey decisions or instructions given by the body overseeing compliance with labour legislation regarding the compliance with the requirements of regulatory-legal acts on labour legislation and this Code.

Administrative court appeal can be made from the decisions and instructions of the body overseeing the compliance with labour legislation. According to Article 162-1.1 of the Criminal Code of the Republic of Azerbaijan involvement of a considerable number of employees into fulfilment of any work (services) before labour contract takes effect in accordance with the manner established in the Labour Code of the Republic of Azerbaijan, as well as repetition of the same acts leads to liability under law.

Primary vocational education institutions regularly provide vocational guidance and “open door” days for students at general education schools. Moreover, in order to involve the graduates of boarding schools into vocational education, each year 10% (two persons) of places during the admission to primary vocational education institutions are allocated for boarding school graduates.

Pilot project was implemented during 2016-2017 academic year for ensuring inclusivity and involvement of persons with disabilities in vocational education. Within the project specialized vocational guidance was provided for 3 students with disabilities on specialty of “barber/hairdresser” and inclusive education was provided by participation of highly-qualified experts in the education process.

Educational workshops under the special boarding schools for children with limited health capacity registered in the system of the Ministry of Education have been established and supplied with necessary inventory and equipment. The organization of vocational guidance and vocational trainings in special education institutions is the principal condition for preparing students for independent life and their social adaptation. The graduates of special boarding schools are awarded with certificates on vocational education (carpenter,



metal craftsman, embroiderer, carpet-maker, blacksmith and etc.) with degrees alongside relevant educational documents. Ministry of Education jointly with Baku city Chief Employment Agency organized three-month courses on various professions for graduates of state children institutions and undertook measures for their participation in the labour market and job placement. Furthermore, Baku Regional Vocational Education Center under the SES organized “cook assistant” course for the graduates of Integration training boarding school No 11 and they were given certificates on completion of the course. As a result of this course some of the participants found jobs as cook assistants. The students of special Boarding School No 5 for children with limited health capacities showing ability for music from were involved into the musical education at the musical schools functioning within the boarding school. 1012

persons with disabilities in 2015, 1633 persons with disabilities in 2016 and 902 persons with disabilities during first 9 months of 2017 applied to various local agencies of the SES. 473 of them (64 women) in 2015, 487 (53 women) in 2016 and 358 (70 women) in the first 9 months of 2017 were provided with jobs.

204 persons with disabilities in 2015, 125 in 2016 and 65 in the 9 months of 2017 were involved in various vocational training courses, such as “English language”, “weaver”, “computer user” and etc. During 2015-2016 and 11 months of 2017 144 citizens with impaired vision were involved in “English Language” and “Braille script computer user” courses at the Azerbaijan Blind Association. As a result of these courses they were able to find jobs, engage in self-employment or organize private services.

The SES regularly takes measures for rational employment of persons with disabilities, facilitating labour market integration, organizing vocational guidance and career development services for adapting them psychologically and socially, and assisting in choosing their future professions or occupations and directing them to jobs which are in great demand in the labour market.

In the framework of cooperation between the Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan and Turkish Cooperation and Coordination Agency (TIKA) “Arıcı” (Bee-keeper) vocational course was organized for 12 disabled jobseekers residing in Shamakhi rayon in August 2015. 10 bee colonies, bee boxes, 10 reserve bee boxes, equipment for bee-keeping, medical preparations and other means of treatment were presented by TIKA to each of the disabled person who completed the above-mentioned course. Moreover, with support from TIKA 20 young people were involved into “Mosaic design” course at Ramana Vocational Rehabilitation Center for Young Persons with Disabilities in 2016.

Presidential Decree on “Additional measures for employment of population” was approved on April 7, 2016 for developing non-oil sector and entrepreneurship activities, as well as opening of new jobs in the country. Thus, to assist in self-employment of the population and create new jobs 6,0 million manats from the reserve fund of the President of the Republic of Azerbaijan under the state budget for 2016 were transferred to the account of the Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan. 60 of people involved in this

program were persons with disabilities.

Regarding the use of vocational guidance services provided in the educational system and labour market for foreign citizens, it should be noted that according to Article 13 of the Labour Code unless otherwise provided for by Law or international agreements Azerbaijan is a party to, foreigners and stateless persons can enjoy all labour rights and exercise relevant duties equally with Azerbaijani citizens while residing in the Republic of Azerbaijan.

It is prohibited to restrict labour rights of foreigners and stateless persons indicated in the Labour Code and in other regulatory-legal acts, except cases stipulated in the legislation. It is not allowed to grant foreigners and stateless persons rights superior to those of citizens of the Republic of Azerbaijan in the field of labour relations. Except the cases mentioned in Article 64 of the Migration Code of the Republic of Azerbaijan, employers shall obtain work permission for employing foreigners and persons without citizenship in accordance with the rules and conditions established in this Code. State Labour Inspection Service under the Ministry of Labour and Social Protection of Population oversees the exercise of rights of migrant workers.

