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EUROPEAN SOCIAL CHARTER

7th National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF AZERBAIJAN

(Articles 4, 5, 6, 21, 22, 26, 28 and 29)

for the period 01/01/2009 – 31/12/2012)

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CYCLE 2014

THE SEVENTH REPORT

OF THE REPUBLIC OF AZERBAIJAN ON THE IMPLEMENTATION OF THE ARTICLES 4, 5, 6, 21, 22, 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**

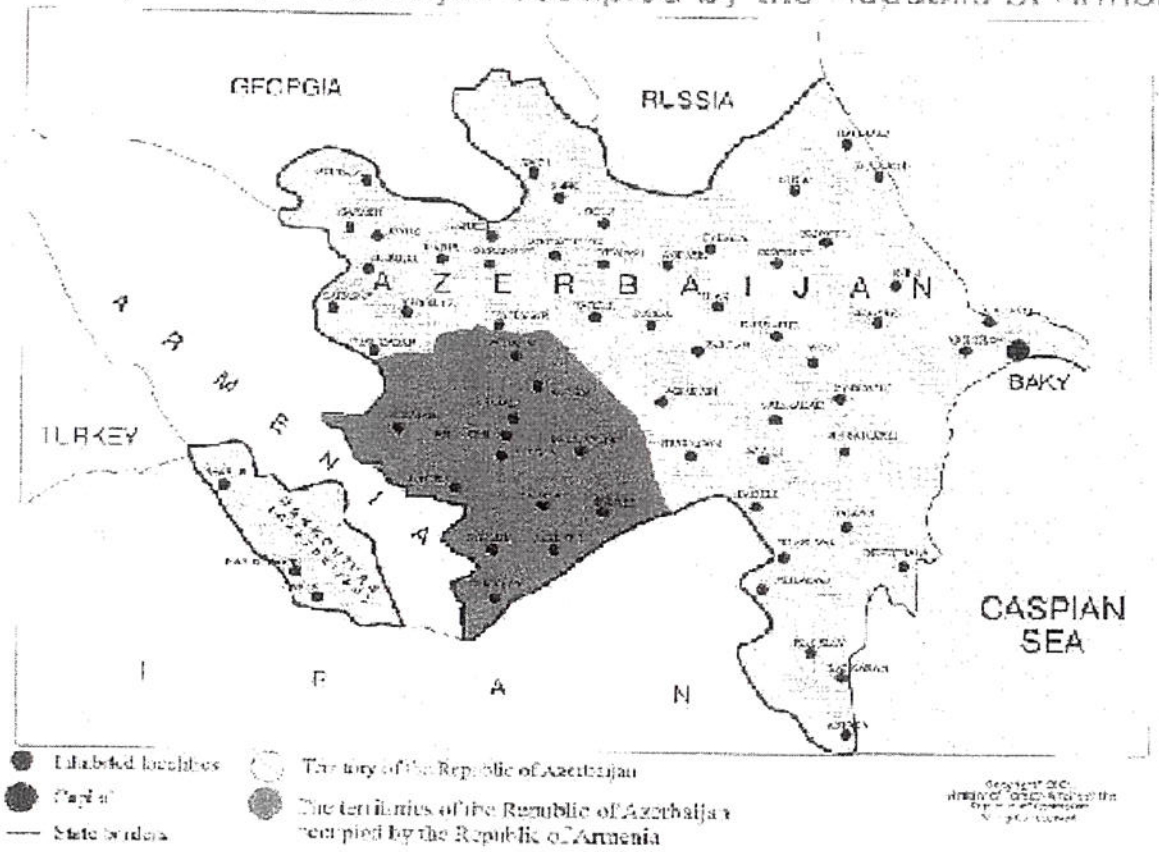
This report also covers the application of such provisions in the following non-metropolitan territories to which, in conformity with Article L, they have been declared applicable: **Republic of Azerbaijan**[1]

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

[1] 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 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 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.

Answers

Article 4 – The right to a fair remuneration

Paragraph 1 – Decent Wages By the order of the President of the Republic of Azerbaijan on "increase of the minimum monthly wages" dated December 1, 2011, No.1866, the minimum monthly wages were determined as 93.5 AZN from December 1, 2011. At the same time, by the Law of the Republic of Azerbaijan No. 259-IVQ , dated December 6, 2011, in 2012 the subsistence minimum was increased and determined as 108 AZN. And from September 1, 2013, the minimum wage in the Republic was determined as 105 AZN.

According to the paragraph 5.4 of the Law of the Republic of Azerbaijan on "Subsistence minimum", the minimum wage in the Republic of Azerbaijan is increased to the level of subsistence wage in the country. At present, the

minimum monthly wage (105AZN) arranges 90.5 % of the subsistence minimum (116AZN) in the Republic.

Years	Minimum monthly wage (man)	Average monthly wage (man)	The correlation of the net Minimum monthly wage to the net Average monthly wage
2009	75	298,0	29,5%
2010	85	331,5	31,1%,
2011	85	364,2	27,7%
2012	93,5	398,2	27,5%

Though the Minimum wage is in the level close to the subsistence minimum, the subsistence minimum arranges 28.2 % of the average wage in the Republic (410.8 AZN for the first half of 2013).

As the minimum monthly wage is the indicator determined by taking into account the social-economic conditions, connected with subsistence minimum and consumer basket and applied in determination of a number of social budget costs, it is expedient that the issue of adaptation of this indicator to the requirements of the paragraph 1 Article 4 of the European Social Charter Revised by stages is reviewed by the commission consisting of the representatives of the relevant state authorities. For this purpose, the Ministry of Labour and Social Protection of the Population has applied to the Cabinet of Ministers of the Republic of Azerbaijan with the suggestion of establishment of the commission consisting of the representatives of the related state authorities and social partners.

According to the paragraph 7.3 of the "Azerbaijan 2020: Look into the Future "Development Concept" approved by the Decree of the President of the Republic of Azerbaijan dated December 29, 2012, in order to ensure decent living standards of the working citizens, measures will be taken in the direction of reaching the amount of minimum wages to the subsistence minimum standards and the normative determined in European countries – the amount of 60 % of the average monthly wage gradually depending on the development of the economy; decrease of differentiation of the population on incomes will be achieved on the basis of continuation of the works for increase of share of remuneration in the total incomes of the population and implementation of relevant measures in the field of social protection. The works will be strengthened in the field of ensuring the safe and healthy working conditions of the working citizens, the State Program will be prepared on protection of labor and improvement of labor conditions.

#	Indicators	Measure unit	Forecast						
			2014	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**
1	Minimum monthly wage (MMV)	AZN	146	178	215	256	305	360	430
2	Average monthly wage	AZN	478	525	577	634	697	766	842
3	The correlation of the net Minimum monthly wage to the net Average monthly wage	%	35,8	39,8	43,7	47,4	51,3	55,1	60,0

According to the above mentioned, while determining the forecast indicators on the years 2013-2016, it is expedient to increase the special weight of Minimum monthly wage in the average monthly wage gradually and to forecast the positive dynamics. For this purpose, it is suggested to forecast the minimum monthly wage for the years 2014 – 2020 at least in the following amounts by taking into account the growth rate of Average monthly wage in the Republic.

Article 4 – The right to a fair remuneration

Paragraph 2 - Remuneration for overtime works

The employees are paid wages for the overtime works. The Article 165 of the Labour Code determines the amount for per hour of the overtime work not less than double amount of wages per position on hourly basis. The Article also does not allow replacement of overtime works with additional day offs.

According to the Article 164 of the Labour Code of the Republic of Azerbaijan, *Wages for work performed on day off, ballot day, holidays, considered as non-business days and the day of National Mourning shall be paid as follows:*

If wages are paid on the basis of time worked by the employee, the amount paid shall be no less than twice the standard daily salary; If wages are paid on the basis of piece work, the amount paid shall not be less than twice the specified piece-rate pay.
If an employee paid monthly works on a holiday as part of his monthly workdays, he shall be paid for one day extra in an amount no less than his daily salary. If the work was performed in addition to the monthly quota, he shall be paid an amount not less than twice the daily salary., if the work was performed in excess of the monthly quota, he shall be paid an extra amount not less than twice of the daily salary

Should an employee who works on a days off, ballot day, holidays, considered as non-business days or day of national mourning so desire he may have an extra day off in lieu of pay.

At the same time, by the Article 96 of the Labour Code of the Republic of Azerbaijan, during the registration period (recording), the duration of the working hours may be applied with summed recording of working hour not exceeding the number of working hours determined by the legislation. In this case, the registration (recording) period can not be more than one year, and the duration of daily work (shift) can be more than 12 hours. The rule of application of summed recording of working hours is regulated by the collective contract, the rules determining the mode of working hours or the employment agreement. According to the Article 102 of the Labour Code of the Republic of Azerbaijan, the employer is obliged to conduct exact, accurate recording of working hours of each employee and the overtime working hours. The form and rule of recording of working hours is determined by the employer.

The analysis of actual weekly hours in the Republic indicates that the average actual weekly working hours did not exceed the weekly normal working hours in 2009, though those working more than 40 hours in a week have arranged 24.4 % in 2009, and 18.2 % in 2010. This situation is explained with that as noted above, the mode of working hours shortened in the interval of 24-36 hours was applied in a number of work places in accordance with the labour legislation in Azerbaijan, at the same time, according to the Labour

Code some employees were applied incomplete working hours under their request in respect to the family issues.

As seen from the above stated, the special weight of those working more than the normal working hours inclined to be decreased to an important extent. Hence, this indicator has been 18.2 % in 2010. The positive dynamics of this indicator was made influence by strengthening supervision on prevention of allowing working more than the working hours groundlessly and on compliance with the mode of working hours by the State Labour Inspectorate Service in the Country for recent years.

During the control carried out by the State Labour Inspectorate Service in 2009 – 2012, facts of attraction to working overtime works without payment by the employers haven't been found.

Article 4 – The right to a fair remuneration

Paragraph 3 - recognition of the right of men and women workers to equal pay for work of equal value

By the Article 16 of the Labour Code of the Republic of Azerbaijan, during hiring or a change in or termination of employment no discrimination among employees shall be permitted on the basis of citizenship, sex, race, nationality, language, place of residence, economic standing, social origin, age, family circumstances, religion, political views, affiliation with trade unions or other public associations, professional standing, beliefs, or other factors unrelated to the professional qualifications, job performance, or professional skills of the employees, or shall it be permitted to establish privileges and benefits or directly or indirectly limit rights on the basis of these factors.

In order to obtain the indicators on average monthly wages on men and women, the official statistics report was established in the Republic from 2007. The difference in the wages of women and men is found as the special weight of average monthly wages of women in the average monthly wages of men in percent in the country. According to the official statistic indicators, the average monthly wages of women and men in the Republic increases year by year. As to the indicators, average monthly wages of women arrange 50 – 58 % of average monthly wages of men on average.

At the same time, the average monthly wages of men are highly formed in comparison to the women in the Republic. According to the official

statistics, the average monthly wages of women were 212.6 AZN in 2009 (362,8 AZN in men), 226.6 AZN in 2010, 413,2 AZN in men), 235.1 AZN in 2011 (459,8 AZN in men) and 243.6 AZN in 2012 (519,8 AZN in men). This condition should be explained with the majority of women working in the economy of the Republic. So that, according to the statistic indicators of 2012, it is indicated that 70 % of the employees in the field of health, 68 % in the field of education, 70 % in the field of leisure, entertainment and arts are women. As we know, the institutions acting in these fields of the economy are mainly funded from budget, and here the tariff (duty) wages are lower in comparison with the private sector.

Thus, the wages of women were amounted to 58.6 % of the wages of men in 2009, 54.8 % in 2010, 51.1 % in 2011 and 46.8 % in 2012.

Equal opportunities for women and men on employment is provided by the legislation in the Republic of Azerbaijan. The principles of equal remuneration for equal work for women and men are observed in remuneration systems that applied in institutions, enterprises and organizations of the Republic and gender discrimination in remuneration isn't allowed.

