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**EUROPEAN SOCIAL CHARTER (revised)**

1<sup>st</sup> National Report on the implementation of  
the European Social Charter (revised)

submitted by

***THE GOVERNMENT OF AZERBAIJAN***

for the period 1 November 2004 - 31 December 2006

on articles 1, 9, 20, 24.

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Report registered by the Secretariat on 4 December 2007



**First Report of the Republic of Azerbaijan  
for the implementation of the articles 1, 9, 20, and 24 of the  
European Social Charter (Revised)**

For the period **1 November 2004** to **31 December 2006** 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 nonmetropolitan territories to which, in conformity with Article L, they have been declared applicable: **Republic of Azerbaijan**<sup>1</sup>

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

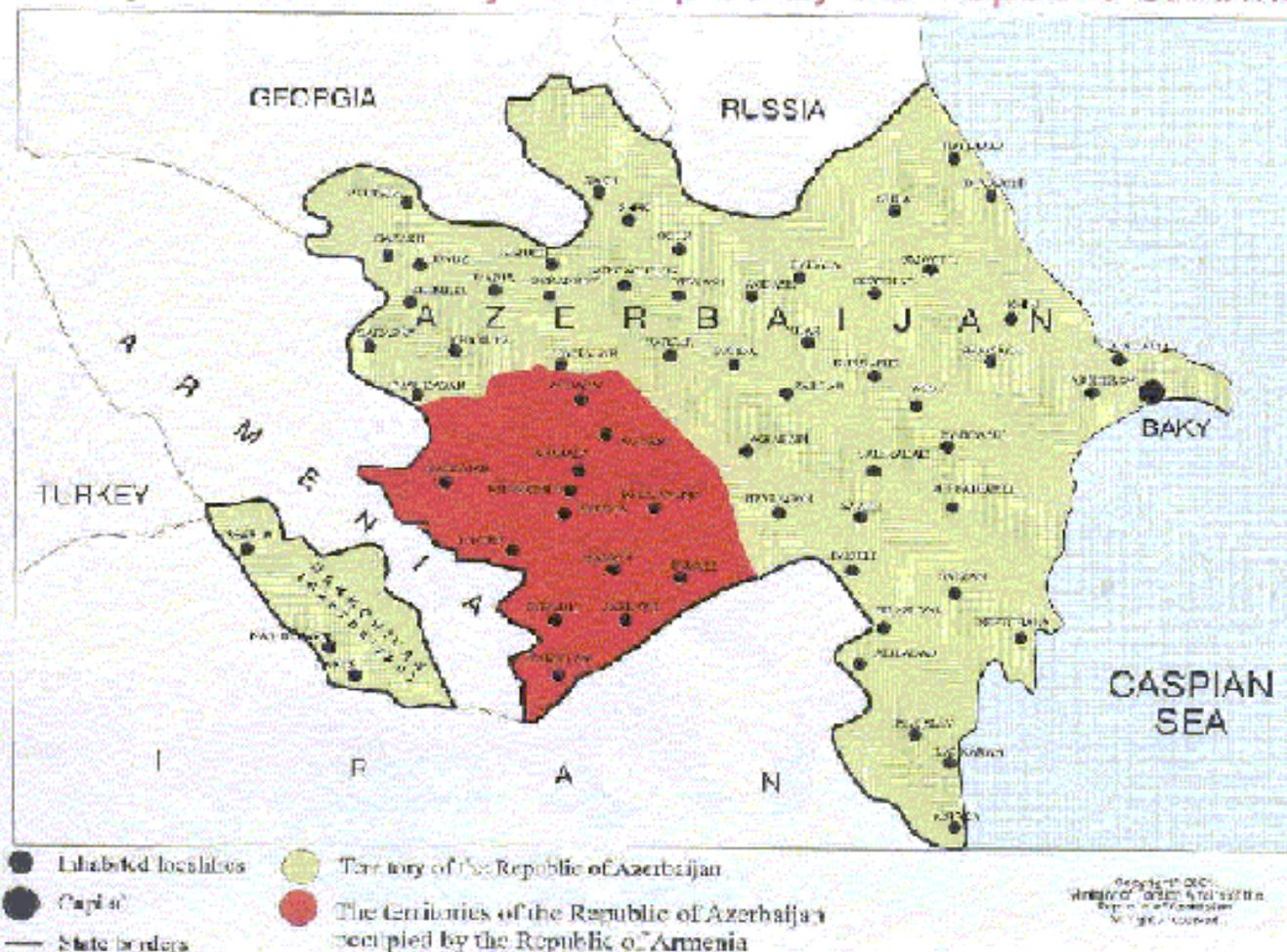
- Azerbaijan Confederation of Trade Unions
- National Confederation of Employers' Organisations<sup>2</sup>

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

<sup>2</sup> Please state whether you have received any observations from these national organisations of employers and workers, and supply those they have asked you to transmit. The information provided would be usefully supplemented by your communicating a summary of all other observations, to which you might add any comments that you consider useful.

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



## **ARTICLE 1: THE RIGHT TO WORK**

### **ARTICLE 1 PARA. 1**

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

to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;"

### **Question A**

Please indicate the policy followed by your government in attempting to reach and maintain full employment. Please supplement with details of the measures and programmes implemented to achieve as high and stable a level of employment as possible.

Please indicate, if possible, the trend in total employment policy expenditure over the past five years, including the relative shares of "active" (job creation, training, etc.) and "passive" (financial compensation, etc.) measures.

Please indicate the active policy measures taken in order to favour access to employment of groups most exposed to or affected by unemployment (eg. women, the young<sup>3</sup>, older workers, the long-term unemployed<sup>4</sup>, the disabled, immigrants and/or ethnic minorities). Please give indications on the number of beneficiaries from these measures and information, if possible, on their impact on employment.

### **Response to Question A**

Social and political stability gained in Azerbaijan in the recent period has opened ways for comprehensive socio-economic reforms. Heightened attention to the social and economic sphere has led to enactment of democratic labour and employment legislation in line with modern standards and its continued improvement.

A proof of the above statement was evident on 7 April 2003 when the President of the Republic of Azerbaijan signed an Executive Order endorsing the State Programme on Application of Standards Provided for in the European Social

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<sup>3</sup> Aged between fifteen and twenty-four.

<sup>4</sup> Persons without employment for over one year and seeking employment.

Charter. The Programme envisaged assessing the correspondence of the national normative-legal framework to the Charter standards and, based on the assessment results, requisite actions to draft legislative proposals, obtain approvals from the relevant authorities and achieve their enactment and enforcement.

The employment policies prevalent in the Republic of Azerbaijan are manifested in a number of statutes. First of all, Articles 35, 36, 37 and 38 of the Constitution of the Republic of Azerbaijan establish the basics of the rights to work, vacation, recreation and social protection. The Constitution states that everyone has a right to choose freely one's vocation, profession, occupation and a job. Nobody can be forced to work. Everyone has a right to work in safe and healthy conditions and, without any discrimination, receive recompense that is not lower than the officially mandated minimum wage.

The Republic of Azerbaijan was the first amongst members of the Commonwealth of Independent States to enact in 1999 a substantially novel Labour Code in tune with demands of market economy. Enforcement of the Labour Code was accompanied by adoption of new normative-legal acts, which, taken together with the Code, formed the national framework in the areas of labour relations, compensation for work and, especially, labour protection and safety.

Presently, in the scope of the above-mentioned State Programme, the Labour Code was assessed from the point of its compliance to the European Social Charter; specific proposals were developed on harmonisation and improvement of the Code.

In accordance with labour legislation, collective bargaining over social and economic issues occurs at various levels: at the national level it feeds into the Master Collective Labour Agreement, within various sectors there are sectoral (tariff) agreements, and at enterprise level there is a union contract (collective bargaining contract).

State Labor Inspectorate (SLI) established in 1997 under the Ministry of Labor and Social Protection of the Population of Republic of Azerbaijan exercises state control over compliance with the requirements of Labor Code of Azerbaijan Republic and other labor laws and regulations. SLI shall have the right to require those persons guilty of Labour legislation violations to cease their violations of the law, to hold these persons accountable in cases and the manner determined in the The Code of Administrative Offences and to table before the relevant authorities whether to hold said persons liable for other infringements.

After accession to the International Labour Organisation (ILO) the Republic of Azerbaijan has ratified a number of labour conventions, i.e. the Employment Service

Convention No. 88, the Employment Policy Convention No. 122, the Human Resources Development Convention No. 142, eight conventions on youth labour, the Convention No. 138 concerning Minimum Age for Admission to Employment, the Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. Active co-operation with ILO resulted in opening an ILO representative office in Azerbaijan in 2002 and appointment of an ILO National Correspondent.

A new “Law of the Republic of Azerbaijan on Employment” was enacted in July 2001 to correspond to international standards and to reflect social, political and economic change that had occurred in the country.

In accordance with the “Law of the Republic of Azerbaijan on Employment” the state assists a citizen in effectively ensuring for him/her a freely selected occupation.

The Employment Law defines legal, economic and institutional grounds of state policy of promoting employment as well as provides state guarantees for the employed and social protection of the unemployed.

According to Article 6.2 of the Law on Employment, main features of the state employment policy are as follows:

- assuring all citizens equal rights in selecting labour and occupation, regardless of their race, ethnicity, religion, language, gender, marriage status, social origin, place of residence, property situation, beliefs, affiliation with a political party, a trade union or other public organisation;
- protecting lawful labour and business-related initiative of the citizens, promotion of entrepreneurship;
- creating conditions for free expression by the citizens of their preferences in selecting the type of work and occupation;
- providing social protection to the unemployed, assisting the citizens who experience difficulties in finding suitable employment;
- facilitating employment of the citizens outside of the bounds and of the foreigners and stateless persons within the Republic of Azerbaijan.

The Law grants the citizens of the Republic of Azerbaijan a right to choose vocation, profession, occupation and a job.

The Law also mandates that the state provides additional protection to vulnerable groups and to citizens experiencing difficulties in finding suitable employment (youth under the age of 20; single parents and multi-children parents having under-age children; women with disabled children; persons with less than two years left to the retirement age; the disabled; former convicts; internally

displaced persons; war veterans; survivors of the killed-in-action family members) by generating additional jobs or establishing specialised enterprises and organisations (including organisations and institutions for the disabled), providing specialised training and other means.

Article 9.4 of the Law establishes a Regulation for setting a job quota for the citizens needing social protection and experiencing difficulties in finding suitable employment and also identifies a List of organisations where the quota is not applicable. It also stipulates taking officials to administrative responsibility for breaching Articles 17.2, 17.3, 17.4, 17.8 and 17.9 in the way prescribed in Article 29.2 (including charging employers who refuse to employ a disabled person or another person in need of social protection within the available quota).

One of the major directions in current government policy is efficient use of labour resources realising a state employment policy to address social efficacy of employment.

Since 1995 sustained economic growth, stable macroeconomic indicators, institutional reforms in line with market economy precepts, development of economy's social focus, improved life standard have all contributed to job generation and facilitated employment.

Along with creating new jobs and social protection of laid-off workers, the government also focuses on crafting a mechanism of adjustment for the pace and socio-economic specificities of labour market shifts and on more efficient utilisation of the national labour potential.

By the Executive Order 1068 of 26 October 2005 the President of the Republic endorsed the Employment Strategy of the Republic of Azerbaijan for 2006 – 2015 with the purpose of establishing a state employment policy, ensuring social efficacy of employment and efficient use of labour resources. On 15 May 2007 the President signed an Executive Order approving the State Programme for Implementation of the Employment Strategy of the Republic of Azerbaijan.

The principal objective of the Program is to ensure that the priority tasks identified in the Employment Strategy of Azerbaijan Republic (2006-2015) for 2011 approved by Presidential Decree No.1068 of October 26, 2005 are accomplished in order to create the political, economical, social and institutional environment aiming at providing effective employment development of the nation.

Goals of the State Program include:

- Implementation of a macroeconomic policy aimed at ensuring economic growth and effective employment;

- Improvement of the national legal framework in compliance with the international legal practices of employment;
- Improvement and institutional development of the labor market;
- Improvement of the quality of the labor force and development of competitive human resources on the labor market;
- Ensuring continuous development aimed at providing dignified labor;
- Development of employment of socially vulnerable groups;
- Reinforcement of social protection of job-seekers and unemployed individuals.

The Employment Strategy to be realised in the coming ten years will be implemented over two complementary phases.

During the first phase covering the years 2006-2010 the Programme aims at a significant reduction in the current unemployment rate, strengthening social protection of socially vulnerable groups and improving the labour market. Along with that, the Programme will facilitate improving quality and enhancing competitiveness of labour resources and an overall increase in economic activity.

In the second phase of the Programme (2011-2015) the focus of attention would shift to promoting labour demand, creating a business-friendly environment in accordance with best international practice, deepening the structural adjustment, further increasing investment activity and promoting high rates of development of human capital.

Several measures are taken for the development of employment of socially sensible groups that are indicated in “The State Program on the Implementation of Employment Strategy of the Republic of Azerbaijan”:

- Vocational training, retraining, job creation and implementation of appropriate measures in other spheres for the development of youth employment;
- Determination of measures for the strengthening of employment of refugees and IDPs;
- Provision of gender equality in the field of employment;
- Raising the competitiveness of women in labour-market;
- Provision of integration of disabled into society, establishment of appropriate conditions for raising the level of their employment;
- Establishment of joint work mechanism of punitive institutions and respective employment bodies and appropriate information system in order to organize the vocational education system of persons to be released from punitive institutions in line with demands of labour market.

At the same time, the following programmes have been adopted and are now being implemented in Azerbaijan: the State Programme for Socio-Economic Development of the Regions for 2004-2008 (approved by the Presidential Decree of 11 February 2004); the State Programme for Improving Living Conditions of and Increasing Employment among Refugees and Internally Displaced Persons (approved by the Presidential Decree of 1 July 2004); the State Youth Programme for 2005-2009 (approved by the Presidential Decree of 30 August 2005); the State Programme for Improving Social Protection of Elderly Citizens (approved by the Presidential Decree of 17 April 2006); and the ILO Decent Work Country Programme for 2006-2009. Along with that, the Presidential Decrees on Implementation of the Government Policy for Women and on the Government Policy for Youth establish employment preferences for these two groups.

Increasing youth employment, up-to-date vocational training for the youth, engaging the youth in paid public works and through other active employment efforts are considered the priorities in running the State Youth Programme for 2005-2009.

The Employment Service is doing its part for the implementation of this Program. The State Employment Service, with assistance from UNDP and ILO, commissioned the Baku Regional Vocational Training Centre for the benefit of job seekers and the unemployed. Another training centre is scheduled to open in the district of Goychay.

Opening of regional training centres will effect a qualitative change in training efficiency (especially of the young people) by focusing on module training programmes tailored to real market needs.

With the purpose of educating young specialists in highest international standards, on 16 April 2007 the President of the Republic signed the Executive Order 2090 approving the State Programme on Study Abroad of the Youth.

SME development workshops have been organised in a number of cities and administrative districts, including Shamakhi, Imishli, Aghjabadi, Aghdash, Bilasuvar, Shaki, Zagatala and Lankaran.

Relevant training programmes were developed to educate the young people and motivate their entrepreneurship activities. The Employment Service developed a short-term flexible course on the Basics of Business for the benefit of job seekers and the unemployed and specially promoted attendance of young families at these courses. The courses informed the trainees on best business practices of entrepreneurs, current economic situation and business perspectives.

Complex measures have been implemented for the promotion of youth entrepreneurship and employment.

Training, advise, information services and vocational training courses on the essentials of entrepreneurship for the young people, who want to engage in entrepreneurship and are demobilized from army were organized in the cities and regions of the republic (Baku, Genje, Ali-Bayramli, Mingechevir, Yevlakh, Lenkeran, Sheki, Quba, Khanlar, Goychay, Masalli, Kurdemir, Sabirabad, Shemkir, Qebele, Shamakhi, Agdash, Imishli, Agjabedi, Bilesuvar and Zakatala). About 50 young persons participated in each training.

Seminar-trainings on the essentials of entrepreneurship for newly started young entrepreneurs and farmers were held in Sabirabad, Samukh, Hajigabul, Salyan, Devechi and Kurdemir. About 50 young persons participated in each training.

Exhibitions of young entrepreneurs were held throughout the republic in 2005 and 2007. Purpose of these events was to increase the role of youth in strengthening of Azerbaijan's economic potential, to stimulate the entrepreneurship activities of youth, to create conditions for the business negotiations of young entrepreneurs, to attract the attention of public and clients to the services that are produced by young entrepreneurs and are offered in market. About 150 entrepreneurs attended at the exhibitions.

Career Days were held for young men and women in 2006.

The network of "The Youth House" social service institutions are being created in Mingechevir, Agcabedi, Genje and Barda.

The championship of republic on "Students in free entrepreneurship" game was held with participation of the teams of 10 higher education institutions for the purpose of developing youth's knowledge and skills. The overall participation of 250 students in the activity was ensured.

With the purpose of defining new directions of activity in line with state youth policy, to assist a harmonious development of youth, to attract youth to the socially useful activities and to propogate a healthy way of life among youth "Youth social initiatives" festival-competition was held. About 2000 young men and women were covered in the context of festival-competition (concert programs, camps, surveys and other activities were organized).

The Azerbaijan National Confederation of Entrepreneurs' (Employers) Organizations (ANCEO) carried out "Start your own business" and "Develop your business" programs in the context of cooperation with International Labour Organization in order to increase the opportunities of entrepreneurship activity of

youth for the purpose of the provision of their employment. ANCEO also sends young managers to European countries through the “Manager Training Program” of the Netherlands to increase the business knowledge and skills of youth and to learn the work practice of developed countries.

One of the priority areas for the Employment Service is social and professional re-adaptation of young men who are discharged from the military service, providing them with employment opportunities suitable for the needs of the labour market, giving them professional training in new technologies, computer literacy, business and management skills.

As a result of achievements in creating a youth employment network, at the Millennium Summit UN Secretary General Kofi Annan put the Republic of Azerbaijan in top ten countries in terms of youth employment opportunities.

The government established the legislative framework in the area of migration policy by enacting requisite statutes, i.e. the Laws of the Republic of Azerbaijan on Entering and Leaving the Country and the Passports (14 June 1994), on Legal Situation of Foreigners and Persons without citizenship (13 March 1996), on Labour Migration (28 October 1999). On 25 July 2006 the President endorsed the State Migration Programme for 2006-2008.

Special attention was paid to rights and social protection of labour migrants. With this purpose in mind the government of Azerbaijan intensified co-operation with migration destination countries and signed bilateral agreements with them on labour migration and social protection of migrants. Efforts in this area have been continued.

OSCE, IOM and the Government of Azerbaijan have co-operated in developing the Action Plan for Combating Human Trafficking. To aid anti-human trafficking efforts, a migrant advisory service was established at the Migration Department of the Ministry of Labour and Social Protection of Population for the benefit of prospective migrants.

A number of government decrees and executive orders were signed to protect rights and lawful interests of citizens, to establish mutual confidence and transparency between government authorities and private sector, and to improve business environment. A system of state support for business has been formed and continues to develop.

The right to free entrepreneurship is also provided in Article 59 of the Constitution of the Republic of Azerbaijan. A number of statutes exist to regulate and facilitate this economic sector, state support system for small businesses has been established. The legislative framework of doing business in Azerbaijan is

established by the Civil Code of the Republic of Azerbaijan, Laws on Business Activity, on State Registration of Legal Entities, on Protection of Foreign Investment, on Privatisation of State Property, on State Support to Small Business and a host of others. Most of the mentioned legislation was adopted after carefully considering best international practice and recommendations of international institutions.

Regular and successive actions intended to strengthen regional business development and use, regional economic potential more efficiently have characterised a new phase of economic development.

This has been confirmed by adoption of the State Programme for Socio-Economic Development of the Regions for 2004 – 2008, signed into action by a decree of the President. The Programme enumerates pressing government actions for developing the regional economy and government policy priorities for the next five years.

Principal goals of the Programme are better utilisation of economic potential of the regions, increased employment and, consequently, an impetus for dynamic economic development of the nation.

The Programme also envisions revival and regeneration of traditional regional production activities, opening new production facilities, efficient use of local resources, creating infrastructure requisite for regional development, job generation, investment promotion, etc.

The Programme calls for opening of 600,000 new jobs in five years. In total more than 600,000 new jobs were generated between 1 October 2003 and September 2007. Majority (82%) of new jobs are being created in non-oil sector.

The aggression of Armenia against Azerbaijan resulted in military occupation of 20% of the territory of the Republic of Azerbaijani and produced about one million of refugees and internally displaced persons (IDPs), who suffered a loss of about 300,000 productive jobs. The employment rate among refugees and IDPs is still quite low.

With the purpose of strengthening social protection and employment of refugees and IDPs, on 1 July 2004 the President of the Republic signed the Executive Order approving the State Programme for Improving Living Conditions of and Increasing Employment among Refugees and Internally Displaced Persons.

In implementing this Programme the Employment Service conducts specific actions for extending employment opportunities of refugees and IDPs, providing them with jobs, attracting them to training programmes, engaging them in temporary paid public works, etc.