According to Article 64 of the Code of Migration of the Republic of Azerbaijan legal persons, physical persons engaged in entrepreneurship activities without creating legal person and branches and representative offices of foreign legal persons can employ in the Republic of Azerbaijan foreigners and persons without citizenship. Pursuant to Article 23.5 of the Law of the Republic of Azerbaijan on Education admission of foreigners and stateless persons to higher educational institutions and to PhD of science institutions is made on the basis of international agreements which Azerbaijan is a party to and agreement (on paid terms) signed between foreigners or stateless persons and higher educational institution.

According to Article 24 of this Law as part of uninterrupted education and vocational training supplementary education provides continuous education opportunity for every citizen granted with a state document on completion of a certain stage of vocational/specialty education and aims at developing human potential, increasing and improving intellectual and professional level of staff, their adaptation to changing and updating labour environment and active and effective participation of adult citizens in the social, cultural, economic and political life of the country.

Advancement of professional skills, retraining of staff, internship for staff, second higher education and vocational education, higher degrees and education for adults are the main directions of supplementary education.

According to Article 44 of this Law admission of foreigners and stateless persons to any education level or advancement of their professional skills is made on the basis of quota determined by the government and agreements signed directly with educational institutions, legal and physical persons in accordance with international agreements which Azerbaijan is a party to.

The rules of obtaining education, recognition of diplomas received in foreign countries and determination of equivalency (nostrification) for foreigners and stateless persons in the Republic of

Azerbaijan are regulated by legal acts approved by the Cabinet of Ministers of the Republic of Azerbaijan.

**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.*

Article 25 of the Constitution of the Republic of Azerbaijan establishes equality of rights and liberties of citizens regardless of sex and prohibits restriction of human and citizen rights and liberties on grounds of sex. Thus, equality principle of men and women in all spheres of life has been widely mentioned in the national legislation.

Article 16 of the Labour Code prohibits any kind of discrimination among employees on grounds of citizenship, sex, race, religion, nationality, language, place of residence, property status, social-economic origin, age, marital status, conviction, political views, membership in trade-unions or other public unions, position, professional qualities, competency and other factors unrelated with job performance, as well as direct or indirect granting of privileges and concessions and restriction of rights on the basis of these factors.

Following the ratification of Revised European Social Charter the following sub-paragraphs were included to Article 31 on collective agreements of the Labour Code of the Republic of Azerbaijan:

- assistance in the explanatory work and provision of information, as well as prevention of cases of mockery, obvious hostile actions and offensive conduct against individual workers at the workplace and undertaking all necessary measures in order to protect employees from these acts;

- assistance in explanatory work and provision of information on sexual harassment in the workplace or in connection with work, prevention of sexual harassment and undertaking all necessary measures regarding the protection of employees from this type of behaviour.

According to Article 195 of the Code employer bears full material liability for the damage to employee in case of sexual harassment at work.

Part 6 of Article 241 of the Labour Code defines workplaces and jobs in which women's labour is prohibited. The "List of jobs, including underground jobs,

occupations (positions), production areas with harmful and hard work conditions in which women's labour is prohibited" was approved with the Decision the Cabinet of Ministers of the Republic of Azerbaijan No 170, dated October 20, 1999 of. Determination of concessions, privileges and additional provisions in labour relations for women, persons with disabilities and persons under the age of 18 who need special social protection shall not be considered as discrimination.

Part 6 of Article 241 of the Labour Code is in conformity with the ILO Convention No 45 on "Use of women's labour in mines and underground jobs" ratified on May 19, 1992 by the Republic of Azerbaijan.

As prohibition of women's labour at harmful, hard, as well as underground jobs does not comply with the principle of equal opportunities for all and as advanced technology is already broadly applied in all spheres of life, the "List of occupations (positions), production areas, jobs, including underground jobs with hard and harmful work conditions where women's' labour is prohibited" approved with Decision of the Cabinet of Ministers of the Republic of Azerbaijan No 170, October 20, 1999 based on Article 241 of the Labour Code of the Republic of Azerbaijan was repealed and a new list was drafted and presented on November 28, 2013 to the Cabinet of Ministers of the Republic of Azerbaijan considering only pregnant women and women having children under the age of 1.5. The draft law stipulates the following:

«The following amendments shall be made to the Labour Code of the Republic of Azerbaijan:

1.1. Fourth indention of first part of Article 211 shall be edited as follows:

"production areas and jobs in which labour of pregnant women, women having children under the age of 1.5 and persons under the age of 18 is prohibited;"

1.2. in Article:

1.2.1. First part shall be edited as follows:

"labour of pregnant women, as well as women having children under 1.5 is prohibited in the workplaces with hard and harmful work conditions, underground tunnels, mines and other underground work.";