Table 1. The dynamics of minimum wages with average nominal monthly wages on the year in the Republic of Azerbaijan

Years	Minimum wages (in AZN / dollars*)	Nominal Average monthly wage (in AZN / dollars)	The special weight of minimum wages in average wages (%)	The special weight of wages in the incomes of the population (%)
2008	60,0 (from January 1) / 75,0 $ 75,0 (from September 1) / 93,8 $	274,4 /343,0 $	21,9 27,3	28.3

2009	75,0 /93,8 $	298,0 / 370,2 $	25,2	28.2
2010	85,0 (from September 1) / 105,9 $	331,5/413,0$	25.6	27.4
2011	93,5(from December 1)/ 118,4$	364,2/ 461,2$	25.7	26.3
2012	93,5/119,0$	396,0/504,1 $	23.6	25.6

Source: The State Statistics Committee of the Republic of Azerbaijan "Azerbaijan in figures -2013"

Note*: the correlation of Azerbaijan manat to the US dollars has been in 2008 - 0,8216 AZN, in 2009 - 0,8037 AZN, in 2010 - 0,8026 AZN, in 2011 - 0,7897 AZN, in 2012 - 0,7856 AZN.

Table 2. The Average Monthly Wages of Women and Men that worked in full in October of 2011

(according to the finals of one time examination of the employees who worked in full in October)

Types of economic activities, sections, groups and classes	**Average monthly wage, in manats**		**The average monthly wages of women in comparison to the average monthly wages of men , in percent**	**The special weight of women in general number of employees, in percent**
	Women	**Men**		
Forest and the services in this field	124.9	148.6	84.1	14.9
Fishing and fish breeding	124.4	136.8	90.9	30.2
Raw oil and natural gas production	580.5	942.2	61.6	11.2
Production of metal ores	268.6	394.7	68.1	6.8
Production of stone, sand, gravel, salt and other products of mining industry	207.8	289.4	71.8	10.4
Production of meat products (treatment)	219.7	366.6	59.9	36.9
Production of dairy products	174.6	186.3	93.7	23.8
Flour production, processing of grain and other cereals	184.1	191.6	96.1	18.9
Production of flour products (bread production)	119.7	141.0	84.9	48.0
Textile industry	219.4	258.6	84.8	45.2

Leather tanning, coloring, production of suitcase and other similar goods from leather	149.7	189.5	79.0	30.8
Shoes production	267.8	290.3	92.2	31.1
Wood treatment and production of goods from wood	155.1	202.8	76.5	15.5
Paper and cardboard production	199.4	197.4	101.0	25.3
Polygraph activities	238.6	264.4	98.2	31.0
Production of oil products	495.3	561.5	88.2	30.4
Chemistry industry	259.3	374.8	69.2	21.0
Production of rubber and plastic goods	168.4	198.1	85.0	25.2
Metallurgy industry	388.8	555.0	70.1	10.7
Production of machines and other ready goods from equipments	423.3	842.8	50.2	20.0
Production of electric equipments	219.4	194.5	112.8	17.9
Production of machines and equipments	193.0	256.0	75.4	20.0
Furniture production	155.7	174.1	89.4	9.9
Electric energy, gas and vapor production, distribution and supply	283.4	381.6	74.3	12.6
Construction	338.5	412.0	82.2	6.8
Trade; repair of transport facilities	187.0	165.1	113.3	7.9
Other than transport facilities, wholesale	278.0	363.4	76.5	11.2
Other than transport facilities, retail sale	176.2	167.0	105.5	31.8
Transport of passenger and cargo through rail way	167.0	234.5	71.2	21.1
The activities of other road transport (transport of passengers and cargo through automobiles)	231.0	426.7	54.1	5.8
Activities of the water transport	315.5	538.1	58.6	12.5
Activities of the air transport	550.0	722.2	76.2	17.3
Placement of tourists and catering	289.1	385.8	74.9	42.2
Publication activities	200.7	248.6	80.7	38.2
Communication	531.0	813.8	65.2	34.3
Financial activities (other than the services on insurance and pension security)	768.7	987.2	77.9	31.7
insurance and pension security	729.0	908.3	80.3	30.6
Veterinary activities	159.3	200.0	79.7	17.5
State management and protection; social welfare	233.5	345.5	67.6	43.8

Education	241.8	281.2	86.0	78.6
From them:				
Preschool education	294.4	206.1	142.8	87.4
Secondary education (secondary)	235.1	254.9	92.2	83.7
Secondary technical and vocational education	178.1	176.0	101.2	60.8
Higher education	295.6	330.7	89.4	55.2
Provision of health and other social services to the population	151.7	223.9	67.8	76.3
From them:				
Activities of the hospitals	128.4	180.0	71.3	80.0
Physician practice	149.6	190.2	78.7	74.8

Source: The web site of the State Statistics Committee of the Republic of Azerbaijan www.stat.gov.az .

Article 4 – The right to a fair remuneration

Paragraph 4 - recognition of the right of all workers to a reasonable period of notice for termination of employment

Reasonable period of notice

The agreements concluded for an indefinite period

The article 77 of the Labour Code of the Republic of Azerbaijan defined the guarantees of the employees while terminating the employment agreements. With these guarantees, if the number of employees is decreased or the staff is reduced, the employer has to give two months priori official notice before cancelling the employment agreement in accordance with the paragraph "b" of the Article 70 of the Code. During the notice period, each employee is exempted from execution of labour function for at least one day for enabling him to search a new job in each working week. In the 3rd part of the Article 77 of the Labour Code, when the employment agreement is cancelled in accordance with the paragraph "a" (if the entity is liquidated) and "b" (if the number of employees is decreased or the staff is reduced) of the Article 70 of the Code, the employees are paid:

- severance pay equaling the lowest average monthly wage;
- the average monthly wage for the second and third months after dismissal until he/she finds a new job.
Employee is paid salary for working during the notice period.

In the 4th part of this article, the employer may terminate the employment agreement under relevant grounds by paying at least two months salary in one time by the consent of the employee instead of notice periods determined with the first part of this article and the second part of the article 56 of the Labour Code. The average wage provided in the third part of the article 77 of the Labour Code is paid to the employee under relevant references given to the employee by the relevant executive power authority (Head Employment Service). That reference is given to the persons taken into registration in the relevant executive power authority (General Employment Service) within one month from the date of dismissal. These payments should be made by the employer, if the entity is liquidated, by the new proprietor of its property (the legal, natural entity implementing operative management of the property). This rule is not applied to the case provided for in the four parts, the case of getting two month salary instead of notice period of this article. In collective contracts, the employment agreement may provide for maintenance of average salary for a longer period during the employment period, as well as issuance of the payments indicated in the third and the seventh parts of this article in a higher amount. According to the article 129 of the Labor Code, the employee may be granted unpaid leaves in respect to material – life and other problems (as well as for searching a new job). According to the legislation, the amount of severance pay should not be limited with maximum limit.

According to the paragraph 5 of the article 77 of the Labour Code, the severance pay in the amount of average wage is paid under the reference issued by the General Employment Service and its local offices . These payments are made by the new proprietor of property when the entity is liquidated.

According to the Law on "Employment", payment of unemployment pay to the citizens that got unemployment status may continue within 26 calendar weeks during the period of 12 months. According to the information given by the State Statistics Committee, the average amount of unemployment pay was 224.1 AZN in 2012.

According to the article 24.2 of the mentioned Law, in the cases the employees are on obligatory holiday without pay in the form of group in respect to the suspension of works in the entity without fault of the employer

during the period of 12 months prior to commencement of unemployment and the rule of calculation of pay for those who have work on paid basis during the period less than 26 calendar weeks within that period of 12 months is determined by the relevant executive power authority.

According to the Article 24.3 of the Law, in all other cases, the unemployment pay is determined in the minimum amount of benefit approved by the relevant executive power authority (hereinafter referred to as "the minimum amount of approved benefit").

According to the Article 24.4 of the Law, if the unemployed person has the child under 18 under his patronage, the amount of unemployment pay is increased in the amount of 10 percent per each child but not exceeding 50 % of the pay.

According to the Article 24.5 of the Law, the amounts deductible by the decision of the court that is legally effective (alimony, indemnification of damage and other amounts) are deducted from the unemployment pay not exceeding 50 % of the assigned pay.

According to the Article 24.6 of the Law, in all cases, the amount of the pay has not be more than the average monthly wage on the Republic and less than approved minimum pay.

Immediate dismissal and termination of labour functions along with dismissal

According to the Labour Code, the successors of the died employee are paid benefit in the amount of three times of the average monthly salary and while termination of the labour contract of the employee who has lost labour abilities in full, the benefit in the amount of at least twice of the salary should paid.

Exemption of the employees from execution of labour functions for the purpose of searching a new job

The State Labour Inspectorate has not revealed any violation of this right in controls it conducted and as well as no one has been appealed in respect to

exemption from execution of labour functions for the purpose of searching a job.

The probation period and part time work

Under the Article 51 of the Labour Code of the Republic of Azerbaijan, an employment contract may be executed for a probationary period in order to examine an employee's professional qualifications and ability to perform a particular job. The probationary period shall be established with the consent of the parties and may not exceed three months. The probationary period shall consist of the work time during which the employee actually performs his duties. Periods during which the employee is temporarily disabled and absent from the job for valid reasons and when his job and salary is kept for him and he is compensated shall not be included in the probationary period. An employment contract in which a probationary period is not mentioned should considered as concluded without a probationary period. With the Article 53 of the Labour Code, the results of the probation during employment and its regulation manners were determined. According to that article, before the end of the probationary period, one of the parties may terminate an individual employment contract by notifying the other party in writing with three days notice. If neither party has demanded termination of an individual employment contract, the employee shall be considered to have passed his probationary period. As of the time when the employee is considered to have passed his probationary period, the employment contract may be terminated only on the grounds established by this Code. If the employment contract specifies a probationary period, the terms for termination of the employment contract by the employer in the case of an unsatisfactory probationary period must be indicated. If the results of the probationary period are unsatisfactory, the employer may terminate the employment contract under its substantiated order. At the same time, according to the paragraph "e" of the article 70 of the Labour Code, *if the employee has not justified the expectations within probation period, the employment contract is terminated by the employer.*

According to the article 94 of the Labour Code of the Republic of Azerbaijan, short working hours, short workdays and short workweeks may be established under the contract between the employer and employee upon execution of an employment contract. According to the Article, part-time hours and their effective duration over a month or year shall be defined at the agreement of the parties. If the health and physiological state (pregnancy, disability, *restricted health condition up to 18 years old*) of an employee, a

chronically sick child, or any other family member, requires part-time employment on the basis of medical findings, as well as for women with children under 14 or *with restricted health condition*, the employer shall be obliged to arrange part-time work (workday or workweek) on the basis of their applications. Part-time work shall be defined according to compensation, time spent on the job, or by agreement of the parties. There shall be no limitation of any kind on the labour rights of part-time employees as defined by this Code or the employment contract. The guarantees, as well as right to notice of the employees when terminating the employment contract as defined in the article 77 of the Labour Code apply to the employees from all categories, as well as those being in probation periods and working in part time works. So that, according to the Article 4 of the Code, this Code shall apply to all enterprises, establishments, organizations (hereinafter referred to as «Enterprises»), as well as workplaces where an employment contract exists without the establishment of an entity, to all embassies and consulates of the Republic of Azerbaijan operating outside the territory of the Republic of Azerbaijan, to all ships sailing in international waters under the banner of the Republic of Azerbaijan and to all offshore installations and other workplaces, regardless of their property, organizational and legal form, and to relevant government bodies, individuals and entities of the Republic of Azerbaijan, pursuant to the rules specified in this Code. This Code shall also apply to employees performing jobs in their homes using their employer's goods (materials).

In the Article 5 of the Code were indicated, other work places and servants that it applied to. According to the 1st part of the Article, This Code shall apply unconditionally to all workplaces incorporated by foreign countries, their citizens or entities, international organizations, and stateless persons in the Republic of Azerbaijan registered under the law and doing business under a special permit (license) unless otherwise stipulated by the agreements signed by and between the Republic of Azerbaijan and foreign countries and international organizations. But it is noted in the second part of the Article that, this Code shall apply to all public officials, as well as to all officials of the public prosecutor office, police offices and other law enforcement authorities taking into account the particulars as established in Normative Legal Acts regulating the legal status of public officials. If these Normative Legal Acts do not cover in detail said public official's labour, social and economic rights determined by this Code, then the appropriate requirements hereof shall apply.

In the Article 6 of the Code, the scope of persons that it does not apply was determined. Here includes a) military personnel; b) judges; c) deputies of the Milli Majlis (Parliament) of the Republic of Azerbaijan and persons elected to municipal bodies; d) foreigners signing employment contracts with a legal entity of a foreign country and fulfilling his labor functions in an enterprise (affiliate, representation) operating in the Republic of Azerbaijan; e) persons

performing jobs under contractor, task, commission, author and other civil contracts.