Refugees and IDPs can also find work through various Labour Exchanges and Labour Fairs conducted out in the regions.

Along with the above-mentioned efforts, another factor positively affecting employment of socially vulnerable groups (youth under the age of 20; single parents and multi-children parents having under-age children; women with disabled children; persons with less than two years left to the retirement age; the disabled; former convicts; internally displaced persons; war veterans; survivors of the killed-in-action family members) is a quota job system established for their benefit.

Job quoting is stipulated in relevant legislation, e.g. the Law on Employment states that the state provides additional protection to vulnerable groups and to citizens experiencing difficulties in finding suitable employment by generating additional jobs or establishing specialised enterprises and organisations (including organisations and institutions for the disabled), providing specialised training and other means.

The Resolution 213 of the Cabinet of Ministers of the Republic of Azerbaijan establishes job quoting for the above-mentioned groups. The quota is set depending on the situation in the local labour market, but in any case not higher than 5% of the total employee count.

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Social impact of this provision lies in giving work to the segments most vulnerable to acute labour market competition due to age, family, physical and other reasons.

In accordance with Article 12 of the Employment Law, in February 2002 the Cabinet of Ministers of the Republic of Azerbaijan identified regions for preferential job generation where employment should be promoted as matter of priority.

In scope of the joint project of the government of Azerbaijan and UNDP on Implementation of the National Employment Strategy and Development of National Social Protection System, specific actions to organise paid public works are taken with a view of reducing poverty and increasing employment chances of job seekers and the unemployed as well as socially vulnerable groups.

The main objective in organising paid public works is to provide temporary employment to citizens who are seeking jobs or unemployed. It should be noted that socially vulnerable citizens are given preference in employment for paid public

works, such as city improvement and beautification, repair and renovation of public facilities, such as schools, hospitals, kindergartens and roads.

Relevant actions are undertaken to develop small and medium business and promote foreign investment in the oil sector and other sectors of the economy to be able to supply a job to every able-bodied citizen.

Specific actions are summarised in annual national and territorial employment programmes, and the State Employment Service takes active steps to implement these actions with the purpose of employment generation. Notable examples are labour fairs, organisation of labour exchanges in major cities, establishment of enterprises connected to employment service units, etc.

It was decided to implement following measures to ensure full employment of citizens looking for job and unemployed ones through the Employment Service Center: the provision of citizens looking for job and unemployed ones with regular work, involvement in vocational training and retraining courses, involvement in paid public works of temporary character, the organization of Labour Fairs, the establishment of Regional Vocational Education Centers and the conduct of vocational advices for the purpose of the organization of vocational training courses, the establishment of vocational cabinets, the payment of allowances for unemployment.

The payment of unemployment benefits is a passive measure, and others are active ones.

From the funds that were allocated for the financing of social protection of population through the Employment Service Units, 22.5% (289.204.54 AZN) was spent for active, and 77.5% (996.266.46 AZN) for passive measures in 2004. In 2005, this percentage was 23.5% (392.413.54 AZN) and 76.5% (1.289.199.36 AZN), and in 2006, 19.3 % (387.467,29 AZN) and 80.7% (1.622.123,59 AZN) accordingly.

As a consequence of increase in the average monthly wages in the Republic and the maximum limit of the unemployment allowance, the amount of funds spent on passive measures increased by 4.2% in 2006.

At present, State Employment Agency institutions work to intensify active measures.

## Question B

Please indicate the trends in employment<sup>5</sup> covering all sectors of the economy. In connection with this, indicate as far as possible, the activity rate<sup>6</sup>, the employment rate<sup>7</sup> and the breakdown of employment by region, by sex, by age, by employment status (employed, self-employed), by type of employment (full time and part time, permanent and fixed term, temporary), and by sector of activity.

Please give the trend of the figures and percentages of unemployed in your country, including the proportion of unemployed to the total labour force. Please give a breakdown of the unemployed by region, category, sex, age and by length of unemployment.

## Response to Question B

A major objective of national economic policy is social improvement. Implementation of decisions taken in this regard would allow increasing people's incomes (average monthly wages, pensions, monetary benefits, including an unemployment benefit) by the year 2008. At the same time, monetary and credit policies serve to keep inflation at a low, manageable level and reduce other uncertainties, thus contributing to improvement of the investment climate and employment facilitation.

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<sup>5</sup> Reference is made to the definition of employment adopted by the Thirteenth International Conference of Labour Statisticians (Geneva, 1982) or any further versions.

<sup>6</sup> The activity rate represents the total labour force as a percentage of the population aged 15 years and over and living in private households. The labour force is defined as the sum of persons in employment plus the unemployed.

<sup>7</sup> The employment rate represents persons in employment as a percentage of the population aged 15-64 years and living in private households.

**Sectoral employment trends**  
**Table 1. Employment by economic sector, '000**

	2004	2005	2006*	% of total
Total economy	3809.1	3850.2	3973	100
Agriculture, hunting and forestry	1502.7	1510	1548	39
Fishing, fish farming	3.3	3.8	4.3	0.1
Mining	41.9	42.2	45	1.7
Manufacturing and processing	181.2	188.7	195	4.9
Electricity generation, natural gas and water production and distribution	39.8	39.7	40.2	1
Construction	190.6	194.4	222.8	5.6
Wholesale and retail trade, automobile repairs, repair of consumer durables and personal items	630.7	638.8	650.4	16.4
Hotel and restaurant services	12.4	14.2	22	0.6
Transport, warehousing and communication	190.5	191.5	201.8	5.1
Financial services	13.1	13.2	13.4	0.3
Real estate operations, rent and consumer service	100	100.6	106.7	2.7
Public administration, defence, social protection	269.7	270.5	271.2	6.8
Education	330.8	335.3	339.4	8.5
Public health and social services	174.6	177.2	180.5	4
Utilities, other social and personal services	127.3	129.5	131.7	3.3
Activities of organisations with a right to inviolability	0.5	0.6	0.6	0
Total employment in 2006: 3,973,000 (2,054,100 male and 1,918,900 female)				
Source: State Statistical Committee of the Republic of Azerbaijan, Azerbaijan Statistical Yearbook: 2007				

**Table 2. Industrial employment by sector, '000**

	2004	2005	2006
<b>Total industry</b>	175.3	179.3	185.6
Including:			
Mining	39.6	40.8	40.4
<b>Manufacturing &amp; processing</b>	100	101.9	106.4
including:			
Food processing and production, including beverages and tobacco	16.6	18.4	19
Carpet weaving, textile and clothing industry	13	13	15.1
Production of leather and leather products, shoe-making	1.1	1	1.1
Firewood production and wood processing	1.5	1.2	1
Cellulose and paper production, publishing	2.4	2.4	2.4
Production of petroleum products	6.8	6.7	6.5
Chemical industry	11.4	11	11.5
Rubber and plastic production	1.6	1.8	2.3
Production of other non-metallic items	6	6.6	6.9
Metal works and production of ready-made metal products	13.1	13.5	13.7
Production of machines and equipment	9.7	9.5	9.2
Production of electrical, optical and electronic equipment	4.6	4.5	4.8
Production of transportation vehicles and equipment	8.9	9.1	10
Other industrial sectors	3.3	3.2	2.9
Electricity generation, natural gas and water production and distribution	35.7	36.6	38.8
Source: State Statistical Committee of the Republic of Azerbaijan, Azerbaijan Statistical Yearbook: 2007			

## Economic activeness of population

**Table 3. Labour force (%)**

	2004	2005	2006
Total economically active population,	100	100	100
Total employment	98.6	98.6	98.7
Unemployed registered by the Employment Service	1.4	1.4	1.3
Men	1.3	1.3	1.3
Women	1.6	1.6	1.4
Source: State Statistical Committee of the Republic of Azerbaijan, Azerbaijan Statistical Yearbook: 2007			

**Table 4. Employment level by property type (000)**

	2004	2005	2006
Total employment	3809.1	3850.2	3973
of them:			
state	1209.3	1229.8	1271.9
Non-state:	2599.8	2620.4	2701.1
of them:			
individual	1465.8	1466.3	1500.4
private	295.9	347.3	390.7
municipal	18.2	17.7	16.8
Foreign investment and joint ventures	53.9	58.7	65.2
religious	32	30.8	30.5
Free-lance	734	699.6	697.5
Source: State Statistical Committee of the Republic of Azerbaijan, Azerbaijan Statistical Yearbook: 2007			

**Table 5. The division of employed population by main workplace and sex (for 2006)**  
*(By total and sex division, in percentage)*

Main workplace	Women	Men	Sex division	
			Women	Men
State institutions, offices and organizations	24,8	24,6	47,3	52,7
Non-governmental institutions, offices and organizations	7,0	16,1	27,8	72,2
Family farms	40,1	29,7	54,7	45,3
Entrepreneurship activity as individual person without establishing legal entity	0,8	3,4	18,0	82,0
Hired employees by individual person	2,1	6,7	22,0	78,0
In private labour activity	25,0	19,2	53,7	46,3
In production co-operatives	0,2	0,3	42,3	57,7
Total, percentage	100	100	47,2	52,8
Thousand people	1 880,2	2 105,7		

The number of women in family farms was 9.4% more than men, and the number of women engaged in private labour activity was 7.4% more than men.

Source: The State Statistics Committee of Azerbaijan Republic "The women and men in Azerbaijan-2007".

**Table 6. Hired employment by sector ('000)**

	2004	2005	2006
Total economy	1263.9	1300.4	1334
Agriculture, hunting and foresting	35.8	44.9	46.4
Fishing, fish farming	0.6	0.8	0.8
Mining	39.7	40.8	41
Manufacturing and processing	96.8	108.1	107
Electricity generation, natural gas and water production and distribution	35.9	37.6	40.1
Construction	59.2	60.5	65.2
Wholesale and retail trade, automobile repairs, repair of consumer durables and personal items	246.6	251.8	261.9
Hotel and restaurant services	8	13.4	12.8
Transport, warehousing and communication	85.5	88.4	89.9
Financial services	9.7	11.5	13.4
Real estate operations, rent and consumer service	56	57.1	61.5
Public administration, defence, social protection	50.6	49.5	50.4
Education	330	326.7	330.2
Public health and social services	130.2	131.9	134.4
Utilities, other social and personal services	79.3	77.4	78.9
Activities of organisations with a right to inviolability	-	-	-
Source: State Statistical Committee of the Republic of Azerbaijan, Azerbaijan Statistical Yearbook: 2007			

**Table 7. Hired employment by economic regions in 2005 ('000)**

<b>City, region</b>	<b>2005</b>
Baku	550.9
Absheron economic region	72.0
Ganja-Gazakh economic region	139.8
Shaki-Zagatala economic region	69.1
Lankaran economic region	67.9
Guba-Khachmaz economic region	49.0
Aran economic region	209.4
Upper Garabagh economic region	41.4
Kalbajar-Lachin economic region	19.9
Mountainous Shirvan economic region	27.2
Nakhchivan Autonomous Republic	53.8
<b>Total:</b>	<b>1300.4</b>
Source: State Statistical Committee of the Republic of Azerbaijan. Labour Market, 2006	

**Table 8. Dynamics of the share of unemployed in the total labour force (person)**

Years	Total	Of them		Registered unemployed as % of economically active population
		men	women	
2004	55945	26669	29276	1.45
2005	56343	27265	29078	1.44
2006	53862	26323	27539	1.34
Source: State Statistical Committee of the Republic of Azerbaijan, Azerbaijan Statistical Yearbook: 2007				

**Table 9. Job provision by the Employment Services in 2006, '000**

Job seekers	Applied to get a job		Job placements
	person	percentage	(persons)
Total	49220	100	28076
Currently working	141	0.3	69
Currently out of work	49079	99.7	28007
of them:			
Above the working age	1070	2.2	273

**Division of registered unemployed population by certain types:**

**Table 10. The division of unemployed population by economic regions of the republic  
(people)**

Name of the region	As of 1 January 2006	As of 1 January 2007
Baku city	9828	9634
Absheron economic region	1091	902
Genje-Qazakh economic region	3636	3677
Sheki-Zaqatala economic region	2968	2647
Lenkeran economic region	2360	2148
Quba-Khachmaz economic region	1489	1436
Aran economic region	13984	13478
Upper Karabakh economic region	7083	6549
Kelbejer-Lachin economic region	4043	3834
Highland Shirvan economic region	1957	1925
Nakhichevan economic region	7904	7632
<b>Total: by Republic</b>	<b>56343</b>	<b>53862</b>

**Table 11. The division of unemployed population by education, '000**

Education level	as of 1 January 2006		as of 1 January 2007	
	Total	of them: women	Total	of them: women
Tertiary	17,276	6,725	17,545	6,633
Specialised secondary	19,587	11,082	17,868	9,974
General secondary	17,013	9,927	16,856	10,096
Incomplete secondary	2,457	1,344	1,593	836
<b>TOTAL</b>	<b>56,343</b>	<b>29,078</b>	<b>53,862</b>	<b>27,539</b>

**Table 12. The division of unemployed population by age and gender, persons**

Age	as of 1 January 2006		as of 1 January 2007	
	Total	of them : women	Total	of them : women
16-19	211	101	178	96
19-24	9,733	5,256	9,420	5,017
25-35	16,393	9,158	17,528	8,963
above 35	29,460	14,563	26,736	13,463
<b>TOTAL</b>	<b>56,343</b>	<b>29,078</b>	<b>53,862</b>	<b>27,539</b>

**Table 13. The division of unemployed population by duration of unemployment, persons**

Time out of work	as of 1 January 2006			as of 1 January 2006		
	Total	of them:		Total	of them:	
		women	young people under age of 35		women	young people under age of 35
Up to 1 month	236	90	141	260	80	161
1-3 months	448	149	226	545	170	337
3-6 months	5,578	1,977	2,338	5,925	1,927	2,370
6-12 months	12,332	6,834	5,898	12,660	7,186	6,898
Over a year	37,749	20,028	18,280	34,472	18,176	17,360
<b>TOTAL</b>	<b>56,343</b>	<b>29,078</b>	<b>26,883</b>	<b>53,862</b>	<b>27,539</b>	<b>27,126</b>

Based on the analysis of the division of unemployed by the country, it could be said that the highest level of unemployment is viewed in Aran economic region, because this region is purely agrarian region and is densely populated by forcibly displaced persons as a result of Armenian aggression, at the same time the second highest level of unemployment is in Nakhichevan economic region as this region has been in the state of blockade by Armenia for many years, Upper Karabakh region and adjacent regions have been occupied by Armenian armed forces.

To assess situation in the Azerbaijani labour market from the internationally recognised perspective, the first nation-wide selective economic activity survey was held in Azerbaijan between May 7 and June 6, 2003 with financial support of UNDP and technical assistance from ILO. The survey resulted in 62.9% of population classified as economically active and 37.1% as inactive or, in absolute figures, 3,782,500 active vs. 2,231,000 inactive population.

**Table 14. Economically active and inactive population over age of 15 (persons)**

Gender	Economically active population	Including:		Economically inactive population	Economic activity, %	Employment, %	Unemployment, %
		Employed	Unemployed				
Urban and rural							
Total, including:	3 782 496	3 377 826	404 670	2 230 974	62.9	89.3	10.7
Male	2 186 079	1 975 626	210 453	703 929	75.6	90.4	9.6
Female	1 596 417	1 402 200	194 217	1 527 045	51.1	87.8	12.2
Urban							
Total, including:	1 995 183	1 715 235	279 948	1 398 510	58.8	86.0	14.0
Male	1 163 949	1 024 836	139 113	435 789	72.8	88.0	12.0
Female	831 234	690 399	140 835	962 721	46.3	83.1	16.9
Rural							
Total, including:	1 787 313	1 662 591	124 722	832 464	68.2	93.0	7.0
Male	1 022 130	950 790	71 340	268 140	79.2	93.0	7.0
Female	765 183	711 801	53 382	564 324	57.6	93.0	7.0

\*Source: Results of the selective survey on economic activity (2003)

The survey afforded obtaining more comprehensive information, analyzing socio-economic situation from the standpoint of employment, defining and scientifically validating development perspectives. The survey revealed that male unemployment at 9.6% is lower than the respective female figure of 12.2%, the highest unemployment rate (23.8%) is observed amongst the 20-24 age cohort. For a comparison, unemployment rate was 17,2% in 1995, 16,25% in 1999, 10,7% in 2003, and 6,8 % in 2006.

Surveying economically active population has allowed for better understanding of the impact of education on the structure of the economically active population. The gender and age breakdown of the employed population indicates that the employment level is 58.6% until the age of 40, but drops to 3.3% for those 60 years old and older.

The second survey of current trends in labour market and employment structure has commenced in keeping with the memorandum of understanding signed between the Ministry of Labour and Social Protection of Population and the

State Statistical Committee, based on the experience of the first survey (2003) funded by UNDP and using international labour standards as recommended by ILO, with consideration being given to nation-wide gender factors.

**Table 15. The division of unemployment level by place of residence and age groups (2006)**  
(In percentage)

Age groups	total		urban		rural	
	women	men	women	men	women	men
15-19	17,3	14,6	25,9	25,7	9,6	8,7
20-24	16,4	16,2	25,2	23,7	8,5	10,1
25-29	10,2	9,5	15,4	12,9	5,4	5,8
30-34	5,6	6,1	7,6	6,8	3,9	5,6
35-39	4,5	4,9	6,6	6,1	2,1	4,0
40-44	3,8	4,4	5,6	4,7	1,6	3,9
45-49	4,2	4,2	6,8	4,7	1,2	3,5
50-54	4,8	4,6	8,1	6,2	0,8	2,5
55-59	1,8	4,6	3,2	6,8	0,0	1,9
60-64	0,0	0,6	0,0	0,4	0,0	0,9
<b>total</b>	6,7	6,9	9,6	8,8	3,5	5,0

The highest level of unemployment is observed among the ages between 15-24. The level of unemployment in urban places is higher than in rural places.

Source: The State Statistics Committee of Azerbaijan Republic "The women and men in Azerbaijan-2007".

Under the influence of certain factors related to structural adjustment that the economy has undergone in recent years, the share of public (state) sector employment fell from 56.1% in 1995 to 32.0% in 2006. This reduction is also observed across most productive sectors. Private sector is getting the boost: private sector employment makes up 68.1% of the total employment in 2006, up from 43.9% in 1995.

According to the January 2007 data, the young people made up 53.9% or 15,737 of job placements, 73.3%-i or 423 of vocational trainees and 40.6%-i or 594 of those engaged in paid public works through the Employment Service.

Guided by the Presidential Decree on Implementation of the Government Policy for Women, the Employment Service gives preference to women in job placements. For example, in 2006 women made up 38.7% or 10,878 of job placements, 56.5%-i or 326 of vocational trainees and 15.7%-i or 229 of those engaged in paid public works through the Employment Service.

As a result of actions taken by the government of Azerbaijan, the gross domestic product of Azerbaijan rose to AZN 18,037.8 mln in 2006, which about 8.5 times higher than in 1995 (AZN 2,133.8 mln). GDP per capita in 2006 (AZN 2,156.3) is about 7,6 times higher than in 1995. Most economic sectors grew along. Macroeconomic stability and economic growth have boosted social development and improved the life standard. Continuous growth and increase in employment have caused poverty reduction from 46.7% in 2002 to 20,8% in 2006.

### Question C

Please indicate the trend in the number and the nature of vacant jobs in your country.

### Response to Question C

**Table 16. Monthly dynamics in available vacancies at the Employment Service, 2005 – 2006, person**

Years	Months											
	January	February	March	April	May	June	July	August	September	October	November	December
<b>2005 (total)</b>	7890	8915	9474	9378	9479	10188	10886	12531	11750	10564	9196	9247
service occupations	5148	5692	5832	5447	5817	5801	5444	6628	5812	5344	5069	5232
workers	2742	3223	3642	3931	3962	4387	5442	5903	5938	5220	4327	4015
<b>2006 (total)</b>	9458	10484	11737	12660	12322	12784	13608	14864	15079	12264	13619	11995
service occupations	5659	6629	7174	7324	7269	7197	7970	9077	7612	6621	6650	6553
workers	3799	3855	4563	5339	5053	5587	5638	5787	7457	5643	6969	5442

As it seems from the table 16, demand for service occupations is greater than the demand for workers among vacancies. Majority of service occupations are vacancies for educational and health occupations of organizations existing in the regions of the country (table 17). Since the demand for these occupations in state (public) organizations is greater than that of in non-state organizations (private enterprises, joint ventures, municipalities, non-governmental organizations), as noted in the table 18, state organizations share majority of vacancies. Due to the organization of labour fairs throughout the country, number of vacancies increase during June-September.

