MONITORING OF STATE OF ASSURANCE OF LABOR RIGHTS IN THE REPUBLIC OF AZERBAIJAN

LEGISLATION AND PRACTICE

MONITORING REPORT

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INDUCTION

One of intentions stated in preface of the Constitution of the Republic of Azerbaijan is **'to assure worthy life standard of everyone according to the fair economic and social rules'.**

Existence of fundamental rights and freedoms in countries where socio-economic rights are not assured is impossible. Fundamental rights and freedoms can be assured only in countries with flourishing economy where multilateral conditions are created to provide high prosperous life to every person living in that country.

From this point of view, the Republic of Azerbaijan has affirmed assurance of socio-economic rights as one of high objectives of country in the Constitution of the country. Many works have been done towards creation of necessary normative base for assurance of socio-economic rights in country, formation of mechanisms required for implementation of norms. Country has supported majority of international norms for assurance of socio-economic rights.

But efforts made towards assurance of socio-economic rights can have no serious effect without participation of wide range of population and civic society structures representing them. For assurance of these rights the trade unions, NGOs, other structures representing civil society also should give their contributions.

During 10-year activity Citizens Labor Rights Protection League has functioned mainly in direction of protection, propaganda and

study of socio-economic rights in country.

Referring to our multiyear experience we can confidently say that national norms assuring socio-economic rights in our country in many cases either comply with international standards or are close to these standards. However, there are numerous gaps, faults and deficits in national legislative acts.

Despite national norms are a bit satisfactory, current state of practice is not desirable. The Republic of Azerbaijan is among countries where socio-economic rights, specially labor rights are totally violated. Violation of labor rights in the country is ten times higher than violation of other rights and freedoms. At the same time, restoration of labor rights violated is too insignificant regarding other rights and freedoms violated.

Citizens Labor Rights Protection League carries out implementation of project titled **'Monitoring of Assurance of Socio-Economic Rights in the Republic of Azerbaijan and Formation of Campaigning',** financed by **Eurasia Foundation Azerbaijan Office** due to funds of **United States Agency for International Development (USAID),** in order to implement legal, public, educative and advocacy activities for study of real state of assurance of labor right, which is part of socio-economic rights, in the country by fair indicators, making respective proposals for country authorities, civic society structures, corresponding international bodies upon results obtained, as well assurance of labor rights. The monitoring report submitted has been developed in frame of this project. As a result of monitoring performed in frame of this project the state of assurance of only labor rights has been studied. Study of state of assurance of other socio-economic rights is included in future plans of Organization.

Strategic goal of this project implemented is realization of activities for **study and removal of problems in this field by holding monitoring of state of assurance of labor right that is part of socio-economic rights.**

To get this goal monitoring of **Fair and effective labor conditions** has been held for **Labor right and its assurance.**

Monitoring was held by applying the following monitoring tools.

Analysis of norms on Labor

Rights in comparison with respective International norms supported by country;

The analysis found out lacks in Labor Legislation, provisions causing violation of labor rights and fair labor conditions, provisions of these acts not complying with international standards determined.

Sociological poll

Sociological poll was developed and implemented among 200 respondents working in different fields in base of questionnaire by professional sociologist upon order of Organization. Purpose of the poll was to study the state of signing the labor contracts in workplaces and obeying the labor legislation.

Analysis of violation of labor rights upon statistics

To obtain statistician data the information inquiries were sent to courts of 6 districts of Baku City, Ombudsman, Azerbaijan Trade Unions Confederation, State Statistics Committee and necessary statistical data were gained. Besides, appeals Citizens Labor Rights Protection League received were analyzed as well. Analysis was carried out upon information obtained.

Organizing non-structured interviews with experts

Non-structured interviews were carried out with famous experts in field of labor rights. Interviews involved mainly heads of manufacturing and service enterprises in private sector with limit number of employees. In order to provide correctness of information given those persons were guaranteed that titles of their enterprises and their names will not be stated in report. As a result of interviews the way of establishing the labor relations by employers dealing with small and middle entrepreneurship and problems occurring while establishing labor relations were determined.

Holding observations by attending pilot enterprises

Monitoring was held upon special methods at 30 enterprises of different assignment that were determined in advance on the real state of observation of existing legislation in field of Labor Protection and security technique. Report and

recommendations were developed upon results.