Article 4 – The right to a fair remuneration

Paragraph 5 - Deduction of amount from the salary

According to the Article 202 of the Labour Code of the Republic of Azerbaijan, damage to the employer shall be determined on the basis of actual losses. So that, if the employer loses property which is considered the main source of his business or this property is stolen or damaged, its financial value shall be calculated at base prices. In other situations, damage shall be calculated at the market value of the property at the time of the damage. In other cases, the monetary amount of spiritual damage caused to an employer shall be determined by the court on the basis of his application, pursuant to the principle foreseen in Paragraph 3 of Article 290 hereof. According to the Article 205 of the Labour Code, if the cost of damage to the employer is not more than the monthly income of the employee, then the employer shall decide (order) how to deduct the damage from the employee's salary. If damage occurs while the employee has full financial liability and its value is more than his monthly income and the employee refuses to pay voluntarily, the employer shall file suit in court to resolve the case, and the cost may be paid by court order. If the employee does not agree with the employer's order on compensation, he may file a suit pursuant to the regulations.

According to the Article 173 of the Labour Code of the Republic of Azerbaijan, Employers shall draw up all payment documents (books, lists, checkbooks) for employees reflecting all accounting statements relating to the calculation and compensation of salaries and deductions from them. The following information shall be indicated in employee payment documents (books, lists, check-books):

□□The total amount of salary calculated;
□□Supplements to salaries, bonuses and other payments, their types and amounts;
□□Amounts deducted from salaries - name, type, reason and amount of deductions;
□□Amounts actually paid;
□□Parties' outstanding debt to one another and the amount.

The payment documents (books, lists, check-books) are signed by the accountant who compiled them and submitted to the employee when giving the salaries.

According to the Article 175 of the Labour Code of the Republic of Azerbaijan, with the exception of cases defined hereby, specific deductions may be made from the salary of an employee only with his written consent *or on the basis of executive documents stipulated by the legislation.* An employer may deduct only the following from an employee's salary:

a) Appropriate taxes, social insurance fees and other mandatory payments specified by law;

b) amounts specified in executive documents stipulated by the legislation;

c) losses incurred by an employer that were caused by the employee (except in cases when the employee bears full material responsibility) in an amount not to exceed the average monthly salary of the employee;

d) a portion of the vacation pay proportionate to the vacation days lost as result of the employees early resignation;

e) the balance of the money paid in advance to the employee for official travel which was not reimbursed;

f) overpayments to the employee as a result of mathematical errors by the bookkeeper;

g) the unused portion of money given to the employee to purchase goods and equipment needed for production which has not been returned to the employer;

h) Amounts determined in cases stipulated in collective contracts.

i) the membership fees of the trade unions deducted from the salary of the employees being the member of the trade union and transferred to the special account of the trade union organization of that entity within 4 business days.

At the same time, according to the 3rd part of the Article 174 of the Labor Code, at the employee's consent, up to *20* percent of his wages may be paid in goods produced by the company or in other consumer products, with the exception of alcoholic beverages, *tobacco goods, narcotic drugs and psychotropic agents and other items whose inclusion to the civil turnover is not allowed (excluded from civil traffic).* The deductions from the salary determined in the legislation are deducted without consent of the employee and refusal by the employee to them is not allowed. While making deductions from the salary as defined in the legislation, if the rights of the families to minimum living means are violated (we inform it for awareness that these cases are not encountered in practice), the arising dispute will be settled by the court.

According to the Article 176 of the Labour Code, total deductions may not exceed 20 percent of the employee's compensation. In the case of legal actions defined by law, the deductions may not exceed 50 percent of his compensation.

According to the 2nd part of that Article, when legal documents require several simultaneous deductions, the employee always shall be paid 50 percent of his compensation. But, according to the article 65.3 of the Law on "Execution", during deduction of alimonies, indemnification of damages to the health, indemnification of the damage made to the injured persons in the result of loss of the person taking care of the family and indemnification of the damage made in the result of the crime, the amount of deductions from salary and other incomes considered equal to it may be up to 70 %.

According to the Article 101 of the Taxes Code of the Republic of Azerbaijan, taxes are deducted from monthly income in the following rates:

The amount of the monthly income from which the tax is deducted	Amount of tax
Up to 2500 AZN	14 percent
If more than 2500 AZN	350 AZN+ 25 % of the amount exceeding 2500 AZN

According to the Article 102 of the Tax Code of the Republic Azerbaijan of , if the monthly income of the natural entity in respect to any hired work in the main work place is up to 200 AZN, its part in the amount of 1 times of the subsistence wage on the country for the population with labour abilities, and if the annual income is up to 2400 AZN, it part in the amount of 12 times of the subsistence wage on the country for the population with labour abilities are exempted from income tax.

If the monthly salary of the employee is 396.0 AZN(the information for the January of 2013) after deduction of the above stated tax, social security and membership fees for trade unions, the net average income of the employee may be evaluated in the amount of 396,0 - (396,0 x (14% + 3% + 2%))/100 =396,0 - 75,24 = 320,76.

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.

Answers

Article 5 - The right to organize

Establishment of trade unions and employers' organizations

After preparation of the draft of the Trade Unions Regulation, it is accepted with majority of votes by the congress or conference of the trade unions. The accepted Regulation is taken into registration in accordance with the Law of the Republic of Azerbaijan on "The state registration of legal entities" the state duties in the amount of 11 AZN are paid to the state budget in accordance with the Law of the Republic of Azerbaijan. There is not any other procedure and no other payment is required for registration.

It is necessary to note in respect to the Article 12 of the Law on Trade Unions, this procedure is applied as defined by the legislation. So that, it raises issue before the management of the trade union organization about the detected violations. The employer review these requirements and gives information about the results to that trade union organization not later than one month. Otherwise, the trade union applies to the court for protection of the persons whose rights were violated. At the same time, according to the legislation, if the management of the trade union organization violates the labour legislation, or fails to fulfill the conditions of the collective contracts, the trade union has the right to raise the issue before the relevant authorized authorities on attraction of them to the disciplinary responsibility.

The trade unions may apply to the court with the claim application to defend their members and may perform the duties of the representative.

In the Article 9 of the Code, the major rights of the employee on the employment agreement were determined. Here included the right to be the member of trade unions and social unions, as well as to take part in the strikes,

meetings, assemblies held by these organizations or the labour collective and in any other mass events not prohibited by the legislation. In the Article 16 of the Code regulating non allowability of discrimination in labour relations, it is prohibited to allow any discrimination among the employees for the relations to trade unions, determination of direct and indirect privileges and discounts based on this factor, as well as to restrict these rights. The employee undergoing the discrimination may apply to the court with the claim to restore its violated rights.

According to the Article 11 of the Labour Code of the Republic of Azerbaijan, the major rights of the employer was determined with the paragraph f) to enter into collective contracts with a labour collective or its representative agency and to monitor fulfillment of the obligations under these contracts;

According to the first paragraph of the Article 80 of the Labour Code, the *employment agreement concluded with an employee, who is a member of the trade union, shall, on the grounds specified in Article 70, items b) and ç) of this Code, be terminated by an employer by obtaining prior consent of the trade union functioning at the enterprise.*

According to the Article 20 of the Labour Code, it was provided for to establish the representative body of the employer. According to this article, for the purpose of protecting their interests with respect to their economic, financial, and business activities, as well as to promote social cooperation with employees' representative agencies, employers may voluntarily establish an organization and unite in this organization. The rights, duties, strategies and rules of employers' representative agency shall be defined by relevant regulations and by the agency's bylaws. The activity of employers' representative agency and the equality of the rights of employees and employers in labour relations defined under the rules hereof shall be regulated on the basis of relevant contracts and agreements. No superior rights, privileges, or advantages may be granted to employers' representative agency over employees' representative agency.

Today there are artificial obstacles in establishment of trade unions in transnational companies acting in the Republic of Azerbaijan. So that, the employees acting with the initiative to establish the trade unions undergo pressures in most cases (dismissal). Nevertheless, establishment of trade unions in transnational companies is kept in the center of attention of the Azerbaijan Trade Union. For this purpose, strengthening of awareness activities is preferred. Regularly seminars and conferences are held by the Azerbaijan Trade Unions Confederation with the line of ILO and International

Trade Unions Confederation. Also the meetings are organized between the employees working in transnational companies outside the work places and activists of the trade unions. Up to now trade unions were incorporated in 28 transnational companies acting within the Republic and acting presently. The organizational works are continued for incorporation trade unions in other transnational companies.

Freedom to choose whether to enter into trade unions or not

The cases excluding termination of employment contracts are listed in Article 79 of the Labour Code. These cases also include prohibition of dismissal due to the employee's membership in a trade union or any political parties.

Representation

In accordance with Article 25 of the Labour Code of the Republic of Azerbaijan trade union organizations, labour collectives, employers, relevant executive authorities and representatives of employers have the power to conduct negotiation for preparation and execution of collective bargaining and making amendments to it.

If an enterprise has no trade union organization (association), the labour collective shall form a committee with special authority for negotiating.

If there are several trade union organizations (associations) in the Republic or in the territory as well as within an enterprise, such committee for negotiations with employees shall be formed from representatives of the relevant trade unions in proportion to the membership.

There are no restrictions in the legislation for trade unions in collective bargaining and execution of site, tariff and collective contracts.

When advancing a request for negotiations, parties shall submit necessary data for collective bargaining within five days. Rules and terms for preparation and execution of bargaining agreements shall be determined and formalized by mutual consent of the parties. For this purpose the parties shall form a board (working group) consisting of equal number of representatives.

It is prohibited to avoid negotiations to be conducted for the purpose of preparation of collective bargaining agreements and their provisions. Persons representing the employer including executive authorities, local self-governing bodies as well as any organizations established or financed by them may not conduct negotiations and make bargaining agreements on behalf of employees.

If the parties don't accept the draft collective bargaining agreement, their representatives shall prepare a new draft within fifteen days (unless otherwise agreed by the parties) and submit it to the trade union organization (labour collective) for discussion and subsequent approval.

Application in personal plane

According to Article 14 of the Law of the Republic of Azerbaijan on Trade Unions associations of trade unions shall carry out within their authority collective negotiations and execute collective bargaining agreements with government bodies and other organization in respect of economic, social and cultural development matters.

Like in every sector in the Republic of Azerbaijan, there is a trade union protecting economic and social rights of civil servants in government bodies, too. Every government body and the trade union conduct negotiations and execute bargaining agreements. Today the Union of Public Administration and Public Services Employees carries out its activities on a voluntary basis for protecting labour, social and economic rights and interests of the employees who work in government bodies. This Union comprises 1495 trade union organizations and 69139 members.

According to Article 3 of the Law of the Republic of Azerbaijan on Trade Unions military servants may not form trade unions in the Republic of Azerbaijan. However protection of social, economic and labour rights of hired employees in military institutions is carried out by joint trade union committees of relevant ministries.

According to Article 5 of the European Social Charter (revised) the extent of application of the guarantee of the right to organize and freedom to enter into local, national or international organization for the purpose of protection of employee and employer economic and social interests to police and armed forces is determined in the national legislation and/or regulations. As it appears from this Article, the European Social Charter empowers the states, which ratified this Charter, to establish independently other rules in respect of the right to organize for police and armed forces through their national legislations.

Articles 32 and 34 of the Law of the Republic of Azerbaijan on Police dated 28 October 1999, forbidding police officers to hold other elective and appointive offices, to be engaged in political activities and to be members of political parties, determine carrying on any activities not connected with the police activity by any police officer as one of grounds for dismissal.

At the same time, national legislative instruments regulating the police activity don't provide for creation of any professional organizations and trade unions for the purpose of protection of police social and economic interests.

Article 6 – The right to collectively bargain

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 arbitrage 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.

Answers

Paragraph 1 – Joint consultation

A decision of establishment of the National Trilateral Social Council on Safe and Healthy Labour Conditions was passed and the Regulations of the Council were approved on 27 January 2012. The Council consists of the authorized representatives of the Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan, Azerbaijan Trade Unions Confederation and National Confederation of Entrepreneurs (Employers) Organizations of the Republic of Azerbaijan.

The functions of the Council are:

- to ensure the adoption and implementation of annual and long-range action plans on Safe and Healthy Labour Conditions;
- to develop methodological guidelines and recommendations on the issues regarding Safe and Healthy Labour Conditions set out in the action plans

While carrying out the above mentioned powers and duties, the Council should, especially, take into consideration the followings:

- while considering the determined issues, there should be consultations among the members of the Council, the considered issues should be coordinated bringing up for discussion by social partners;
- while considering issues, in case of necessity, the participation of the representatives of the relevant authorities and independent experts should be ensured.