1.2.2. Part 2 shall be edited as follows:

"labour of pregnant women and women having children under the age of 1.5 is allowed in underground jobs in which they are not engaged in physical labour, work in managerial positions or provide social, sanitary-medical services, as well as descend and ascend to underground workplace without doing any physical work.";

1.2.3. To take out Part 3 and 4.

1.2.4. To edit part 5 as follows:

"It is prohibited to involve pregnant women and women having children under the age of 1.5 into the work activities mentioned in this Article which are not suitable due to being dangerous, unhealthy and hard, and which may lead to exposure to lead, benzol, ionizing radiation, high temperature, vibration, or virus conveyers.";

1.2.5. To edit part 6 as follows:

"List of occupations (positions), production areas, jobs, including underground jobs with hard and harmful work conditions where labour of pregnant and women

having children under 1.5 years is prohibited shall be approved by relevant executive authority”.”. »

Moreover, the draft law also stipulates the repeal of parts 3 and 4 (lifting and carrying heavy objects) of Article 241 of the Labour Code of the Republic of Azerbaijan.

### Equal opportunities

According to the Law of the Republic of Azerbaijan on “Gender equality provisions” dated October 10, 2006:

- Article 7 titled “Duties of the employers” defines duties of employers in terms of discrimination at work. It establishes that an employer shall ensure the equality of men and women at work and fulfil the following duties:

According to Article 8 titled “Duties of the employer to eliminate discrimination on grounds of sex” of the Law at the request of the employee the employer shall substantiate that the different approach to the employee was not made based on sex, in case women and men were unequally treated during promotion at work, vocational training, re-training, advancement of professional skills, performance appraisal and dismissal. A person who was refused to be admitted to work is entitled to request a written explanation for comparing the educational background, work experience, vocational training, professional qualities and other advantages of the hired person of opposite sex with her/his own background.

According to Article 9 titled “Equality in the payment for work” of this Law, irrespective of sex all employees working in the same field, having the same specialization degrees, working in the same work environment and doing the same value of work shall be paid equal salaries, as well as equal bonuses and other payments for motivation. In case salaries, bonuses and other payments for motivation purposes are unequally paid, at request of an employee the employer shall substantiate that the difference in payment has nothing to do with the sex of employee.

According to Article 15 titled “Gender equality provisions in the economic and social relations” of the Law, the state guarantees equal opportunities for men and women for the execution of their rights to business property and their engagement in business activities. In addition, the state guarantees equal opportunities for women and men in execution of their rights to social security, targeted state social assistance and other social benefits.

To improve the existing legislative norms and rules regarding the prohibition of any kind of discrimination (direct or indirect) in the field of labour and employment and to ensure their adjustment to international norms on May 11, 2010 with the Law No 1003-IIIQ the Republic of Azerbaijan ratified the ILO Convention No 156 on “Equal opportunities and equal treatment for men and women employees: workers with family responsibilities” and arising from this Convention relevant measures were undertaken for enlarging equal opportunities for all workers in the field of labour and employment. Several concessional norms (regarding non-application of trial period,

attestation and certification, prohibition of termination of labour contract, provision of partly-paid leave, etc.) determined in the Labour Code for pregnant women and women having children under the age of 3 were also applied to men raising alone their children under the age of 3.

Currently 40% of wage workers are concentrated in the state-funded areas, such as education, health, culture, art, science, etc., in which salaries are paid based on Common Tariff Table. Majority of women work in these areas. The Common Tariff Table for employees in the state-funded fields is approved by the Cabinet of Ministers of the Republic of Azerbaijan and tariff (position) salaries per this table is much lower compared to private sector. As a rule and national characteristics, Azerbaijani women prefer getting engaged in housework and therefore do not work at production areas requiring physical labour where salaries are much higher. Therefore, average salaries of women are relatively lower than of men in the country. Currently measures are underway to tackle this issue.

National Coordination Council on Sustainable Development was established with Presidential Decree on October 6, 2016. Azerbaijan submitted to the UN its national review on the implementation of first 6 Sustainable development Goals (including on 5th goal on gender equality) on June of 2017.

In the General Collective Agreement for 2016-2017 several provisions were established regarding the improvement of labour legislation to ensure gender equality, and measures for equal payment for work of equal value by male and female workers. As of January 1, 2017 men constitute 49.9%, whereas women constitute 50.1% of population in the Republic of Azerbaijan. Women constitute 48,6% (2439,5 thousand people), and men constitute 51,4% (2573,2 thousand people) of economically active population. Average life expectancy is 75.2 years (for men 72,8, for women 77,6 years).