**Table 17. Classification of vacancies concerning professions and occupations for 2005 and 2006**

№	Professions and occupations	2005	2006
<b>Total for service occupations:</b>		<b>5232</b>	<b>6553</b>
1	Teacher	2265	2550
2	Physician	1222	1784
3	Nurse	451	597
4	Staff of culture organizations	70	159
5	Other professions	1224	1463
<b>Total for workers:</b>		<b>4015</b>	<b>5442</b>
1	Cleaner	418	306
2	Workers	499	857
3	Weaver / Textile worker	54	340
4	Auxiliary health personnel	133	210
5	Other professions	2911	3729

**Table 18. Monthly dynamics of vacancies at the Employment Service provided by state and non-state organizations (2005-2006)**

years	months																							
	january		february		march		april		may		june		july		august		september		october		november		december	
	s	n/s	s	n/s	s	n/s	s	n/s	s	n/s	s	n/s	s	n/s	s	n/s	s	n/s	s	n/s	s	n/s	s	n/s
2005	6814	1076	7680	1235	7949	1525	7533	1845	7599	1880	7716	2472	8156	2566	9506	3025	8111	2364	8200	2364	8196	1342	9247	1195
2006	7838	1620	8789	1695	9807	1930	10253	2407	9829	2493	9949	2835	10992	2616	11905	2959	12058	2440	9824	2440	10451	3168	9625	2370

## **ARTICLE 1 PARA. 2**

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

to protect effectively the right of the worker to earn his living in an occupation freely entered upon;"

(The Appendix to the Charter stipulates that this provision shall not be interpreted as prohibiting or authorising any union security clause or practice).

Elimination of all forms of discrimination in employment

### **Question A**

Please give information concerning legislative or other measures taken to ensure the elimination of all discrimination in employment which might be based on sex, social or national origin, political opinion, religion, race, colour or age and to promote effectively equal opportunities in seeking employment and in taking up an occupation.<sup>8</sup>

Please give information in this respect on existing sanctions and remedies in cases of discrimination in employment.

### **Response to Question A**

The Constitution, the Labour Code, the Law on Employment of the Republic of Azerbaijan, the Law "On the provision of gender (men and women) equality" proclaim intolerability of all forms of discrimination based on gender, social situation, ethnic origin, political beliefs, religious affiliation, language, race, colour or age.

Right to equality in the Article 25 of the Constitution of Azerbaijan Republic fully covers and regulates not only employment, but all spheres of life:

"Article 25. Right to Equality.

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<sup>8</sup> The term "discrimination" in this Form is to be understood in terms of ILO Convention No. 111 (Discrimination, Employment, Occupations), Article 1

- I. Every Person shall be equal to the Law and Court.
- II. Men and Women shall have equal Rights and Freedoms.
- III. Every Person shall have equal Rights and Freedoms irrespective of race, nationality, religion, sex, origin, property status, social position, convictions, political party, trade union organization and social unity affiliation. Limitations or recognition of Rights and Freedoms because of race, nationality, social status, language origin, convictions and religion shall be prohibited.

Articles 35, 36, 37 and 38 of the Constitution establish citizens' rights to work, vacation, recreation and social protection. The Constitution stipulates that everyone has right to choose freely his or her vocation, profession, occupation and a job. Nobody can be forced to work. Everyone has a right to work in safe and healthy conditions and, without any discrimination, receive recompense that is not lower than the officially mandated minimum wage.

Azerbaijan Republic ratified "International Convention on Elimination of all forms Discrimination", UN Convention on Elimination of all forms Discrimination against Women, International Labour Organization "Convention (No.138) concerning Minimum Age for Admission to Employment" and "Convention (No.182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour".

Several articles of Labour Code of Azerbaijan Republic prohibits discrimination and aim at creating equal opportunities:

"Article 16. Unacceptability of Discrimination in Labour Relations

1. 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, nor shall it be permitted to establish privileges and benefits or directly or indirectly limit rights on the basis of these factors.
2. Concessions, privileges and additional protection for women, the handicapped, minors, and others in need of social protection shall not be considered discrimination.
3. Employers or other physical persons that permit the discrimination indicated in Subsection 1 of this Section shall bear the appropriate responsibility in the manner established by the Legislation.

4. A person subject to the discrimination stipulated in Clause 1 of this Section during his employment may seek recourse in a court of law.”

“Article 20. Employers' Representative Agencies

1. 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.

2. The rights, duties, strategies and roles of employers' representative agency shall be defined by relevant regulations and by the agency's bylaws.

3. The activity of employers' representative agency and the equality of the rights of employees and employers in Labour relations defined under the roles hereof shall be regulated on the basis of relevant contracts and agreements.

4. No superior rights, privileges, or advantages may be granted to employers' representative agency over employees' representative agency.”

“Article 50. Regulation of labour relations in filling a post through competition.

1. In view of the characteristics of labour functions, the employer may announce a competition, in the established way, for filling some positions.

2. The competition is announced, as a rule, for positions related to scientific activity, scientific work in the education centers, and scientific-pedagogical activity. The participants should enjoy equal rights in the announced competition.

3. The competition can be held based on the documents, scientific works, and the information of curriculum vitae of an employee (person intending to hold relevant post) or through holding competition or test or through using both methods.

4. Relevant executive body adopts the legal act regulating the terms of competition and rule of filling post through competition.

5. The employer, at his own discretion, signs with an winner of the accounced competition, an employment contract with or without specified term.

6. The termination of the employment contract of the employee filling the post through the competition, as well as other employment relations are regulated, without any exceptions, through the principles and regulations specified only in this Code.

7. The claimants who do not agree with the results of the competition may appeal to a court within one month from the date the decision of the Competition Commission enters into force. If a court discovers the competition to breach the legislation or to

be biased, it will eliminate its results. In this case, the competition is re-held with the condition that the cases defined in the court decision are eliminated.”

By the Employment Law of the Republic of Azerbaijan, the state assists a citizen in effectively ensuring for him/her a freely selected occupation. The Employment Law defines legal, economic and institutional grounds of state policy of promoting employment as well as provides state guarantees for the employed and social protection of the unemployed.

According to the Employment Law, the government:

- assures all citizens equal rights in selecting labour and occupation, regardless of their race, ethnicity, religion, language, gender, marriage status, social origin, residence, property situation, beliefs, affiliation with a political party, a trade union or another public organisation;
- creates conditions for free expression by the citizens of their preferences in selecting the type of work and occupation;
- facilitates employment of the citizens outside of the bounds and of the foreigners and stateless persons within the Republic of Azerbaijan.

The Law grants the citizens of the Republic of Azerbaijan a right to choose vocation, profession, occupation and a job. The government guarantees that all citizens of the Republic of Azerbaijan can benefit from their legal rights without any discrimination.

## **Question B**

Please indicate any methods adopted:

- a. to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of the above policy of non-discrimination;
- b. to ensure the acceptance and observance of the above policy through educational efforts.

## **Response to Question B**

Regular collective bargaining and signing of the national Master Collective Labour Agreement are the indicators of persistent development of democratic principles and social partnership in Azerbaijan.

Since 2001 Cabinet of Ministers of Azerbaijan Republic, Azerbaijan Trade Union Confederation and National Confederation of Azerbaijan Entrepreneurs (Employers) Organizations have concluded a trilateral Main Collective Agreement. Pursuant to Article 39 of the Labor Code of Azerbaijan Republic Main Collective Agreements shall be signed for a period of up to three years.

The tripartite Master Collective Labour Agreement for 2006-2007 was signed between the Cabinet of Ministers of the Republic of Azerbaijan, the Confederation of Trade Unions and the National Confederation of Employer Organisations, with the Ministry of Labour and Social Protection of Population providing a key input in drafting the Agreement. Chapter 2 Clause 2.4 of the Agreement states: "The parties shall do the following: in line with (revised) requirements of the European Social Charter, help ensure that wages paid to employees are sufficient for providing a decent standard of life for them and their family members."

In the scope of co-operation with ILO, the Decent Work Country Programme for Azerbaijan for the years 2006-2009 was signed in Geneva in November 2006. From the Azerbaijani side the Programme was signed by representatives of the tripartite social partnership: Minister of Labour and Social Protection of Population on behalf of the government of Azerbaijan, Chairman of the National Confederation of Employer Organisations on behalf of business, and Chairman of the Confederation of Trade Unions on behalf of labour. The Decent Work Programme foresees actions to ensure decent work and gender equality, technical training and professional development, as well as developing managerial capacity and business expertise in various sectors of the economy.

Education reforms in Azerbaijan focus on teaching students to become citizens and to take active part in public life. Relevant topics and clauses are being included into textbooks and other teaching aids for general secondary education to inform school pupils on fundamental laws, rights and obligations of the citizens.

A textbook on Human and the Society for the 11<sup>th</sup> grade of general secondary school is especially noteworthy in this respect as it incorporates topics such as "citizen and citizenship," "citizen and the society," "forms of civil participation in public life," "civil society," "human and civil rights in Azerbaijan," "the Convention on the Rights of Child," "social and economic rights."

General secondary schools also pay attention to the issue of democratic citizenship and facilitate understanding by students of importance of human rights and liberties.

### **Question C**

Please indicate the guarantees, including applicable sanctions and remedies, which prevent any discrimination in regard to members of workers' organisations at the time of engagement, promotion or dismissal.

### **Response to Question C**

In accordance with Article 16 Part 1 of the Labour Code, any discrimination based on nationality, gender, race, religion, ethnicity, language, place of residence, property situation, social origin, age, marriage status, beliefs, political views, affiliation with a trade union or other public organisation, rank and duty position or any other factors not related to job qualifications, professional skills and work outcomes, as well as giving any privileges or exemptions or denying any basic rights based on the above criteria is firmly disallowed.

The articles of the Law of the Republic of Azerbaijan "On the provision of gender (men and women) equality", regulates the duties of the employer in the employment activity.

"Article 7. The duties of the employer in employment activity

7.1. The employer should ensure the equity of men and women in the employment activity.

7.2 The duties of the employer are as follows:

7.2.1. treat equally and create equal conditions for the employees in accepting for employment, career development, vocational training, requalification and retraining, evaluation of work quality and dismissal, not depending on the sex;

7.2.2. independeng on the sex, create equal terms and conditions of work for the employees dealing with same work;

7.2.3. independeng on the sex, not to apply different disciplinary reproaches to the employees for same violation of rules;

7.2.4. Meet the requirements of teh articles 9 and 10 of this Law;

7.2.5. take necessary actions to prevent discrimination for sex affiliation and sexual pressure".

In the article 8 of the Law, the functions of the employer are reflected for elimination of sex discrimination:

“8.1 When men and women are treated differently during career development, vocational training, requalification and retraining, evaluation of work quality and dismissal, an employer should justify, at the demand of an employee, that different attitude is not connected to sex attribute.

8.2 The person, whose request for employment was rejected, has right to demand a written explanation on the education, vocational training, experience, specialty quality and other preveledges of representative of opposite sex, who was hired for job.”

“Article 10. The accouncement reflecting sex discrimination

10.1 In the vacancy announcements, it is prohibited to put forward different requirements towards men and women, give privilege to the representative of any sex, ask for data on the civil status or private life of the person seeking for job;

10.2 It is prohibited to publish humiliating announces against the equity of rights of men and women;

10.3. It is prohibited to announce a competition for only one representative of sex.

10.4. The publication of the announcement mentioned in the article 10.3 of this Law is allowed in the case the sex of an employee is determinate term for the characteristics of employment functions or according to the Labour Code of the Republic of Azerbaijan, the application of women labour for this employment is prohibited.

According to the Article 32 of the “Law of Azerbaijan Republic on Civil Service”:

“32.1. Civil servant can be promoted in public service through appointment in higher position, receiving higher speciality degree and also as a result of contest.

32.2. Promotion in public service is carried out taking into consideration a successful and honest performance of duties by public servants, availability of free positions, also the results of practice, retraining and advanced training in accordance with demands of free position”.

## **Question D**

Please indicate whether any form of forced or compulsory labour is authorised or tolerated<sup>9</sup>

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<sup>9</sup> The term "forced or compulsory labour" in this Form is to be understood in terms of ILO Convention No. 29

## Response to Question D

By the Law on Employment, the citizens can freely choose vocation, profession, occupation and a job. Except as provided in legislation (by the court ruling taking effect, during military service or a state of emergency), forced or mandatory labour is prohibited. Nobody can be charged criminally, administratively or in any other way for not working.

By the Law No. 1020 on Amending Some Legislative Acts of the Republic of Azerbaijan (enacted 30 September 2005), the following clause was added to the Criminal Code of the Republic of Azerbaijan:

“Article 144-2. Forced labour

144-2.1. Forcing a person to do work (provide service) by means of threats, intimidation, violence or a threat of resorting to violence, as well as by limiting person’s freedom, except for special cases provided in legislation, is punishable by two years of corrective labour or by deprivation of liberty of the same duration.

144-2.2. The same offence, if done:

144-2.2.1. in respect of two or more persons;

144-2.2.2. repeatedly;

144-2.2.3. in respect of a person under the legal age of adulthood;

144-2.2.4. in respect of a woman whose pregnancy was evident to a perpetrator;

144-2.2.5. by perpetrator(s) using official position;

144-2.2.6. by a premediated group, an organised gang or a criminal association (criminal organisation)

is punishable by three to five years of deprivation of liberty.

144-2.3. The offences under Article 144-2.1 and 144-2.2-ci, if because of perpetrator(s)’ negligence or recklessness, resulted in a death of a victim or led to other grave consequences, are punishable by five to ten years of deprivation of liberty.”

The Code of Administrative Offences of Azerbaijan Republic sets penalties in paragraphs 318 and 321-322 of Articles 53-59 for hiring physical persons by

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(Forced Labour), Article 2.

employers without a labor agreement (contract), forced labor, breaking labor protection regulations, failure to provide safe and healthy work conditions, engaging specialists in labor protection into other activities by the employer, groundless refusal to sign a collective agreement (contract), incompliance with the terms of collective agreement (contract), failure to provide information for control over compliance with the collective agreement (contract), failure to follow instructions of the agencies exercising state control over compliance with the labor legislation (State Labour Inspectorate), failure to report accidents and other cases .

### **Question E**

If so, please describe the nature and scope of any such labour and indicate the extent to which recourse has been had thereto during the reference period.

### **Response to Question E**

According to statistical data by October 1 of 2007, no person has been held criminally liable for the acts stipulated in the Article 144-2 of Criminal Code of Azerbaijan Republic.

### **Question F**

Please indicate what measures are being taken to secure the complete abolition of forced or compulsory labour and the date by which these measures will be fully implemented.

### **Response to Question F**

Inadmissibility of forced labor in Azerbaijan is stipulated by Article 35 of the Constitution of Azerbaijan Republic adopted on November 12, 1995: "no person shall be subject to forced labor", as well as "labor agreements shall be entered into voluntarily. No person shall be forced to enter into any labor agreement".

The Republic of Azerbaijan has ratified ILO Conventions , e.g, No 29 "Forced Labour Convention" and No 105 "Abolition of Forced Labor Convention" and included principles set forth in these conventions into the national labor legislation.

Article 17 of Labor Code "Prohibition of Forced Labor" stipulates:

"1. Forcing any employee to perform work/services that are not his/her official functions by applying any kind of force in any manner, and under the

menace of terminating employment is prohibited. Those found responsible for forcing an employee to work shall be held liable as prescribed by the law.

2. Compulsory or forced labor is permitted on the basis of the applicable legislation, under the supervision of relevant government authorities in military situations or in cases of emergency, as well as under execution of judicial sentence that came into force.”

The Scientific-Research and Training Center on Social Problems of the Ministry of Labor and Social Protection of the Population continuously advocates relevant provisions of labor legislation concerning prohibition of forced labor at the training courses in the field of occupational guidance

## **Question G**

Please give information concerning the conditions under which work is carried out in prison establishments.

## **Response to Question G**

Labour conditions in penitentiary institutions are defined in relevant sections of the Penal Code (the Code on Execution of Judgement) of the Republic of Azerbaijan enacted 14 July 2000. The text of relevant articles is given below.

“Article 95. Employment of persons sentenced to term confinement and life imprisonment

95.1. Each convict must engage in labor activities at places and jobs determined by the penitentiary institution’s management. Penitentiary institution’s management shall ensure that convicts perform useful work given their sex, age, capabilities, health and specialty if applicable. Convicts are generally employed at production facilities of the penitentiary institution and other production entities outside the penitentiary institution, provided appropriate security and isolation arrangements are in place. Convicts, with approval from the penitentiary institution’s management, may work on a self-employment basis.

95.2. Male convicts over sixty, female convicts over fifty five, convicts of the first and second disability category, pregnant female convicts over four months along or female convicts with children at children care facilities of the penitentiary institution may be permitted to work on a voluntary basis. Working arrangements for convicts under age shall be made in compliance with the applicable labor laws.

95.3. Convicts retained at prisons shall work only on the prison's premises.

95.4. Penitentiary institution's Internal Disciplinary Policy shall define the uses of convicts' labor and the list of prohibited works and duties.

95.5. Convicts' professional activities must not impede the penitentiary institution's main function, that is, rehabilitation of convicts.

95.6. Convicts shall be prohibited from disrupting their professional activities and striking as a way of addressing labor-related disputes. Rejection to work or disruption of professional activity without a legitimate reason shall be deemed a breach of the rules for carriage of sentences and shall constitute grounds for application of disciplinary actions against, or holding convicts financially liable."

#### "Article 96. Labor Conditions of Persons Sentenced to Term Confinement and Life Imprisonment

96.1. Working hours, labor safety and vocational sanitation standards for convicts shall be determined in accordance with the existing labor laws.

96.2. Convicts shall have days-off and shall be off duty on public holidays as provided by the existing labor laws.

96.3. Keeping aggregated record of working hours/time given the characteristics of work performed by convicts shall be permitted, except for rehabilitation institutions. Working time during the reviewed period shall not exceed the daily working time as defined by the applicable laws.

96.4. The period of a convict's remunerated employment shall be included in the overall record of service. The penitentiary institution's management shall be responsible for calculating the length of the record of service based on the results of a calendar year. Working time of convicts who have continually failed to perform their professional duties or evaded working may be excluded from their overall record of service by a court order as recommended by the penitentiary institution's management.

96.5. Employed convicts shall be entitled to a paid vacation every year as defined by the existing labor laws. Article 89.4 hereof identifies the procedures for short trip outside the penitentiary institution during vacations.

96.6. Female convicts shall be relieved of the duty to work for a period defined by the applicable laws due to pregnancy and childbirth.

96.7. Convicts who exceed their working norms or display diligent performance of tasks may be provided with additional vacation entitlements as per the applicable labor laws.”

“Article 97. Remuneration of Persons Sentenced to Term Confinement and Life Imprisonment

97.1. Convicts shall be entitled to remuneration in accordance with the existing labor laws.

97.2. The amount of monthly salary of convicts who have fully performed their working time norms and professional duties shall not be less than the minimum amount of remuneration set for labor.

97.3. Incomplete working time shall be remunerated in proportion to the period of time worked or the output.

97.4. The competent executive authority shall be responsible for determining the procedures for remuneration of persons sentenced to term confinement and life imprisonment.”

“Article 98. Unremunerated Employment of Persons Sentenced to Term Confinement and Life Imprisonment

98.1. Convicts may be used for improving the penitentiary institution’s premises and facilities and accommodation and housing conditions of convicts, except for security facilities.

98.2. Convicts shall be used for the works described in Article 98.1 above in general when free from their main employment. Such works shall not exceed eight hours a month.

98.3. Convicts may be used for restoring security facilities free of charge only when such facilities have been damaged or destroyed as a result of natural disasters or other extraordinary events.”

“Article 99. Deductions from Income of Persons Sentenced to Term Confinement and Life Imprisonment

99.1. Deductions shall be made from income, pensions and other earnings of convicts retained at penitentiary institutions and prisons.

99.2. Cost of food and clothes provided to convicts shall be covered after the income tax, state social protection fund contributions and other mandatory charges will have been deducted. Deductions for enforcement orders and other executive documents shall be made in accordance with the applicable laws from the remaining amount. Alimony for children under age shall be assessed against the convict's total income.

99.3. At least twenty five per cent of monthly salary, pension and other income shall be transferred to the personal account of the convict retained at penitentiary institution or prison, regardless of the deductible amounts, and at least fifty per cent of monthly salary, pension and other income shall be transferred to the personal account of male convicts above sixty, female convicts above fifty five, convicts with the first or second disability category, convicts under age or pregnant female convicts or female convicts with children at children care facilities of penitentiary institutions.

99.4. Persons retained at community penitentiary institutions as well as female convicts permitted hereunder to reside outside the penitentiary institution shall receive at least sixty five per cent of their total income regardless of all amounts to be deducted."

### **ARTICLE 1 PARA. 3**

"With a view to ensuring the effective exercise of the right to work, the Parties undertake:  
to establish or maintain free employment services for all workers;"

#### **Question A**

Please describe the operation of free employment services available in your country, indicating the age, sex and nature of occupation of persons placed by them in employment and persons seeking employment.

Please indicate as far as possible the number of vacancies, the placement rate and the duration of unemployment of persons placed.

## Response to Question A

In consideration of the current situation in the labour market the State Employment Service takes measures at social protection of job seekers and the unemployed. The citizens are entitled to free advice on professional orientation, training, retraining and professional development to enable them to select vocation, job and work schedule.

In the last five years 111,174 persons who applied to the Employment Service were placed in jobs. Job Fairs held in every city and district in the country are instrumental in providing employment to people willing to work. 30,000 people found jobs during the last 5 years as a result of resorting to this active employment-boosting measure.

Economic reforms of the recent years, refurbishment and renovation of many production facilities, business development have generated jobs and lifted employment.