The Trilateral Social Council, which is the first one established throughout the CIS region and embodying the social partnership principles stipulated in the General Collective Treaty, ensures the joint activity of social partners in application of the norms, rules and standards for safe and healthy labour conditions in places of work.

According to Article 16 of the Law on Employment of the Republic of Azerbaijan, trade unions may participate in drafting of the state employment policies and the relevant legislative acts of the Republic of Azerbaijan.

Article 6 – The right to bargain collectively

Paragraph 2 - Negotiations mechanism

According to the Articles 26 (1, 2, 3) and 28 (1, 2) of the Labour Code of the Republic of Azerbaijan, the initiator will notify in writing the other party on commencement of the negotiations. *Party that has received a written proposal for the commencement of bargaining shall be obliged to commence negotiations within 10 calendar days.* If there is no trade union at an enterprise, the labour collective shall establish a commission with special bargaining powers.

If there are several trade unions (trade union associations) or other employee-authorized representative agencies at the national, industry, branch or territorial level, a commission shall be created proportionate to employee membership in order to conduct the bargaining. It shall be unacceptable to refuse to bargain to draft the terms of collective contracts and agreements.
Costs connected with bargaining shall be compensated by the employer. Persons invited by the parties to participate in bargaining shall be compensated for their labour on the basis of an agreement between the parties. The participants in collective bargaining shall not be disciplined, reassigned to other work, or dismissed by their employers during the bargaining.

Legislation Framework

The Law of the Republic of Azerbaijan on "Collective contracts and collective agreement" was adopted in 1996 and considered to be null and void from the effective date of the Law of the Republic of Azerbaijan on the approval of the Labour Code of the Republic of Azerbaijan, coming into force and legal regulation issues in respect thereof and the Labour Code, it means from July 1, 1999. For some reasons the Law being null and void was referred to in the report.

The decision on the necessity of preparation and conclusion of the collective contract is adopted by the trade unions. If there is no trade union at the enterprise the general meeting (conference) of a labour collective may adopt a resolution on the bargaining, drafting and signing of a collective contract. *A collective contract can be signed at the company, its affiliates, representations and other independent subdivisions. For the purpose of holding the collective bargaining, drafting, conclusion of collective contracts or their modification, the employer provides the necessary authorities to the head of such subdivision at the affiliates, representations or other independent subdivisions of the company.*

It was determined in the section of "collective contract and treaty" of the Labor Code of the Republic of Azerbaijan that Labour collectives, employers, trade unions (*associations*), relevant authorities and employers' representative bodies shall have the right within the scope of their authority to draft, enter into and amend collective contracts and agreements. One party of the collective contract is employer and the other party is trade union organization. If there is not any trade union organization in the entity, one party of the collective contract is employer and the other party is the labour collective.

Procedures for the drafting and signing and the duration of a collective contract shall be defined and undertaken by the agreement of the parties. The parties may create the appropriate commission (working group) with an equal number of representatives. The commission (working group) shall submit the draft collective contract to the Parties for consideration. The revised draft with suggestions shall be submitted to the general meeting (conference) of the trade union for approval after the proposals received have been investigated. The authorization of trade union organization meetings, conferences and other sessions shall be regulated by its Statute. Any general meeting (conference) where over 50% of employees (representatives) participate shall be considered an authorized meeting. Employers must provide conditions for the trade union or specially-authorized commission to use all available facilities (internal communications and information, copy machines, equipment, etc.) to submit the draft of the collective contract for employee approval. If the draft of the collective contract is not approved, the parties' representatives shall revise it within fifteen days (unless the parties have agreed otherwise) and submit it to the general meeting (conference) of the labor collective or, if appropriate, to the trade union. The draft of a collective contract shall be approved by a majority vote of the participants of the general meeting (conference). The parties must sign a collective contract within three days after its approval the signed collective contract and its amendments shall be submitted to the labour and social issues authority as information within seven days. The content of a collective contract shall be defined by the parties. As a rule, a collective

contract shall include the mutual obligations of the parties in relation to the following matters:

a) improving the productivity and economic performance of the enterprise;

b) defining the procedure and amount of compensation, monetary rewards, benefit payments, extra payments, and other payments;

c) the mechanism for regulating compensation based on price increases and the level of inflation;

d) employment, training, professional development, conditions for laying off employees;

e) working hours, time off, and vacations;

f) cultural and consumer services, social guarantees and benefits for employees and members of their families;

g) performance evaluation, establishment and revision of labor quotas;

h) improving working conditions for women and minors;

i) defining additional guarantees to improve occupational safety;

j) compensation for damage to employees in connection with performance of their jobs;

k) formation of a body to hear individual employment disputes and the procedure by which it shall operate;

l) definition of additional preferential terms and conditions for employee medical and social insurance;

m) consultation and coordination with the trade union if an individual employment agreement is terminated at the employers initiative;

n) environmental safety and protection of employee health;

o) deduction of membership fees from trade union members' salaries and creating conditions for the efficient organization of trade unions charter activities;

p) agreement on additional means for governing collective labor disputes;

q) oversight for compliance with the terms of the collective contract;

r) liability of the parties for breach of a collective contract;

s) enforcement of labour discipline.

t) assistance in provision of information and conducting explanatory work with regard to humiliation of individual employees, open hostile and offensive actions at the place of employment or in connection with the occupation and prevention of such actions, taking all necessary and appropriate measures in order to protect employees from such treatment; u) assistance in conducting explanatory work with regard to sexual harassment in office or in connection with the occupation as

With respect to the enterprises economic capabilities, a collective contract may stipulate other employment and social and economic terms and conditions, including ones more beneficial than those provided herein

(additional vacations, increased pensions, compensation for transportation and travel expenses, free or discounted food, other benefits and compensation).

Regulations which this Code and other regulations require to be included in a collective contract must be included.

1. A collective contract may be executed for a period from one to three years.
2. A collective contract shall take effect when it is signed or on the date indicated therein.
3. Upon expiration of its period a collective contract shall remain in effect until a new contract is concluded, *but for the term not exceeding three years.*
4. Neither changes in the organizational structure of an enterprise, except in the case of a change of ownership or liquidation of the enterprise, *termination of the labor contract with the employer,* nor termination of trade union activities shall be grounds for nullification of a collective contract.
5. Should the ownership of an enterprise changes, the collective contract shall remain in effect for three months. During this time the parties shall have the right to begin negotiations on a new collective contract or on retention, revision, or amendment of the previous one.
6. In the event of liquidation or *reorganization of an enterprise in the form of a merger, division or separation* by the procedure and under the terms established by law, the collective contract shall remain in effect throughout the entire liquidation of *reorganization* period.
7. A collective contract shall apply to all employees at an enterprise, including individuals hired before the collective contract went into effect,

A collective contract shall be revised or amended during its term on the basis of mutual agreement of the parties by the procedure defined therein. If no such procedure has been defined, revisions and amendments shall be made by the procedure stipulated by this Code.

The parties shall report to the labour collective on fulfillment of the collective contract on the dates stipulated in the contract, but no less than once a year.

Furthermore, in the article 36 of this Code, norms connected with the conclusion of collective agreements were reflected. According to that article, collective agreement may be executed between the following parties:

a) A general collective agreement shall be executed between the relevant authority and associations of trade unions of *all state (state).*
b) Industry collective agreements shall be executed between the relevant authority and trade union associations for specific professions or industries.
c) Territorial (district) collective agreements shall be executed between the relevant authority and area associations of trade unions

No provisions were provided for in the legislation in respect to establishment of the counseling authorities attached to the state authorities.

According to the part 1 of the Article 15 of the Labour Code, the State Labour Inspection attached to the Ministry of Labour and Social Protection of the Population shall implement state oversight for the execution of labour legislation and the requirements of other Normative Legal Acts.

Collection of information on collective contracts, as well as the changes and amendments made to them was assigned to the relevant local regions of the State Labour Inspectorate Service and implementation of territorial collective agreements was assigned to the central Apparatus of the State Labour Inspectorate Service.

According to the legislation, the State Labour Inspectorate Service conducts analysis of collective contracts and agreements submitted by the employers, and prevents application of norms worsening the conditions of labour legislation.

The Final Conclusions on the Collective Contracts

According to the Article 30 of the Labour Code of the Republic of Azerbaijan, the procedures for the drafting and signing and the duration of a collective contract shall be defined and undertaken by the agreement of the parties. The parties may create the appropriate commission (working group) with an equal number of representatives. The commission (working group) shall submit the draft collective contract to the Parties for consideration. The revised draft with suggestions shall be submitted to the general meeting (conference) of the trade union for approval after the proposals received have been investigated.

According to the part 1 of the Article 25 of the Labour Code of the Republic of Azerbaijan, Labour collectives, employers, trade unions (*associations*), relevant authorities and employers' representative bodies shall have the right within the scope of their authority to draft, enter into and amend collective contracts and agreements.

According to the part 1 of the Article 25 of the Labour Code of the Republic of Azerbaijan, *Party that has received a written proposal for the commencement of bargaining shall be obliged to commence negotiations within 10 calendar days and send a Response to the party initiating the collective bargaining with the provision of information about the representatives who will participate in the bargaining from his part. The day following the day of receipt of the Response letter by the party initiating the collective bargaining shall be considered as the beginning day of collective bargaining.*

According to the Article 32 of the Labour Code of the Republic of Azerbaijan, collective contract may be executed for a period from one to three years. Upon expiration of its period a collective contract shall remain in effect until a new contract is concluded, *but for the term not exceeding three years.* Neither changes in the organizational structure of an enterprise, except in the

case of a change of ownership or liquidation of the enterprise, *termination of the labor contract with the employer,* nor termination of trade union activities shall be grounds for nullification of a collective contract. Should the ownership of an enterprise changes, the collective contract shall remain in effect for three months. During this time the parties shall have the right to begin negotiations on a new collective contract or on retention, revision, or amendment of the previous one. In the event of liquidation or *reorganization of an enterprise in the form of a merger, division or separation* by the procedure and under the terms established by law, the collective contract shall remain in effect throughout the entire liquidation of *reorganization* period. A collective contract shall apply to all employees at an enterprise, including individuals hired before the collective contract went into effect.

The number of collective contracts and agreements submitted to the State Labour Inspectorate Service and which are valid are 1091, and this covers the same number of the employers and 310007 employees.

Article 6 – The right to bargain collectively

Paragraph 3 – Reconciliation of parties and arbitration

According to the Article 27 of the Labour Code, the guarantees given to the participants of the collective negotiations were determined that, Persons participating in negotiations (representatives of the parties, consultants, experts, mediators, specialists, arbiters and other persons invited by the parties) shall receive their average monthly salaries for no more than three months during the course of the year, and the time spent in bargaining shall be counted towards their seniority. Costs connected with bargaining shall be compensated by the employer. Persons invited by the parties to participate in bargaining shall be compensated for their labor on the basis of an agreement between the parties. The participants in collective bargaining shall not be disciplined, reassigned to other work, or dismissed by their employers during the bargaining.

Article 6 – The right to conclude collective contracts

Paragraph 4 – Collective Actions

According to the Article 285 of the Labour Code, it is included with the name of investigation of the legality of the lockout and attraction of the employer to the responsibility. Upon the request of employees, the court shall decide if a lockout is legal and declared in accordance with law. If the court decides that a lockout declared by the employer has no basis and that material and non-material damages to employees must be paid, the employer shall also be held liable for violation of other laws with respect to the lockout..

The provisions were not provided for in the Code in respect to repetition of the lockout and its reasons.

The group authorized to organize Collective Actions

According to the Article 261 of the Labour Code, The parties to a collective labour dispute shall be the employers and employees (labour collective or a part thereof) or trade unions. Within the authority specified by this Code and other Normative Legal Acts, trade unions shall have the right to strike, to gather together freely, as well as to take other public measures in the manner prescribed by legislation in order to settle collective labor disputes in a legal and just manner. Trade unions, employers' unions and related government authorities may participate as parties to disputes on agreements concerning employees.

The special restrictions on the right to strike

By the Article 36 of the Constituion of the Republic of Azerbaijan and the Article 270 of the Labour Code of the Republic of Azerbaijan, the legal basis of going to strikes were determined. According to this article, Employees shall have the right to strike alone or together with other employees. The right of employees or trade unions to strike shall originate at the time a collective labour dispute has begun. If the parties agreed to resolve the collective labour dispute through peaceful means, a strike shall be resorted to only if the dispute cannot be resolved through those means. If the employer needlessly delays peaceful resolution or fails to fulfill an agreement reached through peaceful means, then the labour collective and trade union organizations shall have the right to strike. Participation in a strike shall be voluntary. Individuals who oblige other persons *by use or threat of force or using their material dependence* to participate or not participate in a strike shall be held accountable for their actions pursuant to the law. Except in situations described in Article 275 hereof, striking employees may not be replaced by others. An employer may not organize strikes or participate in strikes. In relation to strikes resulting from a collective labour dispute, no employees may be fired, nor may the jobs at the enterprise (affiliate, representation) or workplace where the collective labour dispute arose be cut, abolished, or reorganized.