Analysis of press

3 daily newspapers that are popular in country and publish as a rule matters on socio-economic rights have been analyzed. These were Echo, 525-ji Gazet and Azadlyg newspapers. During 3 months all articles posted on these newspapers in field of labor were registered and classified upon special methods. Results obtained were compared with other results and taken into consideration in making the final opinion.

Separate final record was developed on each of these tools used and reflected in the monitoring report submitted. Also the only opinion was made by lawyers on all directions of monitoring implemented.

Report includes proposals compiled upon monitoring results.

Strategy set upon monitoring results

Following activities are scheduled to be implemented according to the strategy set during next period of continuation of project:

LEGAL ACTIVITY. It is considered to organize court cases, also **strategic litigations** for removing the incorrect practice existing during this activity, or changing the existing norm.

PUBLIC ACTIVITY. During this activity conferences, round tables will be arranged, materials posted on media, most important problems found out by the monitoring socialized, public opinion on these problems formed.

EDUCATIVE ACTIVITY. This activity will be included in all events held in frame of project. Monitoring report will be submitted to respective national and international bodies, also presented to discussion of wide community (posting the report on Internet and publication of its brief version on the press), and this will be of educative importance as well.

ACTIVITY TOWARDS IMPLEMENTATION OF RECOMMENDATIONS PREPARED AS A RESULT OF MONITORING. Monitoring report will be directly submitted to some of respective state bodies. For realization of recommendations Organization will determine allies

in Parliament, executive structures, trade union bodies and make efforts for adoption of decisions via them.

While submitting monitoring report to international bodies efforts will be made for adoption of decisions in the country via them.

Geography of project

Despite area of application of monitoring tools and mechanisms includes Baku City and nearby territories the results can be related to all the territory of country. Monitoring results are characteristic for other regions as well.

Main conclusion of the staff implementing the project

The main conclusion we have come to as a result of tools applied in monitoring on state of assurance of labor rights is that labor legislation is not applied in 80% of workplaces in which people are involved in hired labor. Workplaces where labor legislation is obeyed are state institutions mostly. It includes budget organizations and economic subjects owned by state as well. Therefore, labor legislation is brutally violated in these institutions too. There are also private enterprises in which labor legislation is partly obeyed. It concerns big manufacturing enterprises mainly.

Gratitude and responsibility

We express our deep gratitude to Eurasia Foundation Azerbaijan Office and its employees, personnel and experts involved in the project implementation, management of Azerbaijan Trade Unions Confederation, Ministry of Labor and Social Protection of Population, heads and members of corresponding Commissions of Milli Majlis and mass media for supporting this activity, which has been carried out in the country for the first time.

Without valuable views and recommendations of experts taking part in the monitoring implementation development of this report would be impossible, however, the project director bears responsibility for mistakes that may not be excluded in the report.

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Sahib Mammadov

Comparative analizis of legislation

Normative legal acts included in the labor legislation of the Republic of Azerbaijan consist of:

- *Labor Code of the Republic of Azerbaijan (hereinafter LC);*
- *Corresponding laws of the Republic of Azerbaijan;*
- *Normative legal acts adopted by corresponding executive power bodies within their authorities;*
- *International agreements signed or supported by the Republic of Azerbaijan concerning labor, socio-economic issues.*

Constitution and referendum acts of the Republic of Azerbaijan are superior in the country. At the same time, according to article 151 of Constitution international norms Azerbaijan supports have preference regarding other normative acts except Constitution and referendum acts and if there is collation between acts included in legislation system and international norms International norm is applied. In this point, laws included in labor legislation system of the country and normative legal acts of corresponding executive power bodies must comply with both Constitution of the country and corresponding international norms. The following analysis is also based on this principle.

A number of articles of Constitution of the Republic of Azerbaijan are linked to labor right and realization of this right. These articles contain the following principles mainly:

- *Everyone is free in choosing type of activity, profession, occupation and workplace according to personal capacity.*

Differed from previous periods, employment is not compulsory and everyone is entitled to work or not to deal with any labor activity. Those not wanting bear no administrative and criminal responsibility.

- *People work upon labor contracts signed voluntarily and freely only and no one can be made sign labor contract.*
- *Except cases stated in Constitution and International norms supported by Azerbaijan, no one can be made work by use of force.*

According to Constitution, 'it is admissible to involve upon court decision in forced labor conditions and terms of which are set by law, to make work during military service in connection with implementation of orders of authorized persons, to do works demanded from citizens in state of emergency and martial law'.