Currently national unemployment level is 5, 0%, 5, 9% among women (4, 1% among men), including 6, 9% in urban areas (5, 0% among men), 4, 8% in rural areas (3, 2% among men). The analysis of sex-disaggregated data of working population shows that compared to men, women are more concentrated in education (women-68,5% and 31,5%-men), health and social service (73,1%-women and 26,9%-men), recreation, entertainment and art (59,9%-women and 40,1%-men). The ratio of average monthly salary of men to women was 54,7 % in 2014, 53,9 % in 2015 and 50,3 % in 2016.

To increase the competitiveness of women in the labour market and develop self-employment and entrepreneurship among women the UNDP technical assistance project "Advocating for women's participation in economic and social life in rural and urban areas" (since 2011) and projects funded by USAID on "Protection of social rights on support to Women entrepreneurship and employment" (2014) were implemented. Furthermore, 257 women were involved into trainings in the framework of SYSLAB projects (since 2012), 70 women were provided with jobs within the project on virtual enterprises (2014), 9 women were provided with jobs within subsidy projects (2014-2015) implemented in the regions of the Republic of Azerbaijan and finally 253 women were employed as a

result of “Self-employment program” (2017) implemented with Presidential Decree on “Ensuring of self-employment of population”. Share of women

obtaining education for the academic year of 2015-2016: general education institutions - 45,0 %, primary education - 48,2 %, secondary vocational education - 48,4 %, higher education and doctorate - 48,4 %. On average 47 out of 100 students are women. Share of women wage workers by the fields of economic activities: agriculture - 42,2 %, trade - 17,9 %, education - 11,3 %, health and social services - 5,8 %, public governance and defence - 2,0 %, others - 20,8 %.

Article 4.1.8 of the Civil Service Law of the Republic of Azerbaijan defines equal rights for all citizens to hold any civil service position in accordance with their capabilities, professional achievements and experience. Gender equality is ensured during the admission to civil service and holding of civil service positions.

Equal payment for the same job (position) has been determined in civil service by a single act (Presidential Decree). No discrimination is made between the amount of salaries for same positions on the basis of sex and other factors and this issue is strictly regulated by legislation.

Remuneration system is set up in accordance with the professional level of employee and complexity of work irrespective of sex. The highest average monthly salary for women is in mining industry (982, 2 manats), finance and insurance (782,1 manats), electricity, gas and steam production, distribution and supply (429,0 manats), and in construction areas (427,4 manats).

The number of female members of Parliament is increasing. As of November 1, 2015 21 out of 125 MPs were women and their specific share reached 16,8 %. Compared to first municipal elections in the last municipal elections the number of women elected to be member of municipality increased 6 times and reached 5236 and their specific share became 35,0 %. This indicator was 4,0% in the first municipal elections. Indicators regarding women in higher positions in the Republic of Azerbaijan:

- First vice-president of the Republic of Azerbaijan;
- 1 out of 3 deputy chairs of the Parliament and 21 out of 125 MPs (16.8%);
- Chair of 1 State Committee, chair of 1 State Examination Center, 3 deputy ministers, 1 deputy chair of committee, 1 deputy chair of Chamber of Auditors;
- Human Rights Commissioner (Ombudsman);
- Deputy chair of the Constitutional Court and 1 judge;
- Rectors of 5 universities;
- The vice-president of the State Oil Company of the Republic of Azerbaijan;
- 78 deputy head and around 50 heads of departments of local executive authorities in 85 rayons (cities);
- Minister of Culture and Tourism, deputy chair of the Cabinet of Ministers, 1 chair of Committee and Human Rights Commissioner of the Nakhchivan Autonomous Republic;
- 5236 (35,0 %) of municipality members, 302 of chair of municipality;
- 53,6 % of all science workers;
- The number of female diplomats – 181.

The share of women in the civil service is 28.6% (30090 women) as of January 1, 2017. There are over 200 women NGOs. Woman Resource Center was opened in Neftchala on June 3, 2015. 4 women businesses were officially launched in Neftchala rayon on the international rural women's day on October 15, 2015. This project was continued in Bilasuvar, Salyan, Sabirabad, Masallı, Neftchala rayons in 2016. Trainings on "Maternal and child health", "embryonic raising", "treatment of children in families" were held at Neftchala Woman Resource Center on June 24, 2016.

In 2016 5 new entrepreneurial objects were set up in Salyan rayon for women. In 2016 14 new entrepreneurial objects were set up in Masallı rayon for women. In 2016 13 new businesses were set up in Bilasuvar rayon for women. Woman Resource Center was launched on December 7, 2016 in Bilasuvar. Meetings were held in Salyan and Masallı rayons on December 16, 2016 on "Advocating for women's economic and social participation in rural and urban areas: reviewing the results of the project". In 2017 within the project framework training was held at Suraxanı Rayon Haydar Aliyev Center on "Policies and programs considering gender factor for economic participation of rural women" with participation of women members of municipalities and women employees of local executive authorities. International conference was held on April 25, 2017 on "Development of women's entrepreneurship: problems and perspectives" jointly by the State Committee on Family, Women and Children Affairs, the Ministry of Economy and National Confederation of Women. Sessions were organized within the framework of the conference on various topics such as "Development of women's entrepreneurship as one of the priority directions of economic policy: state support mechanisms to entrepreneurship", "New trends in the development of women's entrepreneurship: positive tendencies, initiatives and acquired experience" and "Enlightenment as a major factor in elimination of women's economic subordination and existing stereotypes".