In 2006 alone, 28,076 job seekers who applied to the Employment Service were offered a job, that is, 2,777 persons or 11% more than in 2005.

**Table 19. Age and gender distribution of persons recruited via the Employment Service (persons)**

Gender and age	2005		2006	
	Applied to the Employment Service	Recruited via the Employment Service	Applied to the Employment Service	Recruited via the Employment Service
<b>Total:</b>	36,590	25,299	49,220	28,076
of them:				
Women	13,179	9,163	20,119	10,878
By age:				
Under 16	170	46	43	16
17-19	1,936	1,199	2,608	1,452
20-24	6,803	4,419	8,254	4,694
25-29	6,940	4,568	8,212	4,850
30-35	7,254	4,969	8,571	4,725
35 to the retirement age	13,126	9,886	20,321	11,997
Over the retirement age	361	212	1,070	273

**Table 20. Professional and occupational distribution of persons recruited via the Employment Service (persons)**

<b>Professions and occupations</b>	<b>2005</b>	<b>2006</b>
<b>Service occupations</b>		
Teacher	1,439	1,946
Physician	306	289
Engineer	397	385
Researcher	57	35
Accountant	270	243
Expert	335	308
Top executive	103	110
Economist	150	137
Nurse	552	647
Insurance agent	214	310
Librarian	248	218
Culture personnel	383	507
Statistician	242	55
Manager	121	198
Other	3,146	3,410
<b>Workers' (manual labour) occupations</b>		
Fitter (mechanic)	1,152	1,205
Salesclerk	611	548
Hairdresser / Barber	151	155
Turner / Lathe operator	198	208
Minor health personnel	391	497
Welder	444	468
Potter	229	239
Taylor	214	189
Plasterer	253	255
Engine (locomotive) driver	345	362
Weaver / Textile worker	165	198
Seamer (seamstress)	313	544
Driver	530	590
Other	12,340	13,820

**Table 21. Breakdown of persons recruited  
via the Employment Service by time out of work (persons)**

Time unemployed	2005		2006	
	Vacancies the Employment Service is informed about	Vacancies filled through the Employment Service	Vacancies the Employment Service is informed about	Vacancies filled through the Employment Service
<b>Total:</b>	34,546	25,299	39,560	28,076
Time unemployed				
Up to 1 month		13,151		15,515
1-3 months		4,477		4,581
3-6 months		2,404		2,563
6-12 months		1,883		2,112
Over a year		3,384		3,305

## Question B

Please describe the organisation of public employment services in your country indicating the accompanying measures for the unemployed, and where appropriate, the steps taken to revise the geographical distribution of local and regional employment centres and to redeploy resources when the changing patterns of economic activity and of population so warrant.

## Response to Question B

In accordance with the Law on Employment, the State Employment Service of the Ministry of Labour and Social Protection of Population is the body charged with implementing government employment policy and social protection of job seekers and the unemployed. The State Employment Service has 84 local Employment Centres:

The State Employment Service oversees:

- placing job seekers and the unemployed in jobs, their professional training, retraining and professional development, engaging them in paid public works;
- legality of apportionment and payment of unemployment benefits;

- employment provision to socially vulnerable groups and groups experiencing difficulties in finding suitable employment using special quotas established for these groups;
- collection from employers and proper use of information on job vacancies.

The State Employment Service also:

- develops and implements active employment programmes (job fairs, labour exchanges, etc.) to improve social protection of job seekers and the unemployed;
- compiles statistical information on employment and reports to relevant government authorities;
- performs improvement of physical infrastructure at the Employment Service units and supplies IT equipment.

The State Employment Service co-ordinates its activities with central government authorities, local executive offices and self-government authorities, trade unions, as well as with employers regardless of property type and organisational-legal form.

In order to establish the network of vocational training centers, increase the scope of activities and potential of local employment centers, vacancies for 130 additional staff members were created. Consequently, human resource potential of recently opened Baku Regional Vocational Training Center and local employment centers has been improved and this affected the quality of their work.

Citizens have a right to freely choose a job by either directly applying to employers, or via free mediation of the State Employment Service, or in any other legal way.

The citizens are entitled to free advice on professional orientation, training, retraining and professional development to enable them to select vocation, job and work schedule.

### **Question C**

If both public and private free employment services exist in your country, please describe the steps taken to co-ordinate such services, and to determine the conditions governing the operation of private employment agencies.

## **Response to Question C**

By the Presidential Decree 637 of 4 October 1997 the Ministry of Labour and Social Protection of Population is authorised to issue a special permit (licence) to engage in “recruitment intermediary services.” Licensing is done in accordance with the Regulations for Licensing Recruitment Intermediaries, approved by the Cabinet of Ministers Resolution 10 dated 14 January 1998. A special commission is established at the Ministry of Labour and Social Protection of Population for licensing legal and physical persons as recruitment intermediaries.

The same resolution authorises the Department General of Employment to oversee licensed recruitment intermediaries and co-ordinate their activities with the Employment Service. Meetings and seminars for managers of private recruitment agencies are regularly organised at the Ministry to discuss their co-ordination with the Employment Service.

Licensing of physical and legal entities for recruitment activities was abolished in August 2002. Since then private recruitment agencies has not needed any special permit or licence to engage in recruitment activities.

## **Question D**

Please indicate whether and how the participation of representatives of employers and workers in the organisation and operation of the employment services and in the development of employment services policy is provided for.

## **Response to Question D**

The role of representatives of employers and workers in the organization and operation of employment services as well as formulation of employment policy has been determined according to the relevant articles of the Law on Employment as follows:

“ Article 17. Participation of employers in th provision of employment services

17.1. employers contribute to the realization of state employment policy on the following bases:

17.1.1. observe terms and conditions of labour agreement (job contracts) executed in accordance with labour legislation to regulate labour relations;

- 17.1.2. in case of production stoppage or employee redundancy, take actions stipulated by collective bargaining agreements;
- 17.1.3. facilitate employee training, retraining and professional development;
- 17.1.4. employ socially vulnerable persons (persons in need of social protection) in compliance with the established rules;
- 17.2. in case of employee lay-out due to redundancy or planned reduction of staff numbers, formally notify the Employment Service at least two months in advance, providing professions, occupations, specialities and wages of the employees to be laid out;
- 17.3. to notify the Employment Service within 5 days of opening a job vacancy in the manner prescribed by the State Statistical Committee;
- 17.4. submit monthly reports to the Employment Service about new recruitments via the Employment Service, recruitments by quota and all dismissals.”

The employers are entitled to recruit new staff independently of staff offers from the State Employment Service and to obtain information from the State Employment Service on state of the labour market.

#### “ Article 16. Involvement of trade unions in employment

- 16.1. Trade unions may take part in the development of the national employment policy and relevant legal acts of Azerbaijan Republic.
- 16.2. Trade unions and their elected bodies shall have the following rights with respect to employment:
  - 16.2.1. to suggest to employers or their higher instances to postpone or suspend mass down-sizing activities;
  - 16.2.2. to provide protection to individuals in matters related to provision of employment, recruitment, dismissal, social benefits and security in accordance with the applicable laws.
- 16.3. Employer-initiated improvement of production efficiency, labor organization improvement, enterprise liquidation, staff down-sizing, except as otherwise provided in the existing laws, shall be notified to trade union authorities in writing in advance (at least 3 months in advance) and shall be carried out by negotiating the staff members’ rights and interests with the aforementioned trade union authorities.
- 16.4. Employers (employer associations) and competent executive authorities shall hold joint consultations regarding employment issues upon trade unions’ recommendations. Recommended actions to support employment based on

outcomes of such consultations in accordance with the existing laws may be set forth in the collective agreements (contracts).”

For the purpose of developing coordinated decisions in the field of employment republican and local coordination committees that assist employment were formed from the members of trade unions, employers’ unions, respective executive bodies, related local authorities, public unions representing interests of citizens that need social protection, and these coordination committees effectively solve the problems related with employment on a permanent basis.

Responsibilities of local coordination committees:

- to analyze the local labor market conditions,
- to ensure that draft employment programs are designed in consistency with the social and economic development programs,
- to assist job-seekers and unemployed individuals in finding and passing vocational, professional and skill development training courses and securing employment,
- to discuss and recommend to city and regional executive authorities and national coordination committees issues related to identification of funding sources to support new job creation, preservation of existing employment, entrepreneurship and individual labor activity development.

Round tables on the theme of “The main directions of activities of the State Employment Service units” were held on 22 february, 24 april, 19 june of 2007 at the State Employment Service with participation of social partners. At the same time employment measures being implemented for the social protection of people searching for job and unemployed citizens and the role of employers in provision of employment of population were discussed in these round tables. The representatives of about 120 large institutions, organizations, firms and companies patricipated in these activities and became acquainted with normative-legal documents adopted on employment.

## **Question E**

Please indicate what legislation or administrative guarantees are provided to ensure that these services are available to all.

## Response to Question E

In line with the Employment Law, the government guarantees to job seekers and the unemployed persons:

- assistance via the Employment Service in finding suitable employment and in recruitment for a job;
- free placement by the Employment Service in professional orientation, training, retraining and professional development;
- engagement in paid public works, subject to applicant's age and other considerations;
- paying unemployment benefits to those granted the unemployed status;
- assistance in self-employment;
- invitation to participate in active employment actions (job fairs, labour exchanges, new job offers, etc.) implemented by the Employment Service;
- compensation (in accordance with current legislation) of expenses borne by citizens in moving from one location (settlement) to the other for taking a job (or attend a training course) arranged via the Employment Service;
- free health check at public health facilities, if it is to be conducted as a prerequisite for taking a job or attending a training course arranged via the State Employment Service.

Providing decent work for every person including young men and women with limited work capacity, persons dismissed from the army, persons who serviced the sentence in the institutions of confinement, refugees and IDPs, and the disabled are the priorities outlined in the Decent Work Country Programme (2006-2009) for Azerbaijan signed within the framework of cooperation with the International Labor Organization (ILO) in Geneva on November 2006.

### ARTICLE 1 PARA. 4

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

to provide or promote appropriate vocational guidance, training and rehabilitation."

Please indicate, illustrating with relevant data as far as possible, what measures have been taken to provide or promote:

a. vocational guidance;<sup>10</sup>

b. vocational training;<sup>11</sup>

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<sup>10</sup> If your country has accepted Article 9, it is not necessary to describe the vocational guidance services here.

<sup>11</sup> If your country has accepted Article 10, it is not necessary to describe the vocational training services here.

c. vocational rehabilitation;<sup>12</sup>

with the aim of giving everyone the possibility of earning his living in an occupation freely entered upon.

Please indicate whether equal access is ensured for all those interested, including nationals of the other Contracting Parties to the Charter lawfully resident or working regularly in your territory, and disabled people.

### **Response to points a and b**

The citizens are entitled to free advice on professional orientation, training, retraining and professional development and receive adequate and relevant information in State Employment Service to enable them to select vocation, job and work schedule.

In compliance with the Law on Employment of the Republic of Azerbaijan, the government facilitates employment of the citizens of the Republic of Azerbaijan outside of the bounds and of the foreigners and stateless persons within the Republic of Azerbaijan and guarantee observance of international labour standards.

Growth in employment is directly linked to improving the system of vocational training, retraining and professional development. In the last five years 8,757 persons were directed to training courses tailored to real market needs, of which 49.8% were women, 77.1% young people, 34.6% secondary school graduates, and 18.0% refugees and IDPs.

Those trained for the first time predominate (90.7%) among the trainees meaning that that job seekers without any specialty or vocation learn some professional skills that would help them to find in a suitable job.

A minimum amount of pensions paid to people seeking for job and unemployed that are involved in vocational training, retraining and advanced training organized by the State Employment Service units, is regulated by the “Law of Azerbaijan Republic on Employment”:

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<sup>12</sup> If your country has accepted Article 15, it is not necessary to describe the rehabilitation services for physically or mentally handicapped persons.

“Article 23. The amount of pension paid to citizens during vocational training, retraining and advanced training

23.1. The following amount of pension is paid to citizens while they attend vocational training, retraining and advanced training with notification of respective executive authorities:

23.1.1. For persons that had paid work within the period no less than 26 calendar weeks during 12 months prior to registration as job seeker by respective executive authority (afterwards “beginning of unemployment”), 70 percent amount of average wages calculated over final 12 months in the last workplace, but not more than average wages over republic and not less than a minimum amount of pension approved by respective executive authority\* (afterwards “a minimum amount of approved pension”)

\*The Cabinet of Ministers of Azerbaijan Republic

23.1.2. For the persons that seek for job for the first time, wish to start labour activity after a long interval (more than 1 year), also for those that had paid work within the period less than 26 calendar weeks during 12 months prior to the beginning of unemployment, a minimum amount of approved pension;

Currently, several proposal have been submitted on bringing a minimum amount of pension to the level of minimum wage.

The General Department of Employment is working closely with the Ministry of Education to present training, retraining and professional development courses tailored to real needs of the labour market and of employers. Currently, the General Department of Employment is offering courses within more than 50 various training programmes.

In order to improve organisation of vocational and skill training of job seekers and the unemployed in line with real requirements of the labour market and with international labour standards, the General Department of Employment is implementing the Programme on Improving Training Methodology and Technical Infrastructure of the Vocational and Skill Training System for Job Seekers and the Unemployed in the scope of the joint project of the government of Azerbaijan and UNDP on Development of National Social Protection System.

The Programme helped develop a number of methodical guidelines, teaching aids and special software for the system of professional orientation, training, retraining and professional development. Along with that, 15 training modules, mostly for manual labour vocations, were developed in the scope of the aforementioned Project.

For the purposes of ensuring the employment of job seekers and unemployed citizens with competitive works in existing labour market, organizing their vocational training, retraining and advanced training more efficiently, it was intended to establish such Centers, besides in Baku and Goychay region, first of all in Nakhichevan Autonomous Republic, Lenekeran and Ali-Bayramli cities, Tovuz and Quba regions.

Supplied with modern educational technologies, the organization of vocational training for about 1000 job seekers and unemployed citizens in such Centers was intended. Vocational trainings are constantly organized by regional (city) Employment Centers and also within the structures of state, private and other educational institutions that possess appropriate educational basis for the professions, which are needed in that respective area.

c. Among the market-competitive occupations available to the disabled persons are 69 specialties and vocations in both manual and white-collar categories, such as librarian, clerk, cinema projectionist, archivist, controller, laboratory worker, cook (chef), medical record-keeper, tailor, shoe repairman, bank teller, teacher, potter, gardener, etc.

Furthermore, the joint project of UNDP and the Ministry of Labour and Social Protection of Population on Establishment of Vocational and Skill Rehabilitation Centres for the Disabled helped develop training curriculum for 24 kinds of occupations, such as "porcelain maker," "book-binder," "seamstress," "tailor," "baker," "florist." After taking these short-term vocational courses the disabled may find a suitable job. The disabled who want to engage in business can also enrol in the Basics of Business course offered by the Employment Service. These courses are conducted using methodical recommendations developed jointly with UNDP.

In the current year, 10 blind people were provided with employment through the organization of "Sewer" vocational training courses in Baku Regional Vocational Education Center, it was also intended to organize the courses on "Bookbinder" and "Tailor" professions. At the same time, we would like to state that in order to ensure the employment of the residents of Labour and Rest House of Disabled Youth that function in the village of Ramana under the Ministry of Labour and Social Protection of Population, the pension for the Disabled Veterans and Workers that function in the village of Bilgah, appropriate measures are being taken for the organization of training courses on "Tailor" and "Carpet-maker" professions.

The employment of 109 person in 2006, including 96 of them with quotas, 120 person in the first 6 months of 2007, including 116 with quotas was ensured by the General Department of Employment and its local bodies.

All interested persons among citizens (including those who are disabled) of other State Parties to the Charter residing or working in Azerbaijan have an equal right to apply to the Employment Service in capacity of job seekers and be engaged in professional training and retraining.

Generally, by Article 13 of the Labour Code, foreigners and stateless persons enjoy the same labour rights and obligation as citizens of the Republic of Azerbaijan, if not otherwise provided by the law or international treaties the Republic of Azerbaijan is party to. Any limitation of the rights of foreigners and stateless persons granted by the Labour Code and other applicable legislation is disallowed, except for cases expressly provided in the law.

## **ARTICLE 9: THE RIGHT TO VOCATIONAL GUIDANCE**

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

### **Question A**

Please give a description of the service - its functions, organisation and operation - specifying in particular:

- a. whether access to services is free of charge;
- b. whether vocational guidance work is carried out in the public or private sectors;
- c. the measures taken to supply all persons with adequate information on the choice of employment;
- d. the measures taken to ensure a close link between vocational guidance and training on the one hand and employment on the other;<sup>13</sup>
- e. the measures in hand for improving the services;
- f. the details of special measures to assist disabled persons.

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<sup>13</sup> If your country has accepted Article 10 paragraph 1, it is not necessary to describe these measures here.

## Response to Question A

- a. By the Law on Employment of the Republic of Azerbaijan, the citizens are entitled to free advice on professional orientation, training, retraining and professional development to enable them to select vocation, job and work schedule.
- b. It is organised by the government.
- c. “Methodical rooms on professional orientation” existing in a number of administrative districts provide professional orientation advice and comprehensive and detailed information on current requirements of employers to job seekers and the unemployed as well as to higher-grade secondary school students. These rooms also facilitate discussions on employment-related issues that are of interest to the people.
- d. Presently, “methodical rooms on professional orientation” operate in cities of Baku, Ganja, Nakhchivan and Mingachevir; opening such rooms in other large cities and districts of the Republic is being considered. It is intended to establish such cabinets also in Ali-Bayramli, Sumqayit, Quba, Tovuz, Lenkeran and other cities and region. 2640 person in 2005, 3180 in 2006, 2461 in first 6 months of 2007 received vocational advices.

Vocational advices are also held with job seekers and unemployed citizens who apply to Centers through all regional (city) units of State Employment Service of the republic.

e. A multi-media test software system was developed in order to identify professional interests and inclinations of the unemployed from all population categories and provide information on over 300 vocations and specialities. Vocational advice by experts of Employment Centers is conducted on specific methodical resources and “Tusi” multimedia program.

f. The Employment Law states that the state provides additional protection to vulnerable groups and to citizens experiencing difficulties in finding suitable employment, including persons with limited working faculty due to disablement, by generating additional jobs or establishing specialised enterprises and organisations (including organisations and institutions for the disabled), providing specialised training and other means

Persons with limited work ability also has the right to use vocational training on equal basis.

While ensuring the employment of disabled, it is very important to learn their areas of interest, conduct choice of professions, give vocational advice and from this perspective, joint work with Azerbaijan Blind Society is noteworthy. It should also be stated that there is a special need for the establishment of educational foundations supplied with specific equipment.

For this purpose, the ensurance of integration of disabled into society, the creation of appropriate conditions for the raise of the level of their employment is defined as an important task in the “State Program on Implementation of Employment Strategy of Azerbaijan Republic (2007-2010)”.

### **Question B**

Please indicate the measures taken in the field of vocational guidance to promote occupational and social advancement.

### **Response to Question B**

In consideration of key importance of professional orientation for the future employment of the young generation, the government of Azerbaijan has developed, in the scope of the joint project with UNDP on Development of National Social Protection System, “methodical tools for organisation of professional orientation” and “multi-media test software system for identification of professional interests and inclinations of job seekers and the unemployed” and successfully uses them at the units of the General Department of Employment.

### **Question C**

Please indicate the types of information available in the vocational guidance services and the means employed to disseminate this information.

### **Response to Question C**

Professional orientation advice to job seekers and the unemployed who apply to the Employment Service is provided by Employment Service consultants. Advice is given in two formats: group and individual. Professional orientation advice provided using various methodical recommendations, along with being the most important part of professional orientation, helps the applicants to attain a decent job and societal standing in the future.

## Question D

Please indicate:

- the total amount of public expenditure devoted to vocational guidance services during the reference period;
- the number of specialised staff of the vocational guidance services and their qualifications (teachers, psychologists, administrators, etc.);
- the number of persons benefiting from vocational guidance broken down by age, sex and educational background;
- the geographical and institutional distribution of vocational guidance services.

## Response to Question D

- Budgetary allocation for professional orientation and professional training was AZN 178,000 in 2005 and AZN 180,000 in 2006.
- Number of professional staff of professional orientation centres and their expertise

Professional Orientation Centre	No. of professional staff	Expert specialities
Baku	2	Teacher, economist
Ganja	1	Psychologist
Mingachevir	1	Teacher
Nakhchivan	1	administrator

- the number of persons benefiting from vocational guidance (broken down by age, sex and educational background- not available);

Professional Orientation Centre	No. of persons receiving professional orientation in 2005	No. of persons receiving professional orientation in 2006
Baku	1,050	600
Ganja	1,059	965
Mingachevir	531	925
Nakhchivan	-	690

d. Currently, “methodical rooms on professional orientation” operate in cities of Baku, Ganja, Nakhchivan and Mingachevir. Opening such rooms in other large cities and districts of the Republic is being considered.

### **Question E**

Please indicate whether equality of access to vocational guidance is ensured for all those interested, including nationals of the other Contracting Parties to the Charter lawfully resident or working regularly in your territory, and disabled persons.