The restrictions connected with necessary services or sectors

By the Article 280 of the Labour Code of the Republic of Azerbaijan restriction of the right to strike and the cases not allowing the strikes were determined. According to this Article, the right of employees to strike may be limited *or prohibited* during martial or emergency situations, pursuant to the

laws of the Republic of Azerbaijan. Strikes are not permitted for political purposes except when employees try to reconcile the principles of the state's socioeconomic policy.

The Article 281 of the Labour Code provides for the fields where the strike is prohibited. These fields of service include hospitals, power generation, water supply, telephone communications, air traffic control and fire fighting facilities. It was restricted to conduct strikes in those fields, for the stated fields are of vital importance for health and safety of the people.

The restrictions connected with the public servants

According to the Article 6.4 of the Charter, the parties recognize the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

The right to strike of the persons having the worker status was indicated in the Charter. In that provision, the persons having the status of public servant was not noted. The legislation of the Republic of Azerbaijan differs the worker from the public servant. So that, according to the Article 14.1 of the Law of the Republic of Azerbaijan on "Public service", the public servant is the citizen of the Republic of Azerbaijan holding the position of public service with salary determined in the law (the salary may only be given from the state budget) and taking an oath to be loyal to the Republic of Azerbaijan while being admitted to the public service on administrative position.

As the labour relations of the above stated employees are regulated by the labour legislation, the restriction defined by the legislation in respect to the public service is not contrary to the issues stated in the Charter.

It is noted in the Article 270.8 of the Labour Code that the persons working in legislative, relevant executive power (The Executive Apparatus of the President of the Republic of Azerbaijan, the Cabinet of Ministers of the Republic of Azerbaijan, the ministries, state committees and other central executive power authorities, as well as local executive power authorities), court and law enforcement authorities can not conduct strike. But, according to the

Article 20.1.7 of the Law of the Republic of Azerbaijan on "Public service", the public servant is prohibited to take part in strikes and other actions violating the works of the state authority.

Procedural requirements

There are some procedural requirements in our national legislation to be fulfilled before conducting the strikes. The right of the trade unions or employees to strike arises from occurrence of collective labour dispute. If agreement is reached about settlement of this dispute through reconciliation methods, but the settlement of the dispute through these methods is not achieved, then the strike is allowed. Prior to conducting strike, the decision should be adopted by the meeting of the employees or trade union organization on conducting the strike. The employer should be informed in writing about the decision adopted at least 10 days prior to the strike. This was reflected in the Article 272 of the Labour Code.

According to the Article 271 of the Labour Code of the Republic of Azerbaijan, adoption of decision on conducting the strike was determined. In this Article, the decision to go on strike shall be made at an employees' meeting or by the trade union (organization) as provided in Article 262 hereof. By the Article 274 of the Labour Code, the article of the body leading the strike was determined. According to this Article, the strike shall be led by a strike committee elected by a general meeting (conference) or created by a decision of the trade union. The strike committee shall have the right to call for a general meeting (conference) of employees, to receive information from the employer on items of interest to employees, and to use the knowledge of experts in order to arrive at an opinion on controversial subjects. The employer must be notified at least three days before resumption of a strike. The strike committee shall perform the following duties:

- continue discussions with the employer;
- take measures to prevent actions that might interfere with the employer, with his representatives, or with employees who decided not to participate in the strike leaving or entering the building freely; to prevent actions that may be injurious to them, and to protect them from being subjected to insults;
- together with the employer's representatives, provide security for the entity's property;
- if a strike fund is created, manage that fund;
- report to the labour collective or related body of the trade union on expenditures from the strike fund.

If the strike ends, is declared illegal, or is banned due to martial law or a state of emergency, the powers of the strike committee shall be revoked by a decision of the general meeting (conference) of the employees, or by a decision of the related trade union body.

The results of the strike

It is stated in the Article 270.7 of the Labour Code in respect to the results of the strike for individual employees that in relation to strikes resulting from a collective labour dispute, no employees may be fired, nor may the jobs at the enterprise (affiliate, representation) or workplace where the collective labour dispute arose be cut, abolished, or reorganized. It is stated in the Article 283 of the Labour Code that an employer may pay full or partial wages to striking employees for the duration of the strike. Refusal to pay wages for that period may not be grounds for a dispute. This provision applies to all employees taking part in the strike, whether is the member of the trade union organization or not.

According to the Article 60 of the Code of Administrative Offences titled to force to take part or to refuse to take part in strikes, Enforcing to participate or refuse to participate in strikes with the application of violence or threatening to apply violence or abusing his material dependence - shall involve penalization at the rate of ten to thirty five AZN.

According to the Article 276 of the Labour Code of the Republic of Azerbaijan, the guarantees of the persons who refused to take part in the strike were determined. In this Article, individuals who refuse to participate in a strike shall have the right to continue to work. If this is not possible, the employees' wages shall be paid at the rate paid when an employee is idle for reasons beyond his control. The Article 279 was provided for in the Labour Code in respect to ending and suspension of the strike. In this Article, should the employer accept the strikers' demands, the parties reach an agreement to resolve the dispute, or should employees refuse to continue the strike, the strike shall be considered ended. According to the Article 283 of the Labour Code, payment of salaries of the strikers was determined. According to this Article, an employer may pay full or partial wages to striking employees for the duration of the strike. Refusal to pay wages for that period may not be grounds for a dispute. As stated in the Article 270, as the participation in a strike is voluntary, the employees may take part in the strike notwithstanding whether he is the member of the trade union or not.

Article 21 – The Right of the employees 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.

Answers

Article 21 – The right of the employees to get information and consultation

The employees have the right to require information about the conditions of protection of labour in work places, individual protection means, benefits and guarantees to be given with the norms defined in accordance with these conditions. The employer is obliged to fulfill this requirement.

According to the paragraph "n" of the Article 9 of the Labour Code, the employee has the right to obtain appropriate references from his employer with respect to his place of work, position (profession), monthly salary and labour relations. Also, according to the Article 88 of the Code, at the employee's request, the employer shall be obliged to provide a reference or file information on his position (profession), earnings during the relevant period, copies of personal documents, and his testimonial regarding the employee's professionalism, efficiency and other personal qualities.

According to the Article 88 of the Labour Code of the Republic of Azerbaijan, at the employee's request, the employer shall be obliged to provide a reference or file information on his position (profession), earnings during the relevant period, copies of personal documents, and his testimonial regarding the employee's professionalism, efficiency and other personal qualities. In this Article, with the employee's consent, the employer may send documents concerning the employee's personality or employment activity to another employer or to the respective authorities, as well as to other parties at the

request of another employer or the relevant authority. Employers shall not be permitted to send a testimonial, letter of recommendation or other document concerning the employee unless he is familiar with it. A reference or letter of recommendation with positive content may be sent to another party without familiarizing the employee with it. In this case the employer must inform the employee where said documents have been sent.

According to the Article 10 of the Code, the employee is entitled to keep state secrets and the employer's trade secrets confidential under the rules and terms established by law. This issue is reflected either in the employment agreements concluded with the employee or in the collective contracts.

According to the Article 17 of the Law of the Republic of Azerbaijan on "Trade Unions", with the aim of realization of their tasks and rights under articles and authorities, specified in the present Law, can demand data, not representing state, commercial or another secret, protected by law, from officials, state and economic bodies and administration

State and economic bodies and the administration are bound to freely supply trade unions with the related information.

According to the Article 20 of the Law, it is prohibited to create obstacles to heads of trade unions to visit working place of trade union members to check observance of the legislation about labour and trade unions, conditions of collective contracts, labour agreements, and social issues by the administration and in connection with other issues of trade union aims.

According to the Article 21 of the Labour Code, together with trade unions organizations, other public self-government agencies and employers' representative agencies established under the specified procedure may provide activity according to their statute (regulations).

The owner or manager of an enterprise shall provide the appropriate conditions as stipulated in collective contracts, defined by mutual agreement of this organization and public self-government agencies and employer or by the contract concluded between them for the activity of trade unions and other employees' representative public self-government agencies.

The national legislation does not provide for any restriction on the right to information and consultation in respect to the number of employees in all fields of works not depending on the organizational – legal form.

According to the Article 12 of the Law on "Trade Unions", the administration is bound to consider these demands and inform trade unions about results in the specified period but no later than a month. But, it is required from the employers to provide information to the representatives of the employees on working conditions, payment of employees, working and other legal concerns, economic development of the entity and application of the collective contracts. That's why, no duration was determined in respect to this matter. But, according to the Articles 12, 17 of the Law on the "Trade Unions", the employer has to submit this information when required.

At the same time, sometimes the duration is indicated in the Code for presentation of the information. So that, according to the Article 26 of the Labour Code, the parties shall create 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. Employers and authorities must submit the information necessary for bargaining within five days at the commission's request. Should said information constitute a state or trade secret, the parties to the bargaining shall be liable under the law for disclosing any information they have received.

Scope of activities

According to the Article 222 of the Labour Code of the Republic of Azerbaijan ensuring condition of protection of healthy and safe labour was determined. According to this Article, employers shall provide a healthy and safe workplace, shall monitor dangerous and harmful production factors, and shall provide employees with information on these subjects in a timely manner. Employers shall prepare and implement annual plans to improve working conditions, to ensure occupational safety, and to protect employee health. The mutual responsibilities of the employer and the employee for the creation of a healthy and safe working environment shall be taken into consideration in collective and employment contracts. If a production site is harmful and dangerous or if the work requires a special temperature or the employees work in a dirty environment, they shall be provided with special clothing, shoes, and other personal necessities including washing materials as required in the relevant regulations. Employers, together with employee unions, shall certify compliance with occupational safety standards and regulations. Employees shall be informed of the results of certification. The employer, acting according to the certification results, shall take measures to comply with current regulations. The employer shall handle services such as the storage, washing, drying, disinfecting, and repair of the special clothes and shoes and other personal protection devices given to employees. In certain production areas determined by law the employer shall provide clean drinking water. For employees who work outside during cold and hot seasons of the year, in closed unheated buildings or in hot mills the employer shall provide areas to warm up and to rest. Pursuant to the law, employees shall be given breaks to warm up and rest, and these breaks shall be counted as time on the job.

According to the paragraph n) of the Article 9 of the Labour Code, the employee has the right to get information from the employer in respect to the issues of protection of labour not depending on the number of the employees working within the entity.

Scope of activities in personal background

According to the Article 4 of the Labour Code of the Republic of Azerbaijan, the work places where the Labour Code of the Republic of Azerbaijan is applied were determined. This Code shall apply to all enterprises, establishments, organizations (hereinafter referred to as «Enterprises»), as well as workplaces where an employment agreement exists without the establishment of an entity, to all embassies and consulates of the Republic of Azerbaijan operating outside the territory of the Republic of Azerbaijan, to all ships sailing in international waters under the banner of the Republic of Azerbaijan and to all offshore installations and other workplaces, regardless of their property, organizational and legal form, and to relevant government bodies, individuals and entities of the Republic of Azerbaijan, pursuant to the rules specified in this Code.

Scope of activities in material background

According to the Article 31 of the Labour Code, as a rule, a collective contract shall include the mutual obligations of the parties in relation to the following matters:

a) improving the productivity and economic performance of the enterprise;
b) defining the procedure and amount of compensation, monetary rewards, benefit payments, extra payments, and other payments;
c) the mechanism for regulating compensation based on price increases and the level of inflation;
d) employment, training, professional development, conditions for laying off employees;
e) working hours, time off, and vacations;
f) cultural and consumer services, social guarantees and benefits for employees and members of their families;
g) performance evaluation, establishment and revision of labor quotas;
h) improving working conditions for women and minors;
i) defining additional guarantees to improve occupational safety;
j) compensation for damage to employees in connection with performance of their jobs;
k) formation of a body to hear individual employment disputes and the procedure by which it shall operate;
l) definition of additional preferential terms and conditions for employee medical and social insurance;
m) consultation and coordination with the trade union if an individual employment agreement is terminated at the employer€™s initiative;
n) environmental safety and protection of employee health;

o) deduction of membership fees from trade union members' salaries and creating conditions for the efficient organization of trade unions charter activities;
p) agreement on additional means for governing collective labor disputes;
q) oversight for compliance with the terms of the collective agreement;
r) liability of the parties for breach of a collective contract;
s) enforcement of labor discipline.
t) assistance in provision of information and conducting explanatory work with regard to humiliation of individual employees, open hostile and offensive actions at the place of employment or in connection with the occupation and prevention of such actions, taking all necessary and appropriate measures in order to protect employees from such treatment; u) assistance in conducting explanatory work with regard to sexual harassment in office or in connection with the occupation as well as prevention of such harassment, applying all necessary and appropriate measures in order to protect the employees from such treatment;
u) creation of conditions for workers to engage in physical training and sports, including rehabilitation and professional-practical exercises in working terms and after work, sports and health tourism.
With respect to the enterprise's economic capabilities, a collective contract may stipulate other employment and social and economic terms and conditions, including ones more beneficial than those provided herein (additional vacations, increased pensions, compensation for transportation and travel expenses, free or discounted food, other benefits and compensation).
Regulations which this Code and other regulations require to be included in a collective agreement must be included.