From 2014 to June of 2017 none of court cases was on labour disputes based on discrimination (based on gender equality and sexual orientation). The analysis of appeals regarding labour rights made to the Commissioner for Human Rights of the Republic of Azerbaijan (Ombudsman) (672 appeals in 2014, 960 in 2015, 958 in 2016) shows that no appeal was received on discrimination in employment, including gender-based discrimination (particularly, in terms of equal payment for equal work of women and men employees) and sexual and emotional harassment.

## **Article 21. The right to information and consultation**

In order to ensure efficient implementation of the right of the employees to get information within the entity and to conduct consultation with them, the parties undertake to take measures enabling the employees and their representatives the follows in accordance with the national legislation and practice:



- a) taking into account the possibility to refuse disclosure of any information that might damage the entity or its classification, to get information regularly and in relevant time about the economic and financial condition of the employer entity; and
- b) to consult in advance on the draft decisions that might touch to the interests of the employees, especially might make influence to the employment condition in the entity.

Article 31 of the Labour Code defines control mechanisms over the implementation of provisions set (including obligation on getting information on the health and safety norms at work) in the collective contract. Commission for Regulation and Coordination of Labour Relations was established with Presidential Decree No 2760 dated March 17, 2017 for the purpose of strengthening the social protection of employees, formalization of employer-employee relations, improving control mechanisms of organization of labour payment, ensuring effective protection of labour rights and provisions of participants of labour relations and implementing coordinated policy in these areas among state bodies.

The key objective of the Commission is to give proposals for determination of coordinated general principles of social policies in the country, regulate social-labour relations and support the development of social dialogue for the purpose of protecting social stability. Among main duties of the Commission are the following:

- Conducting collective bargaining and coordinating work on drafting of the General Collective Agreement,
- Assistance in regulation of social-labour relations at the national level,
- Developing socio-economic policy, providing labour market with highly-qualified workforce, engaging with issues, such as socio-labour relations, employment of population and labour migration;
- Consulting on issues of drafting of regulatory-legal acts and implementing measures in the field of social security;
- Coordinating positions of Parties with respect to the main directions of social policies,
- Discussing issues upon initiative of Parties on the implementation of the General Collective Agreement;
- Sharing good practice on social partnership, holding public awareness-raising campaigns with regard to the activities of the Commission;
- Participation in the events organized by international organizations on social-labour relations and social partnership, learning international best practice;
- Conducting consultations regarding ratification and application of international labour norms.

According to part 1 of Article 25 of the Labour Code of the Republic of Azerbaijan trade-union organizations, labour collectives, employers and relevant executive authority and representative bodies of employers within their mandates are

entitled to initiate collective bargaining with regard to drafting of a collective contract, its signing and making amendments to it. According to the third part of this Article in case there is no trade-union organization at an enterprise, labour collectives shall set up a commission with special authority to conduct bargaining.

According to the first part of Article 31 of the Labour Code "Contents of the collective agreement" parties shall define the contents of the collective agreement. Pursuant to second part of this Article the following commitments of the parties are usually included in the collective agreement:

a) To increase efficiency in the production and economic activities of the enterprise;

b) To determine work payment rules and amount of salaries, money rewards, allowances, additional payments and other payments;

c) To introduce regulatory mechanism for adjustment of amount of salaries considering increase in prices and level of inflation;

ç) To determine conditions of employment, supplementary education and laying off employees;

d) To determine conditions on working hours, day-offs and duration of annual leaves;

e) To define cultural, welfare, social service provisions and benefits for the employees and their family members;

ə) To determine rules of performance appraisal, labour norms and their revision;

f) To improve working conditions for women and minors;

g) To determine extra provisions for improving occupational safety;

ğ) Payment of damages inflicted upon employees during fulfilling work;

h) To create a body to hear labour disputes before taking to court and procedure by which it shall operate;

x) To determine additional preferential conditions for medical and social insurance of employees;

ı) To coordinate decision with trade-union organization while terminating labour contract with the initiative of employer;

i) To control over the health and safety rules at work;

j) To ensure transfer of trade-union membership payments from the salaries of trade union member employees to the special account of trade-union organization of the enterprise within 4 working days, as well as ensure creation of necessary conditions for effective operation of statute activities of trade-union organization;

k) To coordinate on additional methods of regulation of collective labour disputes;

q) To control over the implementation of the terms of the collective agreement;

l) Liabilities of the parties for the violation of terms of collective agreements;

m) To take measures for strengthening work discipline.

n) To assist in the explanatory work and provision of information, as well as prevention of cases of mockery, obvious hostile actions and offensive conduct

against employees at the workplace and undertake all necessary measures in order to protect employees from these acts;

o) To assist in explanatory work and provision of information on sexual harassment in the workplace or in connection with work, prevention of sexual harassment and undertaking all necessary measures regarding the protection of employees from this type of behaviour;

ö) To create necessary conditions for the employees to engage in exercise, sport, as well as rehabilitation and professional exercises, sport-health tourism during working regime or after the work.