### **Response to Question E**

In accordance with Article 13 of the Labour Code, foreigners and stateless persons enjoy the same labour rights and obligation as citizens of the Republic of Azerbaijan, if not otherwise provided by the law or international treaties the Republic of Azerbaijan is party to. Any limitation of the rights of foreigners and stateless persons granted by the Labour Code and other applicable legislation is disallowed, except for cases expressly provided in the law. It is also forbidden to grant more labour rights to foreigners and stateless persons in relation to the citizens of the Republic of Azerbaijan.

Simultaneously, according to the Article 6.2.8 of the “Law of Azerbaijan Republic on Employment” it is defined to create conditions of labour activity for stateless persons and foreigners in the territory of Azerbaijan Republic. This ensures that foreign citizens, who live in Azerbaijan and apply to the regional (city) Employment Centers get possible assistance without facing any discrimination under the Law of Azerbaijan Republic.

**ARTICLE 20: THE RIGHT TO EQUAL OPPORTUNITIES AND EQUAL TREATMENT IN MATTERS OF EMPLOYMENT AND OCCUPATION WITHOUT DISCRIMINATION ON THE GROUNDS OF SEX**

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

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

**Question A**

Please state how the rights contained in this provision have been protected in legislation. This information should be specified according to the areas listed in paragraph 1 of Article 20.

**Response to Question A**

Article 25 of the Constitution of Azerbaijan Republic adopted on 12 november of 1995, defines the right to equality, equal rights and freedoms irrespective of sex and prohibits the limitations of rights and freedoms of citizens because of sex. Based on this, the principle of equality of men and women in all spheres of life is widely reflected in the legislation of the republic.

According to the Article 16 of Labour Code of Azerbaijan Republic adopted on 1 june of 1999, 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, nor shall it be permitted to establish privileges and benefits or directly or indirectly

limit rights on the basis of these factors. Employers or other physical persons that permit the discrimination indicated in Subsection 1 of this Section shall bear the appropriate responsibility in the manner established by the Legislation. A person subject to the discrimination stipulated in Clause 1 of this Section during his employment may seek recourse in a court of law.

According to the Article 4 of Labour Code, the labour legislation shall apply to all enterprises, establishments, organizations, 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.

According to subsection a) of Article 9 of Labour Code, employees shall have the right to sign an employment contract choosing employment at a place of work according to his calling, specialty, and profession. At the same time, the Article 15 of Labour Code provides for the employee guarantees upon termination of an employment contract. During the application of aforementioned articles of Labour Code, there is no provision for the discrimination on the basis of employees' sex.

Moreover, in application of female labour the labour legislation of Azerbaijan Republic is based on the principle of easing of labour through providing privileges and additional guarantees, taking into consideration the fulfillment of their physiological characteristics and family responsibilities.

Thus, Division 37 of Chapter X of Labour Code deals with labour rights of women and guarantees to their implementation. According to the Article 240 of Labour Code, refusing to sign a labour contract with a woman who is pregnant or has a child under the age of 3 (because a woman is pregnant and has a child under the age of 3) is prohibited by law.

Under the Article 241 of Labour Code, use of women workers in labour intensive jobs, in hazardous workplaces, and also in underground tunnels, mines, and other underground works is prohibited.

At the same time, Articles 244 and 245 of Labour Code provides for breaks for feeding of their children, part-time jobs for women and paying of the wage for the time spent for physician's examination.

Article 1 of the Law on Guarantees of Gender (Male and Female) Equality enacted on 10 October 2006 states that the purpose of the Law is to eliminate all forms of discrimination based on sex and gender and to ensure gender equality by creating equal opportunities to men and women in political, economic, social, cultural and other areas. By law, all forms of discrimination based on sex and gender are expressly forbidden.

The article 3 of the Law pronounces the followings:

“3.1. All forms of discrimination for sexual affiliation are prohibited.

3.2 The followings are not considered a discrimination:

3.2.1. concessions, privileges and additional allowances for women specified in the Labour Code of the Republic of Azerbaijan’

3.2.2. call for military (alternative) service for men;

3.2.3. different pensions and marriage age fixed in the legislation for men and women;

3.2.4. According to the article 15 of the Family Code of the Republic of Azerbaijan, limitation the right of a husband to demand to dissolve a marriage;

3.2.5. creation of difference terms and conditions for men and women in the prisons;

3.2.6 taking special actions to ensure the gender equity”.

At the same time, according to the article 7 of the Law, the employer should ensure the equity of men and women in the employment activity, treat equally and create equal conditions for the employees in accepting for employment, career development, vocational training, re-qualification and retraining, evaluation of work quality and dismissal, not depending on the sex; independent on the sex, create equal terms and conditions of work for the employees dealing with same work; not to apply different disciplinary reproaches to the employees for same violation of rules; meet the requirements of the articles 9 and 10 of this Law; and take necessary actions to prevent discrimination for sex affiliation and sexual pressure.

There are provisions in the Law on the sexual discrimination (article 10):

“10.1 In the vacancy announcements, it is prohibited to put forward different requirements towards men and women, give privilege to the representative of any sex, ask for data on the civil status or private life of the person seeking for job;

10.2 It is prohibited to publish humiliating announces against the equity of rights of men and women;

10.3. It is prohibited to announce a competition for only one representative of sex.

10.4. The publication of the announcement mentioned in the article 10.3 of this Law is allowed in the case the sex of an employee is determinate term for the characteristics of employment functions or according to the Labour Code of the Republic of Azerbaijan, the application of women labour for this employment is prohibited”.

The employees, who complained about the employers or management for sexual pressure, should not underwent any pressure and pursuit by an employer or management.

This issue is also reflected in the article 31 of the Labour Code. So, according to the article, the parties of the collective labour agreements have liabilities to help in explanatory work and in provision of the information about the defamation and humiliation of the employee's honour and dignity, clear hostility actions and insulting actions against the employee and prevention of such actions, take all necessary measures to protect the employees from such behaviour; to help in explanatory work and in provision of the information about the sexual incitement in the working place or in relation to the work, take all necessary measures to protect the employees from such behaviour.

The Article 6.2.1 of the “Law of the Republic of Azerbaijan on Employment” adopted on July 2 of 2001, which defines the legal, economical and organizational bases of state policy in the sphere of employment, as well as the state guarantees of citizens in labour and unemployed in the field of social protection, provides that equal opportunities shall be ensured for all citizens to exercise their right to choose freely their labour and employment irrespective of race, nationality, language, religion, sex, family circumstances, social origin, place of residence, property status, convictions, political party, trade union organization and social unity affiliation and displayed as one of the main directions of state policy in the sphere of employment.

After gaining independence, Azerbaijan Republic ratified almost all main international instruments on the protection of rights of women.

The International Pact on Economic, Social and Cultural Rights adopted by the UN General Assembly in 1966, the Convention on the Elimination of All Forms of Discrimination against Women adopted in 1979, ILO Convention No.100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, ILO Convention No. 111 concerning Discrimination in respect of Employment, ILO Convention No.103 concerning Maternity Protection are among the most important international regulations. Reports on fulfilling obligations stipulated by the

aforementioned international documents are regularly prepared and submitted to the relevant international organizations.

In march of 2000, the President of Azerbaijan Republic signed the Decree on "Implementation of State woman policy in Azerbaijan Republic". As a declaration of policy that will be implemented by state, this Decree promotes consideration of gender equality in economic reforms, as well as provision of equal representation of men and women in the decision-making level of all state bodies.

The Milli Meclis of Azerbaijan Republic by its Decision No.255 on august 4 of 1992 ratified UN Convention on "Political Rights of Women", dated december 20 of 1952.

State Commitee on Women Problems was established according to the Presidential Decreee on January 14 of 1998 and on february 6 of 2006, the President of Azerbaijan Republic signed the Decree on establishment of State Committe on Family, Women and Child Problems of Azerbaijan Republic on the basis of former organization.

According to the Article 8 of Statute of State Committe on Family, Women and Child Problems of Azerbaijan Republic:

"8. Committee implements following duties in line with the direction of activities defined by this Statute:

8.10. In line with state policy on implementation of employment strategy, to prepare projects to enable women to obtain various new professions and advance their qualifications and to ensure the joint measures with related organizations;

8.12. to ensure the training of specialists on respective fields, the raise of the level of professionalism of workers and the increase of professions;"

According to the Article 9 of Statute, the Committee has the following rights to implement its duties:

"9.3. to conduct a systematic work with men and women in the direction of implementation of gender principles;

9.4. to participate in the sphere of the development directions of millenium, decrease of poverty, implementation of state programs on employment strategy within its competence;

9.7. to take measures, within its competence, with respective bodies to protect the rights of women working in production, if needed, to raise an issue before appropriate bodies to take actions against the officials that violate their rights;

9.13. to take measures for the preparation of specialists in respective spheres and the extension of their professions, as well as the raise of the level of professionalism of the Committee employees;"

Simultaneously, the “Republican Complex Program on the Fight with daily violence in democratic society” was approved by the Direction of the Cabinet of Ministers on January 25 of 2007 and the proposals on the ratification of ILO Convention No. 156 on “Equal treatment and equal opportunities for men and women workers: on workers that have family responsibility” and Convention No.183 on “Revision of Convention of 1952 (revised) on Protection of Motherhood” by Azerbaijan Republic were prepared within this Program. Currently, the possibility of ratification of these Conventions is under discussion.

In the Employment Strategy (2006-2015) approved with the Decree of the Republic of Azerbaijan no. 1068 dated 26 October 2005 and in the para 7 of the State Program for the implementation of the first stage of this Strategy, it is envisaged to strengthen the control on the implementation of relevant provisions stipulated in the legislation to provide gender equity in the field of employment, increase the competitiveness of women in the labour market, implementation of relevant actions to develop entrepreneurship and self-employment among women, implementation of relevant measures for vocational training and re-qualification of unemployed women and those looking for job, development of national handicraft to develop the self-employment amount women, holding relevant study to find out the reasons of employment among women.

## **Question B**

Please indicate whether legislation provides a right for a worker to take legal action before a court or other competent authority in order to ensure the effective implementation and exercise of his rights under this provision. The information shall cover the four areas specified in the provision.

## **Response to Question B**

According to the Article 60 of the Constitution of Azerbaijan Republic, rights and freedoms of every Person shall be guaranteed in a court. Following provisions are reflected in the Article 294 of Labour Code:

1. Except in the situations indicated in Subsection 2 herein, all individual Labour disputes shall be handled by the courts.
2. In the situation indicated in collective agreements with entities, a body may be created within the framework of a trade union to look into individual disputes prior

to going to court. The creation and functioning of this body may be defined by collective agreements.

3. Procedures that differ from the regulations on the settlement of individual Labour disputes and do not violate the principle of the Parties' equal rights and the employment, social and economic rights stipulated in this Code may be specified in employment contracts.

4. If the decision of the body reviewing Labour disputes before the court does not satisfy one of the parties, it may appeal to the court to resolve the dispute. The period for appealing to a court shall begin at the time of that body's decision.

The ruling of the court handling individual Labour disputes shall be governed by the Civil Laws of Procedure of the Republic of Azerbaijan and by other relevant Normative Legal Acts (Article 297 of LC).

At the same time, according to the Article 15 of Labour Code of Azerbaijan Republic, state oversight for the execution of Labour legislation and the requirements of other Normative Legal Acts is implemented through the State Labour Inspection (SLI) attached to the ministry of Labour and Social Protection of Population. SLI, which implements state control over the execution of Labour Legislation may not engage in the resolution of issues referred to a court authority under this Code or other Normative Legal Acts. Employers and employees, as well as other parties to Labour relations, shall be obliged to execute the decisions and instructions on compliance with Labour legislation adopted by officials of SLI pursuant to the requirements of this Code and other Normative Legal Acts on Labour legislation. Complaints concerning the decisions and instructions of officials of SLI may be lodged with the court.

According to the Articles 19 and 20 of the Law of Azerbaijan Republic on the "Guarantees of gender equality (of men and women)", dated october 10 of 2006, "oversight for the guarantee of gender equality is implemented by relevant executive authority". "Relevant executive authority that implements oversight for the guarantee of gender equality (State Committee of Azerbaijan Republic on Family, Woman and Child Problems)" submits annual reports on its activity to the Milli Meclis of Azerbaijan Republic.

Besides, the claiming periods for the solution of individual labour dispute have been set in the Labour Code. So, after realizing that his rights have been violated, an employee shall have three months to appeal to the body which looks into individual Labour disputes as stipulated in 2nd part of the article 294 hereof.

Except for the case indicated in 1st part of this article, an employee may appeal in all instances to court for the settlement of an individual Labour dispute within one calendar month of determining that his rights have been violated. The day on which the employee realizes that his rights have been violated shall be the day on which the related notice, order (instructions, decision), Labour book, accounting documents (book, list, check) is given and the day on which the employer intentionally violates the basic terms of the employment contract protected by this Code. To resolve Labour disputes pertaining to money and other property claims and disputes pertaining to damages, an employee may appeal to a court (the body dealing with Labour disputes) within one year of the day on which his rights were violated. The claim period is not applied towards the requirements for the compensation for life and health damage. If the periods indicated in this Code have elapsed for good reason, such as the sickness of the claimant, the death of a close relative, or if he is on assignment or leave far from his place of residence or for objective reasons, the body which deals with individual Labour disputes may waive the time limit and look into the dispute.

According to the Article 289 of Labour Code, in individual labour disputes, one party shall be an employer and the other party shall be the employee who claims his labour rights or interests protected by the law or his legal representative in the manner determined by the law have been violated.

Constitutional Law on the “Human Rights Commissioner (Ombudsman) of Azerbaijan Republic” was adopted on december 28 of 2001, the first Ombudsman was elected on july 2 of 2002 and began to receive complainants immediately from october 28 of 2002.

According to the Article 1.1 of the Constitutional Law of Azerbaijan Republic, the office of the Human Rights Commissioner of Azerbaijan Republic shall be set up to restore the human rights and freedoms enshrined in the Constitution of Azerbaijan Republic and the international treaties to which the Republic of Azerbaijan is a party, violated by governmental and municipal bodies and officials of the Republic of Azerbaijan.

The guarantee of other rights and freedoms enshrined in the Constitution of Azerbaijan Republic, as well as social-economical rights and right to equality comprises one of the directions of Ombudsman’s activity.

## Question C

Please state whether clauses in collective agreements and employment contracts that contravene the principles of non-discrimination may be declared null and void and according to which procedure.

### Response to Question C

According to the Article 22 of Labour Code, the basic principles for drafting, signing, and executing collective contracts and agreements shall be as follows:

- a) Equality of the parties;
- b) The freedom and ability to choose and discuss the issues constituting the substance of collective contracts and employment agreements;
- c) The unacceptability of including in collective contracts and agreements terms that are not stipulated for objective reasons;
- d) Guaranteed fulfilment of obligations set by legislation;
- e) Oversight of fulfilment of obligations and liability for default.

The terms of collective contracts and agreements shall be binding on the parties and on the places of work to which these terms refer. Any terms of collective contracts and agreements that worsen the standing of employees relative to the Labour, social or economic standards stipulated in this Code and in other Normative Legal Acts shall be invalid under current law (Article 24 of LC). The signed collective contract and its amendments shall be submitted to the Ministry of Labour and Social Protection of population by employers as information within seven days (Article 30.7 of LC). If citizens appeal to SLI about the existence of articles that contradicts the principles of elimination of discrimination in collective contracts and individual labour agreements and SLI affirms this, the body has the right to issue a decision (direction) on invalidation of these articles and implementation of this direction is obligatory.

According to the article 316 of the Labour Code,

“1. During the implementation of this and other standard laws, individual and collective Labour disputes between employers and employees shall be resolved by

the court on the basis of the rules indicated herein and the Civil-Procedural Code of the Republic of Azerbaijan.

2. In the cases described herein, individual and collective Labour disputes may be resolved on the basis of conditions agreed to voluntarily by the parties thereby avoiding the court to resolve the dispute. The right of either party to court appeal may not be limited”.

The article 260 of the Labour Code defines the subject of collective labour disputes. So, “1. Enterprise Labour disputes arising during regulation of the following issues shall be resolved on the basis of this Code:

- a) discussions to enter into collective agreements and contracts;
- b) execution of collective agreements and contracts;
- c) amendments and addenda to existing agreements and contracts;
- d) implementation of collective agreements and contracts;
- e) resolution of other Labour and social problems to preserve the interests of a member of the enterprise.

2. The procedures for resolving collective Labour disputes stipulated herein, regardless of the number of employees, shall be mandatory for employers of all enterprises, relevant executive and judicial bodies, Labour collectives and trade unions.

Issues of non-compliance or incomplete compliance with collective agreements and contracts and collective requests on other labour and social issues may be raised at the general meeting (conference) of employees or trade unions (union). A decision shall be made by a majority vote of the employees; trade unions shall reach decisions pursuant to their bylaws. In addition to 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 (Article 262 of the LC).

According to the article 263 of the Labour Code, on receipt of a collective request, an employer must respond in writing to the employees or trade union within five working days. If the employer completely or partially ignores the collective request or delays his response to the collective request, a collective Labour dispute shall be considered to have begun. The employer must inform the Ministry of Labour and Social Protection of the Republic of Azerbaijan within 3 days after the collective

dispute has begun. A collective request shall be handled within a month in the way stipulated in the Labour Code.

The collective labour disputes can be solved through strikes. The following reconciliation methods may be used to resolve collective Labour disputes: reconciliation commission; mediator; labour arbitration.

The issue of breach of labour contracts can be addressed through solution of individual labour disputes. In the situation indicated in collective agreements with entities, a body may be created within the framework of a trade union to look into individual disputes prior to going to court. The creation and functioning of this body may be defined by collective agreements.

## **Question D**

Please describe which safeguards legislation provides against gender discrimination and against retaliatory measures undertaken by the employer. Please state how it provides for the rectification of the situation (reinstatement in cases of dismissal, financial compensation, etc.). Please indicate also whether there are other sanctions against an employer who is guilty of such discrimination.

## **Response to Question D**

According to the article 8 of the Civil Procedure Code of the Republic of Azerbaijan, the court examination on civil cases and economic disputes is executed on the basis of equity in legislation and court. The court has the same attitude towards all participants and parties not depending on race, nationality, religion, language, sex, origin, property type, position, belief, affiliation with political parties, trade unions and other public unions.

According to the article 290 of the Labour Code, Parties to individual Labour disputes, respecting each other's rights, must comply with the law, meet their commitments under the employment agreement, and obey the rulings (decisions) of the court which decides on the Labour dispute. An employer who has violated the rights and the legal interests of an employee must pay the full amount of the damage caused to an employee and determined by the court as a result of the settlement of an individual Labour dispute. Employers shall bear material liability

for spiritual damage caused to employees in the course of Labour relations. An employee who claims that spiritual damage has been caused to him must indicate the monetary amount of his claim in his application. The monetary amount of the spiritual damage caused an employee shall be determined by the court on the basis of the employee's application pursuant to the degree of public danger of said damage, the personality of the employer and employee, the actual arguments of the case and other objective factors for the adoption of a fair decision. The term "spiritual damage caused to an employee " used in this article shall mean the defamation and humiliation of the employee's honour and dignity, the casting of aspersions on him, insulting his person and spreading false information to disgrace him among the members of the collective or other actions offensive to his morality, ethics, national dignity and faith.

According to the Article 299, there shall be no limit on the amount of a claim and its collection in an individual Labour dispute.

According to the article 17 of the Law of the Republic of Azerbaijan "On the provision of gender (men and women) equity" approved on 10 October, 2006, compensation should be paid to persons subject to sex discrimination in the way stipulated in the legislation of the Republic of Azerbaijan. The employer pays compensation to employees subject to sexual pressure in the way established in the legislation of the Republic of Azerbaijan.

## **Question E**

Please describe who has the burden of proof in cases of alleged gender discrimination in your country and whether this issue is regulated in legislation or case law. If the latter is the case, please enclose some decisions based on this case law.

## **Response to Question E**

In the article 6 of the Law of the Republic of Azerbaijan "On the provision of gender (men and women) equity" approved on 10 October, 2006, the state liabilities are defined to provide the gender equity.

So, the state takes actions to eliminate all forms of sex discrimination, create equal terms for men and women, and not allow for superiority of representatives of one sex in state management and decision making process.

In the article 8 of the Law, the functions of the employer are reflected for elimination of sex discrimination:

“8.1 When men and women are treated differently during career development, vocational training, re-qualification and retraining, evaluation of work quality and dismissal, an employer should justify, at the demand of an employee, that different attitude is not connected to sex attribute.

8.2 The person, whose request for employment was rejected, has right to demand a written explanation on the education, vocational training, experience, specialty quality and other privileges of representative of opposite sex, who was hired for job.”

At the same time, according to the article 9 of the Law “On Provisions of Gender (men and women) equity”:

“9.1 The employees working in one working place, having similar qualification degree, working under same conditions and performing same work should get paid equal salaries, as well as premiums and other incentives not depending on sex.

9.2 If salary, premiums and other incentives paid are different, an employer, at the demand of an employee, should justify that difference in salary is not connected to sex affiliation”.

## **Question F**

Please describe the specific measures to prevent discrimination against women in matters of employment and occupation, particularly in cases of pregnancy, confinement and during the post-natal period.