Measures

According to the Article 227 of the Labour Code of the Republic of Azerbaijan titled "the right of the employees to get information on conditions of the protection of labour", Employees shall have the right to demand information about occupational safety in their workplaces, about the necessary occupational safety material which they should be given based on working conditions, and about benefits and guarantees. Employers shall be obliged to satisfy these requirements.

Supervision

No responsible body for ensuring to respect the right of the employees to get information and consultation was not determined. But, according to the Article 15 of the Labour Code of the Republic of Azerbaijan, the state supervision on compliance with the labour legislation is implemented by the State Labour

Inspectorate Service under the Ministry of Labour and Social Protection of the Population, but the public supervision is implemented by the trade unions.
No direct norm was provided for in the national legislation in respect to indemnification of damage to the employees connected with the stated issues. But, the norms providing for the responsibility for the damage that the employers and employees make to each other were included in the Labour Code.
Also, according to the Article 58 of the Code of Administrative Offences, non-fulfillment or violation of obligations by the employer on the collective contract (agreement) -shall involve penalization at the rate of one thousand to one thousand five hundred AZN.
According to the Article 59, non-introduction of the information required for conducting collective negotiations and performing control over fulfillment of the collective contract (agreement) shall involve penalization at the rate of seven hundred to one thousand five hundred manats.

Article 22 – The right to take part in the determination and improvement of the working conditions and working 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 organisation of social and socio-cultural services and facilities within the undertaking;

d) to the supervision of the observance of regulations on these matters.

Answers

Article 22 – The right to take part in the determination and improvement of the working conditions and working environment

By the Article 223 of the Labour Code of the Republic of Azerbaijan, the services of protection of labour were determined. With this article, an

occupational safety service shall be created to organize occupational safety and monitor employee compliance with occupational safety laws and standards at all offices and entities in all branches of the economy *with the number of staff over fifty employees.* Experts familiar with labour legislation and occupational safety standards shall be included in the staff of labour protection services. *In enterprises with a number of employees over fifty, the position of engineer for safety shall be established, but if the number of workers is over five hundred - the position of the deputy chief (chief engineer) of the company for labor safety.* An industrial-sanitary laboratory shall be instituted at enterprises employing over one thousand employees and a doctor's position shall be established there. Occupational safety service experts shall have the right to monitor employee compliance with occupational safety standards and regulations, to order the heads of relevant units to take mandatory measures to eliminate violations, and to make recommendation to the employer with respect to the liability of any individual who violates occupational safety laws. Occupational safety service *managers* and experts may not be asked to perform work unrelated to their duties. They shall be liable under the law for failure to perform their duties pursuant to the law. Employers may reorganize or cancel occupational safety services only with the agreement of the authority that exercises control over compliance with labour legislation.

Working conditions, organization of work and working environment

By the Article 224 of the Labour Code of the Republic of Azerbaijan, the guarantees to the right to protection of labour of the employee while concluding the employment agreement were determined. The terms of the employment contract shall meet the occupational safety requirements hereof. An employment contract shall state the employers commitment to provide a healthy and safe working environment for the employee and guarantees thereof shall be clearly stated. When hiring an employee for a job with a high risk of job-related illness, the employer shall submit information to the employee about the possible time frame of said illness. The employment contract shall therefore cover only that period, and at the end of that period the employee shall be given a different job with same salary.

Protection of health and safety

The employer prepares and implements perspective and annual actions plan directed to improvement of working conditions, ensuring protection of labour and protection of health of the employees. The mutual obligations on ensuring the conditions of protection of healthy and safe labour between the employer and employees are provided for in the collective contract and employment agreement. The employees working in the productions where the working conditions are harmful and dangerous, also conducted in the conditions of

special temperature or in the works related to pollution are given free special cloth, special footwear and individual protection means, washing and disinfecting agents relevant to the defined norms. Employers, together with employee unions, shall certify compliance with occupational safety standards and regulations. Employees shall be informed of the results of certification. The employer, acting according to the certification results, shall take measures to comply with current regulations. The employer shall handle services such as the storage, washing, drying, disinfecting, and repair of the special clothes and shoes and other personal protection devices given to employees. In certain production areas determined by law the employer shall provide clean drinking water. For employees who work outside during cold and hot seasons of the year, in closed unheated buildings or in hot mills the employer shall provide areas to warm up and to rest. Pursuant to the law, employees shall be given breaks to warm up and rest, and these breaks shall be counted as time on the job.

In the Article 237, the rights of the trade unions in the field of compliance with the rules of protection of labour were determined. Trade unions can within their rights as specified on «Law of the Republic of Azerbaijan on Trade Unions» participate in supervision of implementation of laws and applicable regulatory legal acts on job protection by the employer. Trade unions are to participate in preparing applicable regulatory legal acts on job protection and ways of enforcing them by mutual agreement, they have the right to protest to related state bodies enforcing of those acts which have not been prepared by mutual agreement. Representatives of labour unions can participate in work of state commissions on testing of production equipment and machinery and initiating of their use in production, investigation of unfortunate incidents in production, monitoring of enforcing of job protection laws, and inspection of creating of conditions for their improvement as specified in collective agreements. If the people with authority violate implementation of agreed measures, or hide unfortunate incidents in production labor unions have the right to raise with state bodies the issue of prosecuting of the guilty persons. When dangers for health and life of workers are created the labour unions have the right to raise before the authority carrying out state control over the observance of labour legislation the issue of stopping the use of any machinery which has faulty components and mechanisms which are dangerous for job safety; the production of other kinds of products, use of materials, equipment, and technology which are hazardous to human health; and also activities and decisions made by the employer which are in violation of laws on job safety. Trade union organizations shall carry out control over the labour protection standards and procedures determined by this Code and other Normative Legal Acts through relevant employment inspection operating at their office.

According to the Article 238, the employer who fails to create conditions in work places for protection of healthy and safe jobs, or fails to take the

measures agreed upon in collective agreements will be prosecuted for civil and criminal wrongdoing in cases and in ways defined by law.

According to the Article 239, the employer who is fully or partially responsible for unfortunate incidents or work related illness is to pay in full both compensation for losses or poor health of the employee, and also pay the costs of social security organizations which paid the employee pension connected with medical treatment, granting a benefit, *and also other additional expenses, stipulated by the Civil Code of the Republic* of *Azerbaijan.* The employee who has suffered health problems as a result of production accidents or work illnesses that were employer's fault, or family members and other dependents of an employee who has died because of the same reasons are to be paid a lump sum amount, monthly payments, and other extra fees related to the unfortunate incident as specified by law. The procedures and terms on issuing compensation to employees who has suffered health problems as a result of industrial accidents or occupational disease or family members of an employee perished because of said reasons shall be defined by the relevant executive authority in the established manner.

According to the Article 225 of the Labour Code, the obligatory employee Insurance against loss of labour capacities due to the Industrial Accidents and Occupational Diseases is determined. Employers must provide employees working at high-risk jobs with obligatory insurance against industrial accidents and occupational illness. A list of employees requiring insurance *against accidents and occupational diseases* and the amount of the insurance coverage shall be stated in the collective agreements or employment contracts based on agreements signed with insurance agencies.

According to the Article 31 of the Labour Code, the parties determine the control mechanism for implementation of its conditions in the collective contract (as well as on the obligation to get information about protection of health and safety).

The matter whether the representatives of the employees give suggestions on the relevant measures for improvement of health and safety conditions is regulated by the tariff and collective contracts concluded with the employers. In text of the collective contracts, it is determined that the administration has to present regular information about the context of the implemented works, it means that it is conditioned that the implementation of collective contracts has to be discussed once or twice in a year. So that, public control commissions for protection of the health of the employees act within the entities, administrations and organizations. Those commissions give suggestions to the employers in order to improve the conditions of health in the work places. The execution of the given suggestions is regularly analyzed by the control commissions and they apply to the employer with new suggestions.

Organization of social and social-cultural services and facilities

With the Article 31 of the Labour Code, as a rule, a collective contract shall include the mutual obligations of the parties in relation to the following matters:
creation of conditions for workers to engage in physical training and sports, including rehabilitation and professional-practical exercises in working terms and after work, sports and health tourism. The collective contract may provide for more discounted labour and socio-economic conditions taking into account the economic possibilities of the entity (additional holidays, extra pensions, payment of transport and travel expenses, meals free of charge and with discounts and other discounts and benefits). According to the paragraph e) of the Article 31 of the Labour Code, cultural and consumer services, social guarantees and benefits for employees and members of their families were determined. It is obligatory to reflect in the collective contacts the provisions provided in this Code and other normative legal acts to be included in the collective contracts.

Execution
According to the Article 9 of the Labour Code of the Republic of Azerbaijan, the major rights of the employee under the employment agreement were determined. In this Article, the rights to work under conditions which meet safety and health requirements and to exercise the right to demand such conditions and to appeal to a court for protection of his labour rights and to be defended legally were determined.

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.

Answers

Paragraph 1 – Sexual harassment

The principal duties and responsibilities of the employer have been determined in accordance with the Article 12 of the Labour Code of the Republic of Azerbaijan. The following cases are determined for the employers:

Equal approach and creating equal possibilities for the employers during employment, promotion, increase of vocational training, mastering new professions and qualification, assessment of the quality of work, dismissing from work without depending on their sex; creating the same working conditions for the employees engaged in the same work without depending on their sex, not applying different disciplinary measures to the employees for the same violation, taking necessary measures in order to prevent discrimination on the base of sex and sexual harassment .

collective agreements, amongst which giving information on work related sexual harassment acts against employees or those happening at the work place, preventing such harassment and taking all necessary measures for protecting workers from such acts determined in Article 31 of the Labour Code. The employee may abolish the labour contract on the date stated in the application in the cases determined in Article 69 of the Labour Code when he\she is undergone to the sexual harassment. The employees undergone to the sexual harassment by Article 17.2 of the Law on "Provision of Gender (male and female) equality" of the Republic of Azerbaijan are compensated by the employer in the order determined by the legislation of the Republic of Azerbaijan. Thus, according to the Article 195 of the Labour Code the employer bears full responsibility for the damages to the employee when the employee is undergone to the sexual harassment in the labour relations. The court may decrease the amount of the damages determined taking into account the guiltiness degree, the concrete condition, the material condition of the employee and other cases having importance upon the work or may certify the armistice agreement of the parties on decrease of the amount of the damages. If sustaining damages to any of the parties causes to the criminal action in the result of any action or inaction of both the employer and the employee, then the court begins the criminal case and takes relevant procedural measures for satisfaction of implementation of the investigation or compensating the damages determined in the legislation.

In case when general persecution – persecuting any group or the organization determined for the basis forbidden by political, racial, national, ethnic, cultural, religious, sexual or international legal norms, i.e., deprivation of the people from the principal rights as they belong to any group or organization is related with other criminal actions in accordance with Article

109 of the Criminal Code of the Republic of Azerbaijan – they are punished by deprivation of freedom from five to ten years.

Each party shall prove the cases referred as the basis of their requirements and objections in accordance with Article 77 of the Civil Procedural Code of the Republic of Azerbaijan (proving duty). While considering the disputes on considering the acts of the state organs, executive and other organs invalid, the duty to prove the cases being the basis for adoption of those acts relies on the organ adopting that act. In case when it is not possible to consider the case on the basis of proofs available in the case, the court may propose to the parties to submit necessary additional proofs.