According to part 2 of Article 292 of the Labour Code on “Right of employee to file a claim for restoration of his/her violated rights” an employee can apply to court or a body dealing with pre-court labour disputes for restoration of his/her violated rights. Pursuant to Part 2 of Article 294 of the Labour Code “Bodies dealing with individual labour disputes” a body dealing with pre-court individual labour disputes can be established under the trade-union organizations at enterprises according to the terms of collective agreement. The rules of establishment of this type of bodies and its functioning are regulated by collective agreement.

## **Article 22. The right to take part in the determination and improvement of working conditions and work environment**

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

- a) to the determination and the improvement of the working conditions, work organization and working environment;
- b) to the protection of health and safety within the undertaking;
- c) to the organization of social and socio-cultural services and facilities within the undertaking;
- d) to the supervision of the observance of regulations on these matters.

According to Article 31 of the Labour Code health and safety control at work is one of the commitments included in the collective agreement. Pursuant to Article 223 of the Labour Code in case the number of employees at an industrial enterprise

exceeds 50, occupational safety services shall be established at that enterprise for the purpose of overseeing the provisions of legislation on organization of labour and occupational safety. The occupational safety services shall include experts on health and safety rules and labour legislation. In case the number of employees exceed 50 at an enterprise, the position of occupational safety engineer, or in case the number exceeds 500 the position of deputy head (chief engineer) of the enterprise on issues of occupational safety shall be instituted. Industrial-sanitary lab and position of physician on labour hygiene shall be instituted at enterprises where the number of employees exceeds 1000 people.

Occupational safety experts are entitled to oversee the compliance with health and safety rules at work, to give mandatory instructions to the officials of an enterprise regarding the elimination of discovered violations, and present report to the employer on the application of disciplinary measure towards employees breaching legislation on occupational safety.

Heads and experts of occupational safety service cannot be involved into work unrelated with their position and they bear responsibility over their inaccurate and low-quality implementation of duties. Employer can re-organize or cancel the occupational safety service only with the consent of the body overseeing the compliance with labour legislation.

According to part 3 of Article 222 “Ensuring health and safety at work” of the Labour Code mutual commitments regarding health and safety rules at work are mentioned in the collective agreement and labour contract between the employer and employee.

Pursuant to Article 224 of the Labour Code, provisions regarding the right of employee to occupational safety shall be established while signing the labour contract. The terms of signing of labour contract shall comply with the work health and safety norms established by the Labour Code. Commitment of employer to provide health and safety at work shall be included in the labour contract. Employer shall inform the employee about the possible time frame of occupational illness in case an employee is hired for a job with a high risk of job-related illness. Therefore, only fixed-term labour contract covering the limited period shall be signed with that employee and following the expiry of that period the employee shall be transferred to another job while keeping his/her average monthly salary.

According to part 2 of Article 237 “Rights of trade-unions on overseeing the compliance with health and safety rules at work” of the Labour Code the representatives of trade-unions take part in the work of state commissions on trial and approval for use of production objects and equipment, investigation on work accidents and examinations on checking the status of implementation of measures for improving work health and safety mentioned in the collective agreement. If officials violate health and safety rules at work or conceal work-related accidents, trade-unions have right to take to the state bodies the issue of involvement of the accused person to liability under law.

According to part 1 of the same Article trade-unions take part in overseeing of compliance with health and

safety rules and relevant regulatory-legal acts by the employer in accordance with their rights established in the Law on Trade-unions of the Republic of Azerbaijan.

## **Article 24. The right 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 reason for such termination connected with their capacity or conduct or based on the operational requirements on 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.*

According to Article 70 of the Labour Code, labour contract can be terminated on grounds of the following:

- a) If an enterprise is liquidated;
- b) If there is staff redundancy at an enterprise;
- c) in case relevant decision is made by a competent body regarding the unsuitability of an employee to the position he/she is holding due to lack of required professional level and insufficiency of knowledge of specialty;
- ç) in case an employee does not fulfil his/her job duties or violates work duties in cases mentioned in Article 72 of this Code;
- d) if the employee could not demonstrate the required level of professionalism during probation period;
- e) if the employee of the state-funded organization reaches the age limit.

Attestation can be held for all employees (except some categories of employees) to check their professional level and suitability to the positions (occupations) they hold (Article 65.1 of the Labour Code of the Republic of Azerbaijan).