## **Response to Question F**

According to the article 240 of the Labour Code, refusing to sign a Labour contract with a woman who is pregnant or has a child under the age of three is prohibited by law. This procedure shall not apply to the cases on refusal from hiring when employers do not have an appropriate work (position) or possesses workplaces that do not permit to hire women and involve them in work. If an employer refuses to sign a Labour contract with a woman who is pregnant or has a child under the age of three has to explain to given woman in writing the reason behind his decision. For reasons of refusal from signing Labour contract 'he lady can seek justice from a court of law in order to protect her rights.

According to the article 241 of the Labour Code, “use of women workers is prohibited in labour intensive jobs, in hazardous workplaces, and also in underground tunnels, mines, and other underground works. In underground works involving leadership positions that continues physical work is not needed, also in social works, sanitation and medical services jobs, or in cases involving going down to underground and coming up without doing any physical work use of women workers is permitted.” According to this article of the Labour Code, the Cabinet of Ministers of the Republic of Azerbaijan adopted the Resolution no. 170 dated 20 October, 1999 “On the approval of the list of labour intensive jobs, hazardous workplaces, professions (position) and also underground works that working of women is prohibited”. Besides, this article of the Labour Code defines the limits of weights of heavy objects for manual lifting and carrying by women.

According to the article 242 of the Labour Code,

“1. Calling of women workers who are pregnant or have children under three years of age for work on night shift, on overtime, or weekend, or a holiday or on a day which is not work day, or sending them to job related travel is prohibited.

2. Calling of women workers who have children between ages of 3 and 14, or handicapped children up to age of 16 for work on night shift, on overtime, or weekend, or a holiday or on a day which is not work day, or sending them to job related travel is permitted only by their written consent”.

The article 243 of the Labour Code provides for putting women workers who are pregnant or have children up to age of one and a half years on light duty:

“1. The production or service quotas for women who are pregnant according to medical verification shall be reduced, and they would be working in lighter works where hazardous side-effects of production are eliminated.

2. In case of women workers with children under the age of one year and a half if facing difficulties with doing her work and feeding or breast feeding her child on time, upon written request of the worker the employer has to transfer her to light duty work, or provide necessary conditions for feeding of her child until the child reaches age of one and a half.

3. While women workers are transferred to lighter duty work, their salary remains as the average salary for their main work.

4. It is unlawful to reduce wages of women workers due to their being pregnant or feeding their child”.

At the same time, in the article 244 of the Labour Code, breaks for feeding of a child are taken into account.

“1. Women workers who have children under age one and a half year old shall be given breaks for feeding (breast feeding) of their children, in addition to their regular lunch and rest breaks. These additional breaks shall be at least 30 minutes and shall be given every 3 hours. If a woman worker has two or more children who are under age of one and a half years old the duration of such breaks shall be at least one hour.

2. Breaks given for feeding are considered as work, and the average salary of the worker stays the same.

3. Upon request of the lady the feeding breaks can be added up to the regular lunch or rest breaks, or they can be taken at the beginning of and/or end of workday (shift). If the lady would want to take her feeding breaks at the end of the work day, her work day shall be shortened by time equal to total of the feeding breaks”.

According to the article 245 of the Labour Code:

“1. Upon request of women workers who are pregnant, or have children under age of 14, or have handicapped children under age of 16, or have to care for a sick family member, the employer has to give them part-time daily or weekly job with the pay based on their experience and seniority. In such cases both sides have to agree on the time of the workday or week.

2. The average wages of women workers who are pregnant, or have children under age of three stay the same on the days that they themselves or their children have to be medically examined or seen by a doctor. The employer has to provide the necessary conditions for such examinations”.

## **Question G**

Please indicate whether there are occupations (if so, which ones) that are reserved exclusively for one or other sex, specifying whether this is due to the nature of the activity or the conditions in which it is carried out.

## **Response to Question G**

The types of employment prohibited for women working on the basis of equality principle are not provided for in the legislation of the Republic of Azerbaijan.

According to the article 3 of the Law of the Republic of Azerbaijan “On the provision of gender (men and women) equity” approved on 10 October, 2006, the call for military (alternative) service of men is not considered as discrimination.

According to the article 2 of the law of the Republic of Azerbaijan “On the principles of call for military service in the Republic of Azerbaijan” approved on 10 June, 1992, “the women citizens of the Republic of Azerbaijan with medical education and other speciality from 19 to 40 years old may be registered and may serve on the basis of an agreement in the Military Forces of the Republic of Azerbaijan in the assisting or other companies.”

Taking into account physiological specifics of female workers and to protect women’s health at work places, with the article 241 of the Labour Code, “Use of women workers in Labour intensive jobs, in hazardous workplaces, and also in under ground tunnels, mines, and other underground works is prohibited. In underground works involving leadership positions that continues physical work is not needed, also in socials works, sanitation and medical services jobs, or in cases involving going down to underground and coming up without doing any physical work use of women workers is permitted. According to this article of the Labour Code, the Cabinet of Ministers of the Republic of Azerbaijan adopted the Resolution no. 170 dated 20 October, 1999 “On the approval of the list of labour intensive jobs, hazardous workplaces, professions (position) and also underground works that working of women is prohibited”. Besides, this article of the Labour Code defines the limits of weights of heavy objects for manual lifting and carrying by women.

Besides, work duties of women workers can include manual lifting and carrying of only the heavy objects which their weight is within the limits specified below:

- a) along with performing other duties, lifting by hand and carrying to another place of objects which their total weight is no more than 15 kilograms;
- b) lifting to a height of more than one and a half-metre of an object which its weight is no more than 10 kilograms;
- c) lifting by hand and carrying to another place of objects which their total weight is no more than 10 kilograms during the entire workday (work shift);
- d) carrying of objects by carts or other vehicles which their lifting would require more than 15 kilograms of power.

**Table 22. Number of men and women (persons) working in unfavourable working conditions in economic sectors in 2005**

	Industry	Construction	Transportation	Communication
People working in conditions not meeting sanitary-hygienic norms (persons)	20470	2125	4642	567
Men	16888	2082	3688	265
Women	3582	43	954	302
Out of them:				
In a condition with a lot of noise	10229	569	3103	309
Men	8259	555	2755	170
Women	1970	14	348	139
In a condition of big trembling	2506	467	62	62
Men	2144	466	62	27
Women	362	1	-	35
In over dusty and over gas-filled working zone	6290	548	468	140
Men	5339	534	380	42
Women	951	14	88	98
Carrying out heavy work	5460	198	1138	96
Men	4128	197	991	92
Women	1332	1	147	4
Working with equipment not meeting safety norms	629	-	8	43
Men	586	-	7	42
Women	43	-	1	1

Source: State Statistics Committee of the Republic of Azerbaijan, Labour Market, 2006

**Table 23. Number of men and women (persons) working in unfavourable working conditions in economic sectors in 2006 (percentage)**

	Sənayedə işləyən qadın və kişilərin xüsusi çəkisi		Cins bölgüsü		Tikinti işləyən qadın və kişilərin xüsusi çəkisi		Cins bölgüsü	
	qadınlar	kişilər	qadınlar	kişilər	qadınlar	kişilər	qadınlar	kişilər
People working in conditions not meeting sanitary-hygienic norms (persons)	9.5	16.3	15.7	84.3	1.7	4.7	3.4	96.6
Out of them:								
In a condition with a lot of noise	2.3	4.9	13.2	86.8	0.2	1.4	1.6	98.4
In a condition of big trembling	1.3	2.4	14.9	85.1	-	-	-	-
In over dusty and over gas-filled working zone	1.6	5.3	8.7	91.3	0.4	1.3	2.7	97.3
Carrying out heavy work	0.3	3.1	3.1	96.9	0.2	0.1	11.9	88.1
Working with equipment not meeting safety norms	0.1	0.5	3.9	96.1	-	-	-	-

Source: State Statistics Committee of the Republic of Azerbaijan, Women and men in Azerbaijan, 2006

## Question H

Please indicate whether measures of positive action in favour of one gender aimed at removing de facto inequalities are allowed under the legislation and, if so, whether such measures were taken during the reference period.

### Response to Question H

According to the article 8 of the Law dated 10 October 2006 of the Republic of Azerbaijan "Provisions of Gender Equity (men and women)", in case men and women are treated differently during career development, vocational training, and re-qualification and retraining, the evaluation of work quality and dismissal, at the demand of the employee the employer should justify that different attitude is not connected to sex affiliation. The person, whose request for employment was rejected, has right to demand a written explanation on the education, vocational training, experience, specialty quality and other priviledges of representative of opposite sex, who was hired for job."

In the Republic of Azerbaijan, the number of women able to work consists more than 50% of population capable of working. Women share 48,1% of economically active population in 2006. The indicator of female employment is near to the average world indicator. 51% of people, who is registered in the Employment Service as officially unemployed, are women (2006).

The gender studies show that the women are mostly in the sectors of social services (health, social work, education, etc.). The specific density of female workers to the general number of workers in 2006 constituted 82.9% in health and social services, 66.2% in education, 45% in hotel and restaurant services, 42.2% in chemical industry, 39.4% in communications, 38.5% in financial sector, 35.4% in petroleum products manufacture, 13.6% crude oil and natural gas production.

In March, 2000, the President of the Republic of Azerbaijan signed a Decree "On the implementation of state female policy in the Republic of Azerbaijan. This Decree is a declaration of the policy to be implemented by the state. The decree encourages the allowance of gender equity in the economic reforms, as well as provision of equal representation of male and female in the state bodies on decision making level.

In deepening market relations, the will of women to compete with men on the same level, to self-justify in new labour relations with her ability of working,

capacity and skills will result in wider female representation in the management, entrepreneurship and government bodies.

The legislation of the Republic of Azerbaijan establishes equal family responsibilities of women and men. Fathers who care alone for own or adopted children are entitled to the same extra vacation days as shown for women above. A parent or other family member directly caring for a baby under the age of 3 is entitled to a partially paid social leave in accordance with the legislation. Legal protection afforded to women with small children can be applied to fathers or legal guardians raising the children without a mother due to mother's death, parental incapacitation, long-term in-patient medical treatment or long-term incarceration, etc.

### **Question I**

Please provide information on the situation in practice covering the four areas specified in the provision, ie. on:

- a. the employment situation of both sexes (ie. the number of men and women who are in employment, unemployed, working part-time or on fixed-term contracts or other forms of temporary contracts);
- b. access to and participation in vocational guidance, training, retraining and rehabilitation and the extent to which women train for jobs which have traditionally been occupied by men and vice versa;
- c. differences in terms of employment and working conditions, including remuneration (with an indication of the differences between full-time workers on permanent contracts and part-time workers or workers on fixed-term contracts or other forms of temporary contracts);
- d. differences in career advancement between the sexes in the various sectors of the economy.

## Response to Question I

a.

**Table 24. Employed and Unemployed Men and Women**

Indicators	2004	2005	2006
Total employment, '000	3,809.1	3,850.2	3,973.0
men:	1995,8	2,017.4	2054.1
women:	1813,3	1,832.8	1918.9
Persons registered as unemployed by the Employment Service	55,945	56,343	53,862
men:	26669	27265	26323
women:	29276	29078	27539
of them,			
receiving an unemployment benefit	3,084	2,087	2,281
men:	1,887	1,316	1,488
women:	1,197	771	793
Source: State Statistical Committee of the Republic of Azerbaijan, Azerbaijan Statistical Yearbook: 2007			

**Table 25. Number of women working for hire by economic activity types (person)**

	2001 person	Share	2002	Share	2003	Share	2004	Share	2005	Share
By economy-total	551598	45.8	548810	45.7	554990	45.2	559746	44.3	591652	45.5
Agriculture, hunting and forest management	10024	19.6	8602	20.0	8430	19.7	7976	22.3	8034	17.9
Fishing, fish-farm	149	15.3	115	18.1	120	23.0	137	21.6	136	16.1
Mining	9852	23.8	7956	22.6	7823	20.0	7654	19.3	7071	17.3
Processing	51162	37.0	37782	35.1	32410	33.5	32370	33.5	33504	31.0
Energy, gas and water production and division	8717	22.0	7367	20.4	7143	19.2	6749	18.8	7446	19.8
Construction	6621	9.2	6341	9.0	4936	8.9	4734	8.0	4636	7.7
Wholesale and retail trade	19646	20.8	41156	24.5	71379	30.2	74333	30.1	89937	35.7
Services in hotels and restaurants	2084	36.3	2054	37.1	2147	33.7	1779	22.2	4555	34.0
Transportation, warehouse management and communication	25953	24.2	21507	23.2	18901	23.4	20916	24.5	21278	24.1
Financial activity	1495	21.0	2271	32.6	3109	36.1	3471	35.7	4194	36.6
Operations related to real estate	22478	44.3	20995	46.3	21462	42.9	20340	36.3	22754	39.9
State management and security, social protection	15124	30.2	15523	30.9	13931	28.9	14932	29.5	15427	31.2
Education	219496	69.6	227689	69.5	221184	69.2	222133	67.3	227837	69.7
Health and social services	108655	75.2	102792	75.8	97712	76.5	97781	75.1	100364	76.1
Other utility, social and personal services	50142	58.3	46660	60.7	44303	57.0	44441	56.0	44479	57.5

Source: State Statistics Committee of the Republic of Azerbaijan, Labour Market, 2006

**Table 26. Number of people working on hire by activity types in 2005  
(in percentage by total and sex)**

	Women		Men	
	people	percent	people	percent
Health and social services	100364	17.0	31547	4.5
Education	227837	38.5	98898	14.0
Other utility, social and personal services	44479	7.5	32909	4.6
Operations related to real estate	22754	3.8	34314	4.8
Financial activity	4194	0.7	7271	1.0
Wholesale and retail trade	89937	15.2	161866	22.8
Services in hotels and restaurants	4555	0.8	8834	1.2
State management and security, social protection	15427	2.6	34071	4.8
Processing	33504	5.7	74562	10.5
Transportation, warehouse management and communication	21278	3.6	67154	9.5
Energy, gas and water production and division	7446	1.3	30169	4.3
Agriculture, hunting and forest management	8034	1.3	36839	5.2
Mining	7071	1.2	33685	4.8
Fishing, fish-farm	136	0.0	711	0.1
Construction	4636	0.8	55887	7.9
TOTAL	591652	100	708717	100

Source: State Statistics Committee of the Republic of Azerbaijan, Labour Market, 2006

b. In 2006 women comprised 56.5% or 326 of trainees at professional training courses and 15.7% or 229 of those offered paid public work by the General Department of Employment.

**Table 27. Composition of unemployed, who received an unemployed status by employment services in 2005 and 2006 (by total and sex, in percentage)**

Composition of unemployed	2005				2006			
			Sex division				Sex division	
	women	men	women	men	women	men	women	men
Dismissed as a result of labour fluidity	27.1	26.7	51.9	48.1	28.8	27.7	52.1	47.9
Persons who lost job because of dismissal	15.8	18.4	47.8	52.2	16.4	19.1	47.2	52.8
Graduates from education center	20.1	18.6	53.6	46.4	19.4	17.4	54.0	46.0
Persons not working more than 1 year	37.0	26.6	59.7	40.3	35.3	24.2	60.4	39.6
For other reasons	0.0	9.7	0.3	99.7	0.1	11.6	0.6	99.4
Total in percentage	100	100	51.6	48.4	100	100	51.1	48.9

Source: State Statistics Committee of the Republic of Azerbaijan, Labour Market, 2006

**Table 28. Division of unemployed, who received an unemployed status by employment services by education level (by total and sex, in percentage)**

	2005				2006			
			Sex division				Sex division	
	women	men	women	men	women	men	women	men
With high education	23.1	38.7	38.9	61.1	24.1	41.4	37.8	62.2
With secondary education	38.1	31.2	56.6	43.4	36.2	30.0	55.8	44.2
With general education	34.2	26.0	58.3	41.7	18.3	11.8	61.8	38.2
With incomplete secondary education	4.6	4.1	54.5	45.5	3.0	2.9	52.5	47.5
Total in percentage	100	100	51.6	48.4	100	100	51.1	48.9

Source: State Statistics Committee of the Republic of Azerbaijan, Labour Market, 2006

c. The national legislation forbids setting different work conditions and remuneration scales for employees of the different gender, be it full-time, part-time or temporary work, term contract work or other form of engagement.

d.

15427 women are on the positions related to state management and security, and social protection, and it is 2.6% of total number of women.

Milli Mejlis (Parliament) of Azerbaijan Republic consists of 125 deputies. As of November 6, 2005 the number of female Member of Parliament constituted 11.2%-i (14 members). According to the information of State Statistical Committee the lowest density of female parliamentaries in the country (4.3%) in the period from 1975 to 2006 was observed in 1990. During subsequent years the number of women practically did not change constituting 1/10th of the Members of Parliament.

As of January 1, 2007, 158 females take top government positions which is 19% of officials representing this field.

## Question J

Please indicate what active policies carried out by your authorities to achieve equal opportunities and equal treatment in employment and what practical measures have been taken to implement these policies.

## Response to Question J

On 25 January 2007 by passing Resolution 17 the Cabinet of Ministers approved the National Comprehensive Programme on Combating Routine Violence in Democratic Society. The Programme resolves to develop proposals for ratification by the Republic of Azerbaijan of ILO Convention No. 156 on Equal Treatment and Equal Opportunities for Male and Female Workers: Workers with Family Responsibilities Convention and Convention No. 183 on Revision of the Maternity Protection Convention of 1952 (revised). Currently, preparations are underway for ratification of Convention No. 156; ratification of these Conventions by the Republic of Azerbaijan is being studied.

In December 2007 ILO supported the Ministry of Labour and Social Protection of Population in conducting the Journalist Roundtable: Gender at Work. The Roundtable was attended by government officials, media, international and NGO representatives.

In November 2006 the tripartite representative mission of the Republic of Azerbaijan and ILO officials signed the Decent Work Country Programme for Azerbaijan for 2006-2009. Along with other issues, the Programme envisions better co-ordination of Azerbaijani social partners in preparing the ratification by the Republic of Azerbaijan of ILO Convention No. 156 on Equal Treatment and Equal Opportunities for Male and Female Workers: Workers with Family Responsibilities Convention and in studying possibilities for ratification of Convention No. 183 on Revision of the Maternity Protection Convention of 1952 (revised). The Programme calls on ILO to help draft recommendations in order to revise government policy and practice on addressing workers' family responsibilities and on the social partners, together with the State Committee of Family, Women and Children Affairs and women organisations, to work in close co-operation in the ratification preparatory phase.

In the Employment Strategy (2006-2015) approved with the Decree of the Republic of Azerbaijan no. 1068 dated 26 October 2005 and in the para 7 of the State Program for the implementation of the first stage of this Strategy, it is envisaged to stricken the control on the implementation of relevant provisions stipulated in the legislation to provide gender equity in the field of employment, increase the competitiveness of women in the labour market, implementation of relevant actions to develop entrepreneurship and self-employment among women, implementation of relevant measures for vocational training and re-qualification of unemployed women and those looking for job, development of national handicraft to develop

the self-employment amount women, holding relevant study to find out the reasons of employment among women.

The expected results of this Program are the followings:

In the result of implementation of the actions planned in the State Program for 2007-2010, more favourable conditions will be created for the efficient implementation of employment policy (as well as in the field of female employment), the legislative framework in the employment sector will be improved, competition of human resources will increase, the level of unemployment will decrease, social protection of the people looking for job and the unemployed will strengthened, and institutional framework will be formed for the development of labour market in the regions.

Taking into account the results of the implementation of this State Program and directions of state social and economic policy to be implemented, a relevant State Program will be developed for 2011-2015 for the implementation of directions envisaged in the second stage of implementation of the Employment Strategy of the Republic of Azerbaijan.

The financing sources of the State Program will be the funds of the state budget and State Social Protection Fund of the Republic of Azerbaijan allocated for this end, as well as other sources not contradicting to the legislation of the Republic of Azerbaijan.

## **Question K**

Please indicate if social security matters as well as provisions concerning unemployment benefit, old age benefit and survivor's benefit are considered to be within the scope of this provision.

## **Response to Question K**

The Constitution of the Republic of Azerbaijan establishes in Article 38 that everyone has a right to social protection. When reaching a legally mandated retirement age, becoming disabled or incapacitated, losing a breadwinner, getting ill people are entitled to social protection. Along with these, the state also pays the citizens other social benefits, including targeted social assistance, a funereal benefit and an unemployment benefit. No gender discrimination is tolerated in appointing or remitting the aforementioned pensions, benefits and assistance packages.

## **ARTICLE 24: THE RIGHT TO PROTECTION IN CASES OF TERMINATION OF EMPLOYMENT**

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

a. the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;

b. the right of workers whose employment is terminated without valid reason to adequate compensation or other appropriate relief.

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

### **Question A**

Please state the valid grounds for termination of employment provided by national legislation and whether national legislation prohibits certain cases of termination of employment.<sup>14</sup>

Please specify whether these grounds appear in legislation or regulations or whether they are derived from court decisions or other sources and provide examples of case law on this point.

Please state whether termination of employment is notified in writing, and if so, whether the employer is required to state the reasons for dismissal in the notification.