The number of the complaints entered to the address of the Commissioner (Ombudsman) for Human Rights of the Republic of Azerbaijan in 2009-2012 in connection with the cases of violation of labour rights was as following:

№	Years when the complaints entered	Number of complaints
1.	2009	678
2.	2010	936
3.	2011	1246
4.	2012	887

It is necessary to state that the statistics of the complaints entered to the Apparatus of the Ombudsman in connection with the cases of violation of the labour rights are implemented in the general form and therefore it is not possible to give exact information about the number of the appeals on meeting sexual and moral harassment by the employees at the workplaces.

But we can state one matter about it that concrete measures have been taken for the purpose of restoration of the violated rights of the people upon the consideration of the appeals and complaints related to the violation of labour rights entered to the address of the commissioner (as well as facing sexual and moral harassment at the workplaces) and upon these appeals, violated labour rights have been restored in accordance with the legislation in the result of setting the task before the related organs in connection with the solution of these matters, the guilty persons were punished, payment of means due to the citizens, as well as salaries and compensations for the sustained damages, means upon different types of compensation was supplied.

Such provisions as strengthening of struggle against violence against the women, as well as the domestic violence, provision of legal protection means,

necessary compensation, rehabilitation, medical and psychological aid for the victims of such violence, organization of wide enlightenment work in this field and other provisions were determined in the National Activities Program in the field of increase of the rationality of defense of human rights and freedom in Republic of Azerbaijan certified by the decrees of the President of the Republic of Azerbaijan No. 1880 dated December 28, 2006 and No. 1938 dated December 27, 2011 taking into account some suggestions of the Commissioner and they play an important role in the struggle against the sexual and moral harassment at the workplaces.

Burden of proof

The beginning of the material responsibility and the conditions to prove determined in the Article 192 of the Labour Code of the Republic of Azerbaijan. According to the mentioned Article the parties shall prove the amount of the material damage and the damage itself, as well as the fact that he\she is not guilty while claiming it.

The employer takes the written explanation of the employee before adopting the decision to compensate the damages sustained to him\her, investigates the conformity to laws of his\her actions, the reasonable relation between the sustained damage and the actions (inaction) of the employee, as well as real amount of the sustained damages in compliance with Article 203 of the Labour Code. The employee is entitled to make acquaintance with the documents of the investigation and to give additional explanation (to reject) in the course of the investigation (control). The employer shall introduce the results of the investigation to the employee.

The cases of dismissal of the employee within the relevant working hours are determined by Article 62 of the Labor Code. Dismissal of the employee shall be documented by collecting relevant proofs (doctor's opinion, explanations of the employees, references and other official documents) in every concrete condition in accordance with the mentioned article. There is not any provision in the Labour Code on burden of proof lies with the employer in cases of the sexual harassment of the employee. Therefore, the employee undergone to the sexual harassment shall prove it in the court.

Damages

If the employer has terminated labour relations with the employee by violating the basis of abolishment deemed in Articles 68, 69, 70, 73, 74 and 75 or without meeting the requirements of the rules of Articles 71, 76, as well as without paying attention to the cases deemed in Article 79, then the court settling the labor disputes investigates the pretension appeal and the factual cases of the case and pronounces judgment on restoration of position the employee by paying salary or on certification of the armistice agreement of the parties according to the Article 30 of the Code. The court may consider in the

resolution the payment of the amount of the damage sustained to the employee upon his\her claim by the employer.

While speaking about the "amount of the sustained damage" deemed here, average salary for the period of unemployment of the employee in connection with dismissal, amount of the expenditures undergone in connection with hiring lawyers for protection of rights in the court, as well as the amount of the moral damage required by the employee in the pretension appeal, his]her debt incurred in connection with unemployment, costs undergone in the result of sale of the private objects, as well as other expenditures shall be understood.

In case when the employee is undergone to the sexual harassment and dismissed unfairly, he\she shall be restored by the decision of the court.

Forcing to the action of sexual character shall be punished by penalty in the amount from five hundred to a thousand manat or reformatory work for two years or deprivation of freedom for three years in compliance with Article 151 of the Criminal Code of the Republic of Azerbaijan.

Preventive measures

The definition of the sexual harassment was given in the Law on "Provision of gender equality" of the Republic of Azerbaijan adopted in 2006 and the sexual harassment was forbidden. According to the Article 11 of the mentioned Law the employees made a complaint about sexual harassment by their employer or the leader may not be undergone to any pressure or persecution by their employer or the leader. The employees undergone to the Sexual harassment are compensated by the employer in the order determined by the legislation in force of the Republic of Azerbaijan and it is settled by the court.

According to Paragraph (o) of Article 31 of the Labour Code, implementation of the explanation work and giving information about the sexual instigation matters include obligations on taking all measures necessary for rendering assistance and prevention of such instigations and protection of the employees from such behavior.

In case when the employee is undergone to the sexual harassment and in the cases deemed in the legislation, the labor contract may be abolished on the date stated in the application in accordance with paragraph 3 of Article 69 of the mentioned Code.

Awareness activities and trainings held by the State Committee of Azerbaijan Republic upon Family, Women and Children problems:

A round table was held in the subject of "the role of mass media in elimination of gender stereotypes formed in the society" in 2010 for the purpose of achieving rational utilization of the possibilities of mass media in wider elucidation of women problems and gender matters in the mass media, elimination of stereotypes formed in the society and taking enlightenment measures among the people.

Some social advertisements were prepared upon gender equality and trainings were held in the subject of "Woman rights and gender equality" within the framework of the Program of Woman participation financed by USA International Development Agency (USAID) and executed by Counterpart International Organization in 2012.

A round table was held in the subject of "Woman rights and gender stereotypes in Azerbaijan" on March 15, 2012 together with ABA CEELI Azerbaijan organization. The condition related to the woman rights in the country was discussed and the suggestions in connection with settlement of the available problems were given during the ceremony held with the participation of the representatives of the state organs, the community and the experts.

The trainings were held in the direction of application of the Law on "Provisions of gender equality" in the regions in 2010-2011 of the Republic of Azerbaijan together with People Fund of CIS and "Inkishaf" Social and Economic Investigation Social Union. The principal purpose of the trainings was widening of notions on gender matters, gender sensitivity, discrimination with gender basis, increase of practical and legal knowledge, at the same time strengthening of enlightenment work and development of gender culture. Implementation of such measures as development of the strategic plans upon every field, improvement of the system of relations between the state organs functioning in the fields related to the violence in the daily life, development of collaboration with the relevant international organs, expertize of the national legislation in connection with violence and decrease of the risk of undergoing to violence of the people upon their results for the purpose of prevention of sexual and other kind of inequality, family violence, cruelty in the society and formation of citizenship senses is deemed in the program for rational realization of the "Republic Complex Program upon struggle against daily violence in the democratic society" certified by the Decree No 17s dated January 25, 2007 of the Cabinet of Ministers of the Republic of Azerbaijan and these measures are being implemented successfully. Ratification of Conventions No 156 concerning "Equal Opportunities and Equal Treatment for Men and Women Workers : Workers with Family Responsibilities" and No 183 concerning «the revision of the Maternity Protection Convention (Revised), 1952 " of the International Labour Organization was included in the program and the Republic of Azerbaijan joined these conventions in 2010.

Two paragraphs were added to the Article 31 of the Labour Code of our Republic in connection with junction to the European Social Charter:

n) implementation of the explanation work and giving information about flirting the employees, obvious hostile and insulting actions towards them at the workplaces or in connection with the work and prevention of such actions, taking all necessary measures for protection of the employees against such behavior.

o) implementation of the explanation work and giving information about sexual instigation matters at the workplaces or in connection with the work and prevention of such instigation, taking all necessary measures for protection of the employees against such behavior.

Those additions are the same with the edition of Article 26 of the European Social Charter and are applied to all employees employed upon the legal attitudes where the Labour Code is applied.

According to note stated in Article 290 of the Labor Code moral damage sustained to the employee means distribution of false information not corresponding to the reality by the employer or by a person in position being under his subordination about the employee for the purpose of blotting out of his honor and dignity, humiliating, calumniating him, insulting his personality, as well as the actions contradicting his morality, morals, the sense of national pride, his belief.

We consider that the sexual harassment cases refer to this provision.

Additionally it is necessary to state that in case when the employee is undergone to the sexual harassment in the process of the labour relations, the employer bears total material responsibility for the sustained damages in accordance with point "g" of Article 195. There is no instruction on payment compensation before the court in the legislation. According to the Article 62.5 of the Labor Code the employee who considers his dismissal illegal and groundless because of tendentious attitude of the employer or other persons in position towards him and on the basis of false documents and other facts may appeal to the court for the purpose of restoration of the breached rights, protection of his dignity and honor.

A norm was determined in the Code of Administrative Mistakes and the criminal code in connection with the Sexual harassment. According to the Article 60-1 called Pressure exerted against the employees undergone to the sexual pressing of the Code of Administrative Mistakes, the persons in position are fined in the amount from seventy to ninety manat for exerting influence or persecuting the employee making a complaint from the employer or the leader because of the sexual pressing.

According to the Article 151 called "Forcing to actions of sexual character" of the Criminal Code, forcing the injured person to the sexual relation and other actions of sexual character by threating him\her by destruction, damaging or seizing his\her property or profiting from his\her

material or other dependence is punished by penalty in the amount from five hundred to a thousand manat or reformatory work for two years or deprivation of freedom for three years.

According to the Article 17.2 of the Law on "Provisions of gender (men and women) equality", the employees undergone to the sexual pressing shall be compensated by the employers in the order determined in the legislation in force of Azerbaijan Republic. The order of compensation is stated in Article 290.3 of the Labor Code. According to this article the employer bears material responsibility for the moral damages sustained to the employee in the process of labor relations. The employee who claims that he\she was undergone to the moral damage shall state in his\her application the amount of his\her claim. The amount of the moral damage sustained to the employee is determined by the court taking into account the perilousness degree of the moral damage sustained to the employee, the personality of the employer and the employee, the factual cases and other objective cases necessary for adopting fair decision on the basis of the application of the employee.

The legislation doesn't divide the matter of restoration of the employees into categories in accordance with the subject of the legal disputes. The right of restoration of work concerns all employees dismissed illegally from work for any reason.

Explanation, information or prevention of the Sexual harassment at the workplaces or in connection with work is reflected in the collective contracts in accordance with the legislation. At that time prevention of humiliation of honor and dignity of the employer in the determined order is considered too. According to the Article 274.4.2 the strike committee prevents the actions making hindrance in freely coming of the employers or their representatives, as well as the employees refusing the strike, the actions attempting their health and humiliating their honor and dignity. The measures of enlightenment character are taken by the trade unions in connection with the stated matters and in this case the employees are explained that they are entitled to appeal to the court if they are undergone to the Sexual harassment, humiliation of their dignity and honor. It is the constitutional right of everybody not depending whether he\she is the member of the trade unions. This right was determined in Article 46 of our constitution. According to that Article everybody is entitled to defend his\her dignity and honor, the dignity of the personality is protected by the state. No case may give basis for humiliation of the dignity.

It is necessary to state that Article 23 of the Civil Code of Azerbaijan Republic is devoted to defense of honor, dignity and business authority.

According to point 1 of Article 26 of the European Social Charter, one of the means of provision of the right of defense of dignity at the workplace is the defense of the employees against the Sexual harassment.

Article 4 of the Law of Azerbaijan Republic on "Provisions of gender (men and women) equality" prohibits the Sexual harassment and Article 11 of the mentioned article prohibits undergoing of the employee made a complaint

for the Sexual harassment from the employer or the leader to any pressure or persecution by the employer or the leader.

In connection with it the Law on "making amendments and additions to the legislative acts in Azerbaijan" dated 01.10.2007 of the Republic of Azerbaijan brought some new provisions to the legislation of the republic for the purpose of provision of gender equality at the workplaces in connection with the application of the Law of Azerbaijan Republic on "Provisions of gender (men and women) equality". Thus, undergoing of the employee to the sexual pressing is referred to the cases when the employer bears material responsibility by making amendments to the Labor Code of the Republic of Azerbaijan, such duties as approaching equally to the employees while dismissing from work without depending on their sex, creating the same working conditions for the employees engaged in the same work without depending on their sex, not applying different disciplinary measures to the employees for the same violation, taking necessary measures in order to prevent sexual discrimination and sexual pressing and declaration of the competition for the representatives of only one sex is forbidden.