According to part 5 of Article 65 of the Labour Code for checking suitability of employees to positions (jobs) they hold, attestation commission shall only ask questions related to their position (job), work functions, specialty (profession), duties and their performance, as well as rights and duties established in the labour contract signed with the employee. It is not allowed to assess the professional level of the employee based on his/her political views, morality, personality, beliefs and other personal values, as well as discipline level.

Pursuant to Article 72 of the Labour Code the following are considered to be violation of job duties by an employee:

- a) full-day absence from work without any good reason, except his/her sickness, or sickness or death of his/her close relative;

b) coming to work under the influence of alcohol, drugs, intoxicants or other substances, as well as bringing this drinks and substances to work;

c) inflicting material damage upon the owner as a result of his/her activities or lack thereof;

ç) to damage the health of colleagues or cause their death by breaching health and safety rules at work as a result of his/her activities or lack thereof;

d) intentionally fails to maintain commercial, production or state secret or not fulfilling his/her duties on keeping confidentiality;

e) causes serious damage to employers, enterprises or owner's legal interests as a result of gross mistakes or the infringement of the law during his/her employment activity;

ə) violating job functions repeatedly during the six months following the disciplinary fine by the employer for violation of job functions;

f) committing administrative offence or socially dangerous acts with criminal elements during the work at workplace.

The employer bears full financial liability in case there is legally approved court decision regarding the unlawful and groundless termination of labour contract of an employee or for the material and spiritual damage inflicted upon employee who cannot find a job due to the dissemination of inaccurate information on the personal and professional qualities of an employee, as well as information which disgraced an employee. (Article 195, paragraphs a and ə of the Labour Code of the Republic of Azerbaijan).

According to the Civil Service Law of the Republic of Azerbaijan the age limit for being at civil service is 65. Pursuant to Article 33.1.12 of the Civil Service Law reaching this age limit is basis for termination of civil service of employee. However, according to legislation head of the relevant state body can each time prolong for no more than one year the length of civil service of those employees reaching the age of 65. It is not allowed to prolong the length of civil service for 5 years in this case. The number of civil servants with prolonged length of service working at the apparatus of state body or its subordinate body cannot be over 2% of the employees of the apparatus of state body or its subordinate body. Non-application of disciplinary reproach, possession of academic degree or title, or state reward and three successful attestations are additional factors taken into consideration while prolonging the length of civil service.

Due to amendments made to the Law of the Republic of Azerbaijan on "Labour Pensions" according to Article 7 of the Law the age limit of being at civil service can be prolonged each year for 6 months for men starting from July 1 2017 until July 1 of 2021 and for women starting from July 1, 2017 until July 1 2027.

## **Article 26. The right to dignity at work**

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations:

1. to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;
2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

### Paragraph 1. Sexual harassment

Article 62 of the Labour Code of the Republic of Azerbaijan lists the cases when an employer can dismiss an employee. Dismissal for sexual harassment has not been stipulated in the law.

Article 4 of the Law of the Republic of Azerbaijan on “Gender equality provisions” approved on October 10, 2006 prohibits sexual harassment and according to Article 11 of this Law employees who made complaint about the employer or manager for sexual harassment shall not be subject to any kind of pressure or persecution by that employer or manager.

According to paragraph g) of Article 195 of the Labour Code employer bears full material liability for the damage to employee in case of sexual harassment at work. According to Article 4 of the Civil Procedure Code of the Republic of Azerbaijan all physical and legal persons are entitled to use their right to court protection in a way established by law to protect their legal rights and liberties, as well as their interests. Pursuant to Article 205 of the Code of Administrative Offences employees who faced sexual harassment can apply to court for payment of inflicted damage and imposition of fines on the official in an administrative way. The officials shall be fined from 1500 manats up to 2500 manats for putting pressure on employees or bullying them for reporting sexual harassment on the part of employer or manager.

### Paragraph 2. Emotional harassment

Article 12 of the Labour Code of the Republic of Azerbaijan defines main duties and responsibilities of an employer. According to this Article irrespective of sex an employer is obliged to create equal work conditions for all employees engaged in the same type of activity, to take the same disciplinary measures for the same violation and to undertake all necessary measures for prevention of discrimination on grounds of sex and sexual harassment.

According to paragraphs n) and o) of the second part of Article 31 on contents of collective agreements of the Labour Code of the Republic of Azerbaijan the following mutual commitments are included in the collective agreement:

- assistance in the explanatory work and provision of information, as well as prevention of cases of mockery, obvious hostile actions and offensive conduct against employees at the workplace and undertaking all necessary measures in order to protect employees from these acts;

- assistance in the explanatory work and provision of information on sexual harassment in the workplace or in connection with work, prevention of sexual harassment and undertaking all necessary measures regarding the protection of employees from this type of behaviour.