Please state what are the workers’ rights in cases of unilateral amendments by the employer to the substantive conditions of the employment contract.

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<sup>14</sup> See paras. 1 and 3 of the Appendix to Article 24.

## Response to Question A

### Concerning Clause 1 of the Addendum to Article 24 in relation to paragraphs 1 and 2

A labour contract of an employee executed under the Labour Code of the Republic of Azerbaijan can be terminated upon employer's initiative in accordance with Article 70 of the Code "Grounds for Terminating a Labour Contract by an Employer."

A definition of an employer is given in Article 3: a proprietor, or a chief executive or a board appointed or authorised by a proprietor, or a physical person who conducts business without incorporation. The employer is fully capable to contract or terminate an employee or vary a contract with him/her.

Article 11 "Principal Rights of Employer" gives an employer rights to terminate labour contracts with an employee; press administrative charges against workers who fail to comply labour contract conditions or violate internal company regulations; alter working conditions, lay out employees, cut staff and disband structural divisions in the manner and with grounds prescribed in the present Code.

Article 186 "Disciplinary Responsibility for Breaching Labour and Executive Discipline and its Types" states that terminating employee's labour contract under Paragraph Ç of Article 70 is considered a disciplinary action.

Article 71 "Requisite Conditions and Rules to be Necessarily Taken into Account when Employer Terminates Employee's Labour Contract" states that when a company is divided into parts, or merges with another company, or is being re-established in any other way, or when it changes its legal organisational form, or when a company, without undergoing the above-mentioned changes, lays out employees, cuts the staff numbers, or makes a decision on non-suitability of a given employee to his/her job, the employer shall explore the possibility of offering the employee to transfer to another job, depending on employee's qualifications and occupation (vocation, profession). If the employer lacks these opportunities, the termination can be initiated on the above-mentioned grounds.

Terminating employee's labour contract under Paragraph Ç of Article 70 is allowed, if employee's willingly or negligently or recklessly flouting his/her job function or duty responsibilities causes breakdown of the normal pace of work or production, endangers labour and executive discipline or in any way compromises rights and legally protected interests of a proprietor, an employer or other

employees. The employer must justify any of the above grounds when resorting to termination under this clause.

In view of the first and second paras of the question A, on the 2nd para of the article 24 of the “Annexes to the Revised European Social Charter”:

There is an agreement that this provision covers all employees, but the Party may fully or partly exclude from the protection the following categories of people working on hire:

- a) employees having a labour agreement for specific period or for time for the implementation of specific work;
- v) employees, who passed priori specified probation period;
- s) employees sent for short-time and irregular work;

According to the articles 45 “The Term of an Employment Contract” and 47 “Conclusion of labour agreements with specified term” of the Labour Code of the Republic of Azerbaijan, it is allowed that in specific case, the employer signs with the employee the labour agreement (contract) with term. An employment contract may be concluded without specified term (unlimited) or for a period up to 5 years (term). According to the terms of execution of labour functions, in case of knowing the permanency of rendered services, the labour agreement should be concluded without specified term. The labour agreement (contract) can be concluded for definite term in the following cases:

a) if there is a necessity for performance of employee’s functions by other employee because of his/her temporary absence for specific reasons in cases of his/her losing ability of working, being in business trip and vacation, as well as other cases specified in the legislation under the condition to keep his/her working place and position;

b) during performance of seasonal works not carried out throughout the year because of natural conditions and climate or feature of work;

c) to perform small and short term works such as repair-construction, installation, application and adaptation of new technology, carrying out experimental-testing, in cases there is a necessity to check the skills of employee to perform different kind of work, solve social issues of employees and perform other work of this kind;

d) in cases when the employee should adopt working and professional skills, obtain highest professionalism (traineeship, residency training, internship, Bachelor Degree) in view of complexity of employment functions on relevant position (profession);

f) in cases when the employee has personal or family reasons, receives education while working, lives temporarily in the relevant district/city due to some reasons, intends to work until retirement age;

g) in the performance of public works paid with the notification of relevant executive body;

h) except the bodies stipulated in the para "c" of the article 6 of this Code, in the selection to elective positions in the election bodies (organisations, unions);

i) with mutual agreement of the parties obeying their equality principles;

j) in case of concluding collective agreement with the employees in the form of team , working group in the way stipulated in the second part of the article 46 of this Code;

k) in other cases stipulated in the legislation.

According to the principles stipulated in the Article 70 "Grounds for Termination of an Employment Contract at the Employer's Initiative" of the Labour Code, an employment agreement (contract) with specified term may be terminated and the employees with an employment agreement (contract) with specified term are not protected from the rights given to the employer with the article 70 of the Labour Code. In other words, the article 70 of the Labour Code is applied towards employees working with an employment contract without specified term and with specified term.

As above-mentioned, in some cases the employer shall be prohibited from terminating the employment agreement (contracts). But according to the 2<sup>nd</sup> part of this article, if the employment agreement (contract) signed with the employee is with specified term, it can be terminated upon its expiration (article 73) not taking into account these prohibitions.

According to the article 51 "Probation Period" of the Labour Code, the labour agreement may be concluded fixing probation period to check the qualification, skills to perform relevant functions. The probation period should be specified for not more than 3 months. The labour agreement not specifying probation period is considered to be concluded without probation period.

According to the article 53 of the Labour Code, during the probation period, either party may cancel the employment agreement by giving the other three days' notice. If none of the parties demanded to terminate the labour agreement before the end of probation period, it means an employee passed the probation period. From the day an employee passes the probation period, the labour agreement can be terminated in the manner and according to principles specified in this Code.

While fixing the probation period in the employment contract, it should provide for termination of the employment contract by an employer in case an employee does not justify himself. The employment contract of an employee, who did not justify himself during the probation period, can be terminated by justified order of an employer.

From the above-mentioned, it is clear that according to the legislation, it is allowed to terminate the employment agreement (contract) at the initiative of an employer during the probation period if there is a provision in the employment agreement for its termination in case an employee does not justify himself.

According to the Labour Agreement, the employment relations with an employee involved for short term could be established on the basis of the employment agreement with specified term or civil and legal contracts. In case the employment agreement with specified term is concluded with these employees, the termination of their employment agreement at the initiative of an employer was explained above. According to the article 6 "Individuals to which This Code shall not Apply" of the Labour Code, as the Labour Code is not applied towards the persons working on the basis of civil and legal contracts, the civil and legal contracts signed with these persons are terminated with the terms stipulated in those contracts, and in case of disputes, they are solved in a judicial proceeding.

At present, the articles 51-53 of the Labour Code are as follows:

" Article 51. Probation period

1. The labour agreement may be concluded through fixing probation period to check the qualification, skills to perform relevant functions. The probation period should be not more than 3 months.
2. The probation period is, actually, a time, when an employee performs his working functions. The probation period does not cover the period when an employee temporary loses ability to work, as well as during his absence when his job and average salary are kept for him.
3. The labour agreement not specifying probation period is considered to be concluded without probation period."

" Article 52. Cases of non-fixing probation period

During the conclusion of labour contract, the probation period is not fixed in the following cases:

With persons under 18 years old;

with persons appointed to relevant position through competition;

and other cases defined with the agreement of parties.”

“ Article 53. Outcome of probation in employment and its regulation

1. During the probation period, either party may cancel the employment agreement by giving the other three days' notice.

2. If none of the parties demanded to terminate the labour agreement before the end of probation period, it means an employee passed the probation period. From the day an employee passes the probation period, the labour agreement can be terminated in the manner and according to principles specified in this Code.

3. While fixing the probation period in the employment contract, it should provide for termination of the employment contract by an employer in case an employee does not justify himself.

4. The employment contract of an employee, who did not justify himself during the probation period, can be terminated by order of an employer.”

Concerning Clause 3 Sub-clause (a) of the Addendum to Article 24 in relation to paragraphs 1 and 2

Article 79 Part 1 disallows terminating a labour contract because of employee's belonging to any trade union or a political party.

Article 9 Paragraph (k) grants an employee a right to be a member of a trade union or other public organisation, participate in labour strikes, meetings, rallies and other legal mass actions organised by those organisation or a work collective. Article 19 states that trade union organisations may be established at any company on a strictly voluntary basis without discriminating any employees and without giving prior notice to an employer. Workers can join and be active within trade unions to protect their labour, social, economic rights and lawful interests.

Article 27 “Guarantees to Participants of Collective Bargaining” states that participants in the collective bargaining process (parties' representatives, consultants, experts, mediators, umpires, referees and other persons designated by the parties) can be exempted from performing their job functions for the period of up to 3 months per year during the actual collective bargaining with their remuneration intact. This period also counts towards their seniority (length of service). During collective bargaining the participants thereof can not be

transferred to another job or terminated at employer's initiative or reprimanded or have other disciplinary action against them taken.

Article 265 Part 3 states that during a collective labour dispute employees can hold meetings in time free from work to better organise and protect their lawful interests, on condition that such meetings would not interfere with production or routine operations. Article 270 Part 7 establishes that during a collective labour dispute or a labour strike employees can not be terminated or staff numbers reduced, eliminated or a company (branch, representative office) can not be re-organised.

Concerning Clause 3 Sub-clause (v) of the Addendum to Article 24 in relation to paragraphs 1 and 2

Article 262 Part 3 states along with making collective demands to an employer, employees can authorise their representatives to speak on their behalf or they can delegate bargaining to a trade union. As noted above, Articles 27 and 270 establish that during the collective bargaining the participants thereof can not be transferred to another job or terminated at employer's initiative or reprimanded or have other disciplinary action against them taken, and that during a collective labour dispute or a labour strike employees can not be terminated or staff numbers reduced, eliminated or a company (branch, representative office) can not be re-organised.

Concerning Clause 3 Sub-clause (s) of the Addendum to Article 24 in relation to paragraphs 1 and 2

Article 9 Sub-clause (q) stipulates that an employee can apply to court and resort to legal aid in protecting his/her interests. Article 12 Part 2 informs that an employer, who violates workers' rights, fails to comply with employer obligations as under labour contracts or this Labour Code is liable to be held responsible for these actions.

Article 292 "Employee's Right to Claim Reinstatement of Violated Rights" states that if an employee discovers that his/her rights and legally protected interests are violated, he/she can go to court, or resort to an authority (as under Article 294) that resolves labour disputes prior to court, or announce an individual labour strike under conditions and in the manner indicated in Article 295. An employee can use services of a designated representative in applying to the labour dispute resolution

authority, on the condition that the employee in question issues a legally admissible power of attorney to his/her representative.

Concerning Clause 3 Sub-clause (d) of the Addendum to Article 24 in relation to paragraphs 1 and 2

Article 16 Part 1 stipulates that any discrimination based on nationality, gender, race, religion, ethnicity, language, place of residence, property situation, social origin, age, marriage status, beliefs, political views, affiliation with a trade union or other public organisation, rank and duty position or any other factors not related to job qualifications, professional skills and work outcomes, as well as giving any privileges or exemptions or denying any basic rights based on the above criteria is strictly inadmissible. Exemptions, privileges and additional protection granted to women, the disabled, youth under the age of 18 and other socially vulnerable persons are not considered discriminatory. An employer or other physical person allowing or condoning employee discrimination is responsible before the law. An employee who has been subjected to discrimination can go to court to reinstate his/her violated rights.

Article 240 forbids refusing to sign a labour contract with a woman because she is pregnant or cares for a child under the age of 3. This rule does not apply to situations when an employer has no suitable job (position) for a woman in question or to occupations where female labour is prohibited by law. If the employer refuses a job to the woman who is pregnant or cares for a baby under the age of 3, the woman can demand the employer to provide a written response with an explanation. She can also apply to court to reinstate her rights.

Concerning Clause 3 Sub-clause (e) of the Addendum to Article 24 in relation to paragraphs 1 and 2

Article 125 "Pregnancy and Maternity Leaves" states that women are granted a paid pregnancy and maternity leaves for 126 calendar days (70 days prior to childbirth and 56 days after it). If the childbirth entailed some complications or if there were two or more children born at the same time, the leave is extended to 70 post-childbirth calendar days. For women working in agriculture a normal maternity leave is established at 140 calendar days (70 days prior to and 70 days after the childbirth), for complicated delivery it is extended to 156 calendar days (70 days prior to and 86 days after the childbirth) and for the cases of two or more children born at the same time it is extended to 180 calendar days (70 days prior to and 110 days after the childbirth).

Article 127 “Right to a Partially Compensated Social Leave and Procedures Guiding its Application” establishes that a parent or other family member directly caring for a baby under the age of 3 is entitled to a partially paid social leave with a benefit entitlement in accordance with the legislation. An employee taking care of a baby by applying to his/her employer can choose to use a right to a partially paid social leave either in one go (continuously) or in increments. Article 12 Part 2 mandates that an employer who violates workers’ rights, fails to comply with employer obligations as under labour contracts or this Labour Code is liable to be held responsible for these actions.

Concerning Clause 3 Sub-clause (f) of the Addendum to Article 24 in relation to paragraphs 1 and 2

Article 79 Part 1 forbids an employer to terminate a labour contract of an employee who has suffered a temporary loss of labour capacity. The national legislation establishes that ill or injured workers are issued a proof of a temporary loss of labour capacity (a sick leave certificate) that they can present to an employer to get compensated for the sick days.

Article 74 Part 1 Paragraph (c) states that if an employee can not perform his/her job function due to a complete loss of labour capacity continuing for longer than 6 months (if the longer term is not stipulated elsewhere in legislation), his/her labour contract is terminated automatically and as a matter independent of the will of the parties concerned. In such a case, if a loss of labour capacity is complete, a relevant government agency establishes the category of disability and the employee in question is understood as labour incapacitated for at least a year. A temporary loss of labour capacity for less than 6 months period can not be grounds for terminating a labour contract.

It should be noted here that among the court caseload on labour disputes there is a number of claims by employees about being illegally terminated.

As a general rule, the court passes a decision on the reinstatement of an employment to his job or other equal position. In this case, an employer may reinstate an employee to position equal to earlier one. If there is no compatible position (for ex., head of entity), according to the semi-para b) of the 1<sup>st</sup> part of the

article 74 of the Labour Code, the termination of the labour agreement with an employee will be mandatory.

The application of the article 77 of the Labour Code of the Republic of Azerbaijan has not created any problems in practice. Usually, the order (decree, decision) of an employer regarding the termination of labour agreement provides ground for the payment of the allowance stipulated in the article 77 of the Labour Code (as well as semi-para "c" of the article 74). For this reason, other rules for the payment of mentioned allowance has not been fixed.

As a rule, permanent disability shall be determined by an opinion of the healthcare facility. In case disability continues for more than six months, the healthcare facility sends the person to the Medical and Social Expert Commission for issuance of disability degree. Definition of disability degree means lose of ability to work not temporarily, but permanently.

According to the semi-para d) of the article 74 of the Labour Code of the Republic of Azerbaijan, an individual employment contract shall be terminated independent of the will or wishes of the parties when a court deprives the employee of his right to drive, hold some position or deal with definite activity, sentences him for life sentence or certain period. In this article, the sentence of an employee for life sentence or for certain period is not conditioned in relation with the performance of his employment functions. For this reason, not depending on the relation of the employment activity of an employee with his sentence for life sentence or for certain period of time, the employment contract is terminated independent of the will of the parties.

Article 9 "Main Employee Rights under a Labour Contract" Sub-clause (q) stipulates that an employee can apply to court and resort to legal aid in protecting his/her interests. Article 12 Part 2 informs that an employer, who violates workers' rights, fails to comply with employer obligations as under labour contracts or this Labour Code is liable to be held responsible for these actions.

In these cases, in order to demonstrate in the report the authority of the courts to make economic analyses, in its letter No 11/30-567 dated 4 September, 2007, the Ministry of Labour and Social Protection to the Ministry of Justice requested to demonstrate the samples of court decisions. Ministry of Justice has provided the following information.

The Supreme Court of Azerbaijan reviewed the appeals for cases concerning dismissals under terminated employment contracts cancelled by the employer in accordance with the Labor Code, Article 70, sub-paragraphs a, b, c and d and Article 68, section 2, paragraph "c" in January-August, 2007. The court reviewed the

legitimacy of the Court of Appeal's judgments and had the statutory measures taken to ensure that the infringed rights of employees are restored.

Thus, the claim of Rofel Gurbanov Gasin oglu against Nikoil Investment Commercial Bank was partially satisfied by the resolution of the Sabayil District Court of October 25, 2006 with regards to recovery of job, and compensation of salary and moral damages. The resolution also cancelled the order regarding termination of the employment agreement and required full compensation of salary and partial payment of moral damages.

Based on the plaintiff's and defendant's appeals, the case was reviewed on February 21, 2007 by the Civil Cases Board of the Court of Appeals of Azerbaijan Republic. The review resulted in no changes to the October 25, 2006 judgment of the Sabayil District Court.

Based on the defendant's appeal, the case was reviewed by the Civil Cases Board of the Supreme Court of Azerbaijan Republic on May 16, 2007. The review resulted in no changes to the October 25, 2006 judgment of the Sabayil District Court.

The court rulings related to the case show that the employer's decision No.100 A of July 26, 2006 to terminate the employment agreement with the plaintiff was grounded in paragraph "D" of Article 70 of the Labor Code, however, the employer failed to take into account that paragraph 1 of Article 79 of the Labor Code prohibits employers from dismissing temporarily disabled employees under Article 70 of the Labor Code. Thus, documents attached confirm that the plaintiff had been on out-and in-patient treatment from June 1, 2006 through August 20, 2006. In this view, R.Gurbanov's infringed-upon rights were restored.

Resolution of October 13, 2006 by the Sumgayit City Court reviewed and found ungrounded the claim of Emiran Dunyamaliyev Dunyamali oglu regarding restoration of job and compulsory admission to work brought against the Sumgayit Sintezkauchuk of Azerkimya State Company.

Based on the plaintiff's appeal, the Civil Cases Board of the Court of Appeals of Azerbaijan Republic reviewed the Sumgayit City Court's resolution on January 17, 2007 and made no changes thereto.

Based on the plaintiff's appeal, the Civil Cases Board of the Supreme Court of Azerbaijan Republic reviewed the case and identified that the Court of Appeal breached material and procedural legal provisions, wherefore the Supreme Court's judgment of May 25, 2007 cancelled the Court of Appeals' January 17, 2007 judgment and required the Court of Appeals to review the case again.

Judgment of September 14, 2007 by the Civil Cases Court of the Sumgayit Court of Appeals satisfied E.A.Dunyamaliyev's claim and restored him in the capacity of the check-point manager of Sintezkauchuk plant with compensation of the salary for forced absence.

The case materials show that the defendant considered that the plaintiff failed to properly perform his employment contract responsibilities and sought to dismiss him for failing to properly securing and safeguarding state property, as per paragraph "d" of Article 70 of the Labor Code. However, the court identified that the grounds specified were not provided for in the employment agreement entered into between the employer and the employee and the party responsible for the instance of theft was the Security Department of Sumgayit. In addition, the plaintiff was not on duty when the property was stolen. In this view, the Court of Appeals' termination of the employment contract and reference to paragraph d of Article 70 of the Labor Code was recognized invalid.

Judgment of August 11, 2005 of the Narimanov District Court of Baku did not satisfy Rafail Minulin's claim against the Narimanov Electric Depot of Baku Metro concerning restoration of job and compensation of financial and moral damages.

The Civil Cases Board of the Court of Appeals of Azerbaijan Republic reviewed the case twice based on the plaintiff's appeal and retained the Narimanov District Court's judgment unchanged. Despite that, the Civil Cases Board of the Supreme Court of Azerbaijan that reviewed the case based on the plaintiff's appeal, annulled the Court of Appeals' judgments and required the Court of Appeals to re-review the case.

The Civil Cases Board of the Baku Court of Appeals reviewed the case on August 31, 2007 and terminated the August 11, 2005 judgment of the Narimanov District Court, and ruled to have R.G.Minulin restored in the capacity of a maneuver machinist of Narimanov Electric Depot and compensated for salary and moral damages for days of forced absence since 30.05.2005 in the amount of AZN 500.

In this case, the employment contract termination under paragraph c of Article 70 of the LC was also considered illegitimate.

Presented below are some examples of court judgments related to illegal termination of employment contracts, restoration of employees' rights and compensation of financial and moral damages.

Judgment of November 9, 2005 ruled by the Sabayil District Court did not satisfy the claim of Billura Abdurazagova for restoration in the capacity of the main

counterpart manager at Oriflame and compensation of financial and moral damages for days of forced absence in the amount of AZN40.000.

Based on the plaintiff's appeal regarding the illegitimacy of the Sabayil District Court judgment of November 9, 2005, the Civil Cases Board of the Court of Appeals of Azerbaijan Republic ruled on October 26, 2006 to cancel the Sabayil District Court's November 9, 2005 judgment and provided for partial satisfaction of the claim with B.G.Abdurazagova being restored in her former capacity and compensated for the salary unpaid during the days of forced absence.

Based on the appeal filed by Oriflame representative concerning illegitimacy of the Court of Appeals' judgment of October 26, 2006, the Civil Cases Board of the Supreme Court of Azerbaijan Republic reviewed the case and found the Court of Appeals' ruling valid and retained it effective on February 8, 2007.