Article 26 – The right to dignity at work

Paragraph 2 – Moral harassment

Any discrimination among the employees in the labor relations on the basis of citizenship, sex, race, religion, nationality, language, dwelling place, property condition, public-social source, their age, marital status, belief, political opinion, belonging to the trade unions and other social unions, their official position, as well as the business qualities of the employees, their professionalism competence, other factors not related to the results of labour, determination of privileges and concessions directly or indirectly on the basis of those factors, as well as limitation of the rights is forbidden in accordance with Article 16 of the Labour Code of the Republic of Azerbaijan. Determination of compensations, privileges and additional compensations for the women, disables, persons under the age 18 and other people needing social defense is not considered as discrimination in accordance with paragraph 2 of the mentioned Article. Article 31 of the Labor Code includes rendering aid to the implementation of the explanation and giving information to the matter of Sexual harassment at the workplaces and in connection with the work, taking measures necessary for defense of the employees against such behavior. At the same time the principal duties and responsibility of the employer is determined in Article 12 of the Code. According to the mentioned article the principal duty of the employer includes such duties as approaching equally to the employees while dismissing from work without depending on their sex, creating the same working conditions for the employees engaged in the same work without

depending on their sex, not applying different disciplinary measures to the employees for the same violation, taking necessary measures in order to prevent sexual discrimination and sexual harassment.

The right to file a claim for restoration of the violated rights of the employee is determined in the Article 292 of the Labour Code. According to this Article With respect to the matters described in Article 288 hereof, if an employee proves that his rights or legal interests have been violated, he can appeal to the relevant bodies which deal with individual labor disputes by the procedure described in the Code and request that his rights be reinstated. In order to regain his violated rights, an employee may appeal to the court or to the relevant agency handling labor disputes before appealing to the court, as stipulated in Article 294 (Oversight for Individual Labor Disputes) hereof, or he may go on strike by himself in the manner established in Article 295(Right of an Individual Employee to Strike to Resolve an Individual Labour Dispute) hereof.. In order to regain his violated rights, an employee may also appeal through his legal representative to the relevant body which handles labor disputes... In order for the representative to defend his rights the employee should give a power of attorney to his\her representative, in accordance with established procedure.

The conditions on starting the material responsibility and proving it were determined by Article 192 of the Labor Code. According to the mentioned Article the parties shall prove the amount of the material damage and the damage itself, as well as the fact that he\she is not guilty while claiming it.

The duties and responsibility of the parties have been determined in the individual labor disputes by Article 290 of the Labour Code. According to the mentioned Article the parties shall implement the requirements of the legislation, the obligations upon the labour contract and the decree of the court settling the labour disputes upon its essence by respecting the rights of each other in the individual labour disputes. The employer infringing the rights and legal benefits of the employee shall compensate the material damages sustained to the employee determined by the court in the result of settlement of the individual labor disputes. The employer bears material responsibility for the moral damages inflicted to the employee in the process of labor relations. The employee who claims that he\she was undergone to the moral damage shall state in his\her application the amount of his\her claim. The amount of the moral damage sustained to the employee is determined by the court taking into account the perilousness degree of the moral damage sustained to the employee, the personality of the employer and the employee, the factual cases and other objective cases necessary for adopting fair decision on the basis of the application of the employee. Moral damage sustained to the employee stated in the part of note of the mentioned article means distribution of false information not corresponding to the reality by the employer or by a person in position being under his subordination about the employee for the purpose of blotting out of his honor and dignity, humiliating, calumniating him, insulting

his personality, as well as the actions contradicting his morality, morals, the sense of national pride, his belief.

No norms determining responsibility of the employer for the Sexual harassment were identified in the Labor Code. It is considered that learning of the international practice in the sexual and moral matters and improvement of the national labor legislation may be realized by the technical support of the committee upon social rights of the European Union.

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.

Answers

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

According to the Article 21 of the Labor Code, besides the organizations of the trade unions, public self-management agencies and employers representative agencies established under the specified procedure may provide activity according to their bylaws. The owner or manager of an enterprise shall provide the appropriate conditions as stipulated in collective contracts, defined by mutual agreement of this organization and public self-government agencies and employer or by the contract concluded between them for the activity of trade unions and other employees representative public self-government agencies. No political party or religious society may engage in activities at enterprises.

Pursuant to the appropriate Normative legal Acts, «Public Self-government Agencies» used in this Article shall mean other public

organizations founded by the labor team council, the boards of chairmen (directors), and inventors, rationalizers, women and veterans societies and creative association.

Submitting collective requests was determined by Article 262 of the Labour Code. According to the mentioned Article, besides submitting collective requests, employees may chose representatives to participate at meetings with the employer on their behalf, or grant them the authority to have discussions with the trade union. .

According to the Article 80 of the Labour Code of the Republic of Azerbaijan labour agreement concluded with an employee, who is a member of the trade union, shall, on the grounds specified in Article 70, items b) there is a personnel cutback at the enterprise; and d) the employee does not fulfill his job description or fails to perform his duties as defined by the employment contract and gross violation of job description as indicated in Article 72 hereof without valid reason; of this Code, be terminated by an employer by obtaining prior consent of the trade union functioning at the enterprise.

An employer intending to terminate a labour agreement concluded with an employee, who is a member of a trade union, in connection with one of the cases provided for in paragraph 1 of this article, shall apply to the trade union of the same enterprise with a well-grounded application. Evidencing documents shall be attached to the application. The trade union shall provide their well-grounded written decision at least within ten days of the date of receiving such application to the employer.

While terminating the labour contract on the initiative of the employer in the cases excluding deemed in paragraph 1 of the mentioned Article, getting permission from the trade union in advance is required.

Article 80 of the Labour Code is applied equally to all members of the trade union functioning in the enterprise. In case when the labour contract is abolished illegally with the representatives of the employees and the representatives of other representing organizations, they may appeal to the employer and to the court in order to eliminate the violation of law as the other employees.

According to the Article 21 of the Law on the Trade Unions, the members of the trade unions not dismissed from the execution of their labour function may be released from the production work by paying fee in the amount of average salary on the account of the trade union within the period of participation in the elective organs of the trade unions, in the education courses organized by them and in the seminars.

The trade union gives the leisure time which the period and the conditions are stated in the collective contracts to the members of the trade union selected for their composition and not released from his production work in order to implement the activities of the trade union.

Article 29 – Right to get information and consultation with them in the cases of collective dismissal upon reduction of staff

The employers undertake to give information about dismissal and as well as provide implementation of consultation about the ways and means contributing to softening

In the cases of collective dismissal upon the staff reduction the parties undertake to give information to the representatives of the employees about suck kin of dismissals by the employers, as well as limitation of such dismissal of the employees by taking social measures directed to providing them by employments again or their vocational training and to provide consultations about the ways and the means of mitigation of the results in order to provide rational realization of informing and consultation of the employees.

Answers

Article 29 – Right to information and consultation in procedures of collective redundancy

The principal rights of the employer have been determined by Article 11 of the Labour Code. The right to change the labour conditions or making reductions in the number of the employees, to annul the staff and the structural departments of the employee meeting the requirements of the Code and other normative legal acts was states in the mentioned Article. Violation of the duties on the employer in the field of labor relations with the basis and in the order deemed in the Code was determined in Article 12 of the Code.

Regulation of the labour relations when the owner is changed was determined in Article 63 of the Labour Code. According to the mentioned Article termination of the labour contracts of the employees in mass form by a new owner or by the employer without revealing lack of professionalism level, competence of executing the labor functions, experience that may influence damages to the ownership activities of the owner in connection with changing the owner is forbidden. The new owner or the employer shall determine the level of professionalism of the employees, the necessity of implementation of the ownership activities at the enterprise by implementing attestation of the workplaces and the employees. "Termination of the labour contracts in mass form" means termination of the labour contracts by the new owner of more than 50 percent of the employees when their number is from 100 to 500 persons, 40 percent of the employees when their number is from 500 to 1000 persons and 30 percent of the employees when their number is more than 1000 persons at the same time or at the separate times within three months from the date of possessing the ownership rights on the enterprise with the basis determined in Articles 70 (Grounds for Termination of an Employment

Contract at the Employers Initiative), 73 (Procedures for Terminating a Term Employment Contract) and 75 (Termination of Employment Contracts in Cases Provided Therein)

According to paragraph 1 of Article 77 of the Labour Code if an individual employment contract is terminated due to a reduction in employees or staff, the employee shall be officially notified by the employer two months in advance in cases provided by Article 70, para. b of the mentioned Code (there is a personnel cutback at the enterprise). In this case the agreement of the trade union of the enterprise shall be obtained in advance in accordance with paragraph 1 of Article 80 of the Labour Code. Naturally, the trade union will not give permission to the reduction of the number of the employees when the employer doesn't substantiate the reduction enough and in the result the employer will not be able to reduce them. Thus, improvement of the national legislation is deemed by taking into account the international practice for the purpose of elimination of the realization of the reduction of the employees in the preconceived form.

According to the Article 16 of the Law on "Employment" of the Republic of Azerbaijan , of the employees in connection with rationalization of production, improvement of the organization of labor, liquidation of the enterprise, reduction of the number or the staff of the employees is realized by giving written information beforehand (at least three months prior) to the organs of the relevant trade unions, by conducting negotiations about protection of rights and interests of the employees excluding the cases deemed in the legislation.

The employers (their unions) and the relevant executive power agencies implement joint consultations about the matters on employment with the suggestion of the trade unions. According to the available legislation the measures on rendering assistance on the employment upon the results of the consultation may be deemed in the collective contracts (agreements).

It is also reflected as following in Article 11 of the Law on "Trade Unions": If the liquidation of the enterprise or its structural subdivisions at the initiative of administration can result in full or partial termination of production, reduction of working places or deterioration of labour conditions, such measures are to be conducted with preliminary notification of corresponding trade unions prior not less than three months and conducting of negotiations on the observance of employees rights and interests, unless otherwise specified by the legislation.

It is necessary to state that according to the Article 16.2.1 of the Law on "Employment" of the Republic of Azerbaijan, the trade unions may give suggestions to the employers and their upper organs on delay or temporary cessation of the measures related to loosing free of the employees in mass form.

According to the Article 71 of the Labour Code, the employer takes measures determined by the Labor Code while reducing the number of the

employees or the staff. But supply of those employees by employment is not considered as a duty of the employer in the Labor Code.

All paragraphs of Article 70 of the Labour Code concern the cases when the employer may put an end to the labor contracts in the unilateral order. But paragraphs a and b of the Article concern collective dismissals of the employees. Thus, the labour contracts of all employees are abolished when the enterprise is liquidated. At the same time collective reductions are implemented while making reductions in the number of the employees and the staff (liquidation of the structure departments, sections, reduction of the specialists having certain specialization and etc.), reduction of the individual persons is met in the rare cases.

According to parts 8 and 9 of Article 77 of the Labour Code, the employers involves the children or the persons considered as persons lost their parents and deprived from protection of their parents determined by the Law on "Social defense of the children lost their parents and deprived from protection of parents" of the Republic of Azerbaijan dismissed in connection with the reduction of workplaces to the necessary vocational training on their own account in order to be employed at that enterprise or other enterprise.

The workplace and the position of the employee shall be preserved without depending on the property type and the organizational-legal form when the employee is doing his military service excluding the liquidation of the enterprise in the order determined in the legislation. The persons called to the military service are entitled to return back to his previous position or to the position equal to it within at least 60 days after being demobilized.

Certain exclusions are allowed in the legislation while making reductions. Thus, the list of the persons entitled to be kept at work during the reduction is given in accordance with Article 78 of the Labor Code:

1. The employees possessing the highest degree of his\her specialization and the level of professionalism required for the execution of the labor functions upon certain positions shall be kept at work while implementing reduction of the number of the employees or the staff in the relevant cases. The level of professionalism of the employee is determined by the employer.
2. The employer prefers to keep the following persons at work when their specialty and level of professionalism is the same: member of martyr's family, the participants of the war, the wives (husbands) of soldiers and officers, the persons who have two and more underage children in their responsibility, the persons received labor disability at that enterprise, special temporary dismissed persons, the persons having equal conditions and the persons having the status of refugee.

Other persons deemed in the collective contracts or the labor contracts.

As well, employees whose employment contracts may not be terminated are stated in Article 79 of the Code.

1. By the employer shall be prohibited from terminating the employment contracts of the following individuals:

Pregnant women, as well as women having under three years old children, the men bringing up alone under three years old children;

The employees whose earning place is the enterprise where he is employed and bringing the children who go to school;

The employees who are temporary disabled;

employees with pancreatic (insular) diabetes;

individuals because they are members of trade unions or other political parties;

workers with dependent family member with limited health under 18 years or disable person of group I;

Termination of the labour contract of the employees when he\she is on holiday or on official journey, as well as who didn't participate in the collective negotiations.

It is necessary to state that the provisions stated in the present Article are applied while terminate the labour contracts in connection with the liquidation of the enterprise.