Article 192 of the Labour Code defines conditions of commencement of material liability and its substantiation. According to this Article parties shall bear the burden of proof in case they claim certain amount for material damage or claim the infliction of damage, as well as claim not being guilty for the damage to the other party. According to paragraph g) of Article 195 of the Labour Code employer bears full material liability for the damage to employee in case of sexual harassment at work. The legislation doesn't provide for emotional harassment of employees at workplace during the work process. However, according to Article 4 of the Civil Procedure Code of the Republic of Azerbaijan, all physical and legal persons are entitled to use their court defence right in a way established by law to protect their legal rights and liberties, as well as their interests.

Article 292 of the Labour Code determines the right of employee to claim the restoration of his/her violated rights. According to this Article an employee can apply to bodies dealing with individual labour disputes for restoration of his/her violated rights or interests regarding the issues mentioned in Article 288 of the Code (subject of individual labour disputes).

For restoration of violated rights employee can apply to court or pre-court bodies dealing with labour disputes (Article 294 on "Bodies dealing with individual labour disputes") or can start striking by himself in accordance with Article 295 of this Code (Right of employee to strike by himself for settlement of individual labour disputes). For restoration of his/her rights employee can apply to the body dealing with labour disputes through his/her authorized agent. In this case in accordance with the ways established in the legislation an employee shall give power of attorney to his/her authorized agent for defending his/her rights.

### **Article 28. Right of workers' representatives to protection in the undertaking and facilities to be accorded to them**

The parties undertake achievement of defense of the representatives of the employees in the enterprises as the obligation for the purpose of provision of the rational realization of the right on implementation of the functions of the representatives of the employees:

- a) application of the rational protection against the actions directed to them including dismissal in the form of the representatives of the employees on the basis of their status or activities in the same enterprise;



- b) giving necessary means and possibilities to them in order to implement their functions practically and effectively by taking into account the system of the labor relations of the concrete country and as well as the demands, size and possibilities of the enterprise.

According to Article 21 of the Labour Code on “Activities of public self-governance bodies at enterprises” along with trade-union organizations other representative public self-governance bodies of employees, as well as representative body of employer may be set up at enterprises in accordance with the rules established in the legislation and operate based on the statute.

For the functioning of trade-unions and other representative public self-governing bodies of employees an owner or employer of the enterprise shall create relevant conditions determined in the collective agreements or based on mutual consent of representative public self-governing bodies and employer, or agreement signed between them. “Public self-governance bodies” here shall mean labour collective council, board of chairs (directors), inventors, rationalizers, women and veterans’ societies, creativity associations, and other public unions set up by employees in accordance with relevant regulatory-legal acts.

According to Article 27 of the Labour Code the participants of the collective bargaining (representatives of the parties, councillor, expert, reconciler, mediator, arbitrator and persons appointed by parties) are exempt from fulfilment of their work duties for up to 3 months each year during the time of negotiations. That period of time is included in their record of service.

Expenses related to collective bargaining shall be paid by an employer. Payment to persons invited to participate in the bargaining and who do not work by labour contract shall be made based on the agreement signed with the invited party.

It is not allowed to undertake disciplinary measures against the participants of collective bargaining, or their transfer to another job or their dismissal upon initiative of an employer during the period of negotiations.

### **Article 29. The right to information and consultation in collective redundancy procedures**

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers’ representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by resource to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

Although the planned measures by an employer during staff cutbacks or redundancies are not disclosed

according to Article 71 of the Labour Code of the Republic of Azerbaijan, the Code determines the following:

- signing of agreement between an employer and an employee by mutual consent on the retraining of that employee;

- an employer shall take written mandatory obligation regarding re-signing of labour contract with the dismissed employee due to the decrease of production or services. Although not stipulated by this Code those employees dismissed during staff cutbacks shall be offered to work in case of availability of vacant places at an enterprise.

According to Article 80 (Agreements during the termination of labour contract by an employer) of the Labour Code during personnel cutbacks or redundancies or when an employee does not fulfil his/her job functions or job commitments mentioned in the labour contract or he/she violates his/her job duties, the labour contract of that employee is terminated following the receipt of consent of trade-union organization of which the employee was the member.

The employer shall send to the trade-union organization in that enterprise a well-grounded written notification in case he/she decides to terminate the contract of the member of trade-union organizations on the grounds determined above. The notification form shall include relevant substantiation documents. Trade-union organization shall send its substantiated written decision to the employer no later than 10 days after receiving the notification. According to Articles 11 of the Law on Trade-Unions and Article 16 of the Employment Law of the Republic of Azerbaijan in case the liquidation of organization or its structural divisions with initiative of employer causes complete or partial cessation of production, staff reductions or deterioration of work conditions, these measures shall be taken by informing trade-union organizations at least 3 months in advance and starting negotiations with employees regarding the protection of their rights and interests (except the cases established in the legislation).