In this case, the judgments of the Court of Appeals and Civil Cases Board of the Supreme Court show that the defendant breached paragraph 1 of Article 79 of the Labor Code by terminating the employment agreement with the plaintiff. That Article prohibits dismissing female employees with children under 3 years of age. Despite that the employer failed to take into account that the plaintiff had a child born on 17.10.2004 when terminating the employment agreement.

Judgment of June 7, 2006 by the Guba District Court rejected the claim of Adham Nematov Sultanmedjid oglu against Rafig Mustafayev Movsum oglu, principal of Afurdja village secondary school, Guba district, and the Guba District Education Department, for restoration of work and compensation of salary for days of forced absence.

Based on the plaintiff's appeal, the Civil Cases Board of the Court of Appeals of Azerbaijan Republic reviewed the case and ruled on October 26, 2006 to terminate the judgment of the Guba District Court. The claim was partly satisfied by restoring A.S.Nematov in the capacity of the mathematics teacher at the secondary school of Afurdja village, cancelling the former resolution of the Guba District Education Department No.45 of April 5, 2006 and requiring compensation of salary for days of forced absence from 05.04.2006 through 26.10.2006.

Judgment of November 23, 2005 by the Mingechevir City Court rejected the claim filed in by Nadir Valiyev against the Vocational School No.1 concerning restoration of job and compensation of legal expenses and financial damages incurred.

Based on the plaintiff's appeal, the Civil Cases Board of the Court of Appeals reviewed the case and identified that the employer's resolution to terminate the employment agreement with the plaintiff did not specify the grounds for dismissal

and did not indicate which paragraph of Article 70 of the Labor Code was used as the legal ground for terminating the agreement. Also, it was identified that termination of the employment agreement because the plaintiff did not have a workload of Russian language and literature classes in 2003-2004 was illegitimate.

In this view, the Court of Appeals' August 25, 2006 judgment overruled the Mingechevir City Court's November 23, 2005 judgment on the case and satisfied N.I.Valiyev's claim by restoring him in his former capacity at the Vocational School No.1 and providing him with compensation for days of forced absence since August 30, 2003.

Based on the appeal filed in by the defendant, A.G.Demirov, principal of the Vocational School No.1, the Civil Cases Board of the Supreme Court of Azerbaijan Republic, reviewed the case on February 28, 2007 and ruled to retain the Court of Appeals' judgment of August 25, 2006 unchanged.

### **Response to Question A in relation to paragraphs 3**

Article 45 of the Labour Code states that a labour contract can be time-indefinite or specific (for up to 5 years). If the contract does not contain a term provision it is considered a time-indefinite contract.

Article 73 "Termination Procedure for a Term-based Labour Contract" states that a term-based labour contract is terminated when its term is up. If a labour relationship continues after expiration of the contract term or if neither of the parties demands termination within one week after expiration of the contract term, the labour contract is considered automatically renewed for the term it was originally executed for.

If for certain admissible reasons (an illness, a business trip, a vacation or another case provided in Article 179 when an employee is absent with his/her job secure compensation intact) an employee is absent from work when his/her contract term expires, his/her contract may be terminated at a day designated by an employer after he/she is back to work, provided that this day is within one week of his/her being back to work.

Article 77 Part 1 states that in cases of redundancy or reduction in staff numbers an employer shall formally inform an employee about the situation at least two months prior to termination, as required by Article 70 Paragraph (b). This prior notice requirement applies to both term-based and time-indefinite labour contracts.

For other grounds of termination (as stipulated in Article 70a, 70c and 70ç) the prior notice requirement is not established.

Article 69 states that a labour contract can be terminated at employee's initiative, by an employee giving a one calendar month prior written notice to an employer. After one month since submission of the notice has ended, an employee can skip work and demand a final compensation settlement. The employer must honour employee's wishes in that respect.

Articles 51 and 54 establish a maximum 3-month probation period at the beginning of a labour contract. After the probation period is up, either party may terminate the contract by giving the other party a written notice within three days. If neither party has demanded termination an employee is considered as successfully completed the probation, from which moment his/her labour contract can only be terminated in accordance with procedures and grounds established by the Labour Code.

According to the 2<sup>nd</sup> part of the article 53 of the Labour Code, on the day an employee passes the probation period, the labour agreement can be terminated in the manner and according to principles specified in this Code.

According to the article 76 of the Labour Code, an employer may terminate the employment contract on the basis of only one reason specified in the articles 68, 69, 70, 73, 74 and 75 of this Code. The employment agreement can not be terminated on the basis of two or more reasons at the same time, as well as the reason not provided in the legislation, and breaching the rules on the termination of employment agreement defined in this Code.

According to the 1<sup>st</sup> and 2<sup>nd</sup> parts of the article 45 of the Labour Code, a labour contract may be without specified term (termless) or for a definite period (term). Since the employment contract without specified term or for certain period is not stipulated in the application of the article 76 of the Labour Code, the employment agreement without specified term or for certain period can be terminated in the manner specified in the article 76 of the Labour Code. In general, it should be noted that if the application of separate rules and regulations fixed in the Labour Code of the Republic of Azerbaijan is not conditioned with the employment agreement without specified term or for certain period, then these rules and regulations are applied towards both types of employment agreement.

According to the article 6 of the Labour Code, this Code is not applied towards persons performing jobs under contractor, task, commission, author and other civil contracts. For this reason, in cases of establishing employment relations on the basis of civil and legal agreements, the stipulation of probation period can not be

categorical, and it can be fixed in the contract only with the mutual agreement of “the client” and “the contractor”.

Taking into account the requirements of the CoE experts, in its letter No 11/30-567 dated 4 September, 2007 to the Ministry of Justice, the Ministry of Labour and Social Protection requested to give samples of court decisions on following illegal dismissals:

- the termination of the employment contracts with the employees by reasons of the liquidation of entity, reduction of the number of employees and change in terms and conditions of employment (semi-para a) and b) of the article 70 and semi-para c) of the second part of the article 68 of the Labour Code of the Republic of Azerbaijan) are evaluated as economic reasons. The examples of court decisions proving its authority to check the facts, which are reasons for economic evaluations in cases of work dismissals by above mentioned reasons;
- in cases of the termination of employment agreement of an employee according to the semi-para c) and d) of the article 70 of the Labour Code, the examples of court decisions to check how it investigated a broken right of an employee and fairness of his dismissal;
- examples of court decisions proving the cases of illegal termination of the employment agreements of the employees and thereupon, payment of moral and financial compensation.

In view of the request, the Ministry of Justice of the Republic of Azerbaijan in its letter no 02/06-319 dated 15 September, 2007, informs that the courts of first instance proceeded 485 civil cases on reinstatement in employment in 2006. Court decisions were taken on 322 cases out of them, 121 claims were satisfied, execution of 40 cases was terminated, 82 cases were not preceded according to court decision, and 41 cases were sent accordingly.

176 civil disputes of same kind were examined in the first half of 2007. Court decisions were taken on 119 cases of them, 41 claims were satisfied, execution of 16 cases was terminated, 27 cases were not preceded according to court decision, and 14 cases were sent accordingly.

In the letter, it is mentioned that the application on other cases were sent for review to the Supreme Court of the Republic of Azerbaijan.

We would like to inform that according to the article 74 of the Labour Code, in view of the termination of an individual employment contract independent of the will or wishes of the parties, the employment agreement is not automatically liquidated in case of its termination on the basis of this article. According to the

article 83 of the Labour Code, unless rules other than as provided in this Chapter are established for documenting the termination of an employment contract, the termination of an employment contract by the employee or employer or in the cases independent of the parties' wishes shall not be documented by order (decree, decision) of employer pursuant to the procedures and rules provided in Sections 68, 69, 70, 73, 74 and 75 hereof.

### **Response to Question A in relation to paragraphs 4**

Article 11 states that an employer is entitled to alter work conditions in compliance with provisions of the Code and other applicable laws.

Article 56 states that, if necessary for reasons of production and labour organisation, an employer can alter work conditions by continuing to offer jobs to employees in accordance with their vocations, specialities and positions. An employee whose work conditions will be altered must be informed by an employer at least one month in advance, either by a notice or by an order. If the employee does not want to continue in the same position under new work conditions, he/she must be transferred to another position, if possible. If impossible, an employee can be terminated in accordance with provisions of Article 68 Part 2 Paragraph (c).

### **Question B**

Please state whether workers who consider that they have been dismissed without valid reason have a right of appeal to a tribunal or an impartial authority.

Please indicate the time-limit which workers must observe to exercise this right of appeal. Please state where the burden of proof lies.

### **Response to Question B**

Article 9 "Main Employee Rights under a Labour Contract" Sub-clause (q) stipulates that an employee can apply to court and resort to legal aid in protecting his/her interests. Article 12 Part 2 informs that an employer, who violates workers' rights, fails to comply with employer obligations as under labour contracts or this Labour Code is liable to be held responsible for these actions.

Article 292 "Employee's Right to Claim Reinstatement of Violated Rights" states that if an employee discovers that his/her rights and legally protected interests are violated, he/she can go to court, or resort to an authority (as under Article 294)

that resolves labour disputes prior to court, or announce an individual labour strike under conditions and in the manner indicated in Article 295. An employee can use services of a designated representative in applying to the labour dispute resolution authority, on the condition that the employee in question issues a legally admissible power of attorney to his/her representative.

Article 294 Part 4 states that if an employee or an employer is dissatisfied with a decision passed by a labour dispute resolution authority prior to court, they can apply to court, in which case the legally mandated claim period starts from the day the resolution authority passed its judgement.

Article 296 “Claim Periods in Individual Labour Disputes” states that an employee can apply to the labour dispute resolution authority within three calendar months of discovering that his/her rights are violated. In all other cases an employee has one calendar month from the discovery to apply to court. The claim period does not apply to cases of damage to employee’s life or health. For claims concerning monetary or other material or property compensation, as well as for cases of damage the claim period for court application is 1 year from the discovery.

An employer can bring a claim about violation of rights and lawful interests on the part of an employee within one month from the discovery, and for monetary or other material damage – within a year from the discovery.

If the terms prescribed by Article 296 are missed for an excusable reason (an illness, a business trip, a vacation spent in a different location, a death of a family member or a close relative or other such case) the authority dealing with the labour dispute may rule the claim term as met and judge on the merits of the case.

The Labour Code does not explicitly establish whether the burden of the proof in case of labour disputes is on the employer or employee. Articles 10 and 12 establish that a court ruling is mandatory for both parties in cases of individual and collective labour dispute.

The information on current court practice has been submitted above.

According to the article 84 of the Labour Code of the Republic of Azerbaijan, the following information must be contained in the order (decree, decision) terminating an employment contract:

- the name of enterprise, legal address, number of the order (decree, decision), date, the position and name of the employer who signed it;
- the full name of employee;
- the name of employee's position as stated in the employment contract;
- grounds for terminating the employment contract;

- the relevant Section, and subsection hereof where the rules for termination of employment contract are provided;
- the day, month and year on which the employment contract was terminated;
- official documents considered as grounds for the order (decree, decision) terminating the employment contract.

An order (decree, decision) lacking any of the information provided in subsection 1 of this Section may be declared invalid by the court resolving the Labour dispute. The order (decree, decision) of the employer terminating the employment contract may be prepared in simple form indicating only the information in subsection 1 of this Section; also in accordance with regulations it shall consist of a descriptive (introductory) section and the decision where this information is shown.

In cases of illegal dismissal, the employee is reinstated by court and, as a rule he is paid compensation for period of absence from work and moral damage in cases of claims.

There is no practice in the Republic of Azerbaijan of ending labour agreements with an employee in a repressive manner, at the initiative of an employer. Usually, an employer shows in his order the reasons of ending the labour agreement. If these reasons are not justified enough or the order to end a labour agreement breaches the terms of the Labour Code, the court discovers these facts and takes a decision to reinstate an employee. The court creates all conditions for both parties to be defended.

### **Question C**

If the court or tribunal to which the appeal lies considers that the termination of employment is unjustified, please indicate whether the worker is entitled to adequate damages (and describe how the level of damages is determined) or to any other form of compensation (and indicate what such compensation consists of). In as much as the remedy for unfair or unlawful termination of employment is monetary, please indicate:

- a. whether this applies to all enterprises, regardless of their size;
- b. whether there is a minimum level of damages;
- c. whether the choice of damages (instead of reinstatement) is left to the worker, the employer or the court.

## Response to Question C

In accordance with Article 195 an employer bears complete responsibility to reinstate the damage suffered by an employee, if:

- a) there is an effective court ruling on illegal and groundless termination of a labour contract;
- b) an amount of material and moral damage suffered by an employee is decided by the court;
- c) an employee suffers a damage because of loss of labour capacity while at work due to an accident related to an employer not observing safety rules or, in case of death, a damage is suffered by his/her family members or persons in his/her custody;
- d) while at work, an employee suffers a damage because of breakage, tilt or theft of his/her personal items or other property due to poor organisation of storage and protection by an employer;
- e) a wage or other payments due to an employee are mistakenly identified or illegally and groundlessly refused;
- f) an employee suffers a material or moral damage due to employer's limiting employee's rights in a labour contract in comparison with rights granted in legislation or in collective bargaining agreements;
- g) an employee suffers a material or moral damage due to inability to find employment after being terminated because of employer's spreading false information about low personal and professional qualities of an employee or other libel information;
- h) an employee suffers a material damage due to employer's non-observance of other obligations under a labour contract.

Article 196 "Procedures for Determining and Compensating Material Damages Suffered by the Employer" states that the material damages are compensated to an employee upon his/her discovery of cases set out in Article 195 as well as upon results of an inspection by a relevant authority or an audit conducted by an individual auditor or an audit firm, or upon a decision, an order or a resolution of a government authority or its public officials, or upon a court ruling (resolution, decision, verdict).

The damages inflicted upon employee's personal items or other property are determined at the prevalent market values. By agreements of the parties the compensation may be done in kind.

If an employer agreed in a labour contract or later on that an employee needs his/her own work tools, instruments and other means to perform his/her job function, the employer is liable for a damage inflicted to these items.

If there was not a prior agreement on using employee's own work tools and other personal items, but the employee nevertheless brought them into premises for performing his/her job function, is only liable for intentional damage done to employee's property.

Article 290 Part 3 sets a procedure for determining a monetary equivalent of moral damages suffered by an employee. It also establishes material responsibility of the employer for moral damages. An employee claiming moral damages must indicate an amount claimed in his/her application. The monetary equivalent of moral damages suffered by the employee is decided by the court after considering a threat to public security of the relevant actions and other objective factors related to personalities of the employer and the employee, the facts of the case, etc. Moral damages suffered by an employee are meant to encompass actions of the employer or other person(s) subordinated to him/her that in any way disparage, denigrate or malign his/her dignity, libel, slander or offend him/her, make false allegations about him/her in order to compromise him/her in the eyes of the collective, as well as other actions contrary to ethical norms, public moral s, employee's beliefs and conscience and feelings of national pride.

Article 197 "Review Procedure for Employee's Claim of Compensation for Material Damage" states that an employee shall apply to an employer for compensation of the material damage suffered by the employee. The employer shall investigate the matter, take appropriate decision and inform the employee about it within 15 days.

If an employee is fully or partially dissatisfied with a decision of the employer or if he/she does not received a response to his/her damage application within the legally mandated time, the employee take the matter to court.

The parties may agree on other mechanisms of dispute resolution of damage claims, but such agreements may not prejudice the employee's right to bring the claim to court.

Article 290 states that in individual labour disputes the parties must respect each other's rights, observe their obligations under the legislation and the labour contract and execute the decision of the court on the merits of the case. The

employer who was found to violate employee's rights and lawful interests must pay the damages to the employee in full.

Article 300 states that if an employer terminated a labour contract while violating provisions of Articles 68, 69, 70, 73, 74, 75 and the procedures established in Articles 71 and 76 as well as disregarding the cases stipulated in Article 79, a court deciding this labour dispute on the merits of the case must pass a decision reinstating the employee to the former position with the full compensation for the time forced out of work or pass a ruling confirming a settlement reached by the parties.

The court may rule on the employer to compensate all damages to the employee, meaning average wage for the period the employee was forced out of work, fees paid to lawyers for representing interests of the employee in court, as well as moral damages claimed by the employee, damages suffered as a result of being unemployed because of taking debts, selling personal items, etc. and other such damages.

If during court proceedings on an individual labour dispute an employer and an employee reach a negotiated settlement, the judge shall pass a ruling mandating the parties to the settlement to observe their reciprocal obligations arising from such settlement.

According to the part 1 of the article 300 of the Labour Code, if an employer terminates employment relations with an employee in violation of Sections 68 (Grounds for Terminating an Employment Contract), 69 (Termination of an Employment Contract at the Initiative of the Employee), 70 (Grounds for Termination of an Employment Contract at the Employer's Initiative), 73 (Procedures for Terminating a Term Employment Contract), 74 (Grounds for Termination of an Individual Employment Contract in Cases not depending on the Will of the Parties) and 75 (Termination of Employment Contracts in Cases Provided Therein) hereof on the cancellation of employment contracts or does not comply with the provisions of Sections 71 and 76 or is in violation of the provisions of Section 79, the court which deals with Labour disputes shall, upon a petition on the claim and upon investigating the facts of the case, pass a decision on the reinstatement of said employee by retaining his salary for being away from work obligatorily or by approving the parties' reconciliation agreement according to the second part of the article. In its judgement the court also may stipulate payment by the employer of the amount of damage caused to the employee due to his claim. The term "the amount of damage caused" shall mean the average salary of an employee during the period he was unemployed as a result of his termination, the amount of

expenses incurred by an employee in hiring a lawyer (defender) for the protection of his rights, as well as the amount of spiritual damage requested by the employee on the basis of his application; the total amount of costs incurred by the employee from borrowing money and selling personal items as a result of his unemployment, and other expenses.

If employee and employer manage to sign a reconciliation agreement on the basis of mutual consent during the judicial settlement of an individual Labour dispute, the judge shall pass a judgement binding the Parties to perform their obligations determined by said agreement.

According to the article 301 "Implementation of Decisions and Rulings Concerning Individual Labour Disputes" of the Labour Code, A court decision on the resolution of an individual Labour dispute must be carried out immediately on the day the decision takes effect, unless otherwise stipulated therein. If the responsible party does not implement the court decision, or if the authorized individual or other private person prevents its implementation, the judge shall rule in favour of the payment of financial damages to the employee and shall initiate a criminal case.

Article 303 states that individual labour dispute provisions do not apply to persons appointed to the position in accordance with the Constitution of the Republic of Azerbaijan or by the President of the Republic of Azerbaijan.

Article 4 establishes applicability of the Labour Code to all enterprises, companies, organisations as well as workplaces paying wages without being incorporated located on the territory of the Republic of Azerbaijan and establishes by government agencies, physical and legal persons regardless of the property type and organisational-legal form, as well as embassies and consulates of the Republic of Azerbaijan, ships sailing in international waters under the flag of the Republic of Azerbaijan, offshore facilities and other such workplaces and also out-workers working from home using raw materials and production equipment provided by an employer.

Article 6 establishes non-applicability of the Labour Code to military servicemen; court judges; members of the Parliament of the Republic of Azerbaijan; municipal councillors; foreigners who executed a labour contract in foreign country with a legal person resident in a foreign country to be employed in a company (branch, representative office) located in the Republic of Azerbaijan; persons who provide works and services under short-term civil law contracts, such as subcontracts, assignments, commission contracts, copyright agreements, etc.

## Question D

Please list the categories of workers excluded from this protection and indicate how they are in conformity with item 2 of the Appendix to Article 24.

If workers who are employed under a fixed-term contract are excluded (item 2 of the Appendix to Article 24) from this protection, please provide a definition of a fixed term contract. If there is a trial period of employment for this protection, please indicate its length.

## Response to Question D

Articles 4 and 6 define jobs and persons which are not subject to provisions of the Labour Code. Article 5 defines jobs and persons to whom the Code is applicable with certain specificities. These provisions are expounded above.

Above-mentioned Article 77 extends its coverage to both term-based and time-indefinite labour contracts as well as employees in probation.

Generally, provisions of the Labour Code apply to both term-based and time-indefinite labour contract. Article 6 establishes that this Code is not applicable to persons providing services under civil law contacts. As a general rule, such contracts are term-based.

Article 45 states that a labour contract can be time-indefinite or specific (for up to 5 years). If the contract does not contain a term provision it is considered a time-indefinite contract.

Articles 51 and 54 establish a maximum 3-month probation period at the beginning of a labour contract. After the probation period is up, either party may terminate the contract by giving the other party a written notice within three days. If neither party has demanded termination an employee is considered as successfully completed the probation, from which moment his/her labour contract can only be terminated in accordance with procedures and grounds established by the Labour Code.

In the 1<sup>st</sup> part of the Article 51 of the Labour Code of the Republic of Azerbaijan, when signing the labour contract, the employer clarifies the purpose of the probation period. He/she shows that during the conclusion of a labour contract, the probation period aims to define the qualification level and relevant skills of an employee to perform definite functions. As the purposes of the probation period are the above-mentioned, an employer may evaluate, at the end of probation period, the relevance of an employee only according to these parameters (qualification level, skills to perform functions).