- *Right of everyone to work under safe and healthy conditions and receive payment, not less than minimal wage set by state, according to the job done and admitting no discrimination.*

According to international norms supported by Azerbaijan, everyone is entitled to do the same works and receive equal salary.

- *State must use its resources to assure the employment, and state recognizes the right of the unemployed to get grants if it has no resource to completely assure the employment.*

These principles given above and stated in Constitution of the Republic of Azerbaijan comply with international labor standards and according to another principle of Constitution all valid legislative and normative acts must comply with these provisions. Another article (article 36) of Constitution of the Republic of Azerbaijan is dedicated to right of employees to hold a strike because of socio-economic demands. According to Constitution **'everyone is entitled to hold strike by itself or along with others'.**

According to Constitution, right

to hold strike can be restricted in cases set by legislation. Also, **'Servicemen and civics serving at Armed Forces of the Republic of Azerbaijan and other armed units cannot hold strike'.**

Article 37 of Constitution of the Republic of Azerbaijan concerns the right to rest. According to the article **'everyone has right to rest'. According to section 2 of article** *'Those working upon labor contract are assured with working day set by law but not more than 8 hours daily, days off and holidays, paid leave not less than 21 calendar days at least once a year'.*

International norms on labor rights

The Republic of Azerbaijan has supported majority of important international norms on socio-economic rights. Such documents include first of all International Covenant on Socio-Economic and Cultural Rights, European Social Charter's several articles and conventions of International Labor Organization (ILO). LC of the Republic of Azerbaijan that came into force from July 1, 1999 and to which partly changes and additions were made later **"…establishes, according to international treaties signed or supported by the Republic of Azerbaijan, conventions of ILO and other norms of international law, norms regulating rights and duties of employees, employers, also respective state power bodies in field of creation, change of labor relations, putting an end to them and protection of rights of participants of these relations".**

Universal Declaration for Human Rights adopted on 10 December 1948 has established right of everyone

- *to labor right, to freely choose workplace*
- *to get fair and necessary sum of wage*
- *to establish trade union.*

After this, **International Covenant on Socio-Economic and Cultural Rights** reflected rights such as labor right, right to voluntarily choose profession, right to get fair wage, right to create and enter the trade unions, right of social security, right to guaranteed life standard, right to be protected from hunger, right of health and educa-

tion and assurance of these rights was set as liability of the state participating in Pact.

The Republic of Azerbaijan ratified in **Covenant** 1992.

Liability to ratify European Social Charter was one of liabilities the Republic of Azerbaijan had taken while being admitted to Council of Europe.

By ratifying 18 of articles reflected in section II of European Social Charter the Republic of Azerbaijan supported a number of provisions of this important document. These are articles 1, 4, 5, 6, 7, 8, 9, 11, 14, 16, 20, 21, 22, 24, 26, 27, 28, 29.

EUROPEAN SOCIAL CHARTER CONSISTS OF 2 SEGMENTS: first - labor conditions, second - social security. Labor conditions consider inaccessibility of discrimination in field of employment, prohibition of forced labor and this right is stated in our constitution, no one can be subject to forced labor except exclusions in the legislation.

The Republic of Azerbaijan is member of ILO and participant of a number of its conventions, as well important conventions. Conventions supported by the Republic of Azerbaijan include the below given records that are considered main conventions.

FORCED LABOR CONVENTION. (No 29). This convention was adopted on June 28, 1930 and came into effect on May 1, 1932. The convention bans all forms of forced labor. According to the convention, forced labor can be applied only in exclusive cases, including in military service, seriously controlled correctional works, emergencies such as war, fire, earthquake.

By article 35 of Constitution of the Republic of Azerbaijan "No one can be forced to work", *"Upon court decision involvement in forced labor terms and conditions of which is set by law, to make work for implementation of orders of authorized persons in military service, to make citizens do required works in state of emergency and martial law is admitted".*

FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANIZE CONVENTION. (NO 87). This convention was adopted on 9 July 1948 at the 31st General Conference of ILO. Convention was ratified by the Republic of Azerbaijan on 03.07.1993. The con-

vention sets rights of employees and employers to establish and enter the organization according to their wills and not warning in advance. The convention considers a number of guarantees for realization of these rights and freedoms without interference of state bodies.

By article 58 of Constitution of the Republic of Azerbaijan *"Everyone is entitled to associate with others' and 'Everyone is entitled to establish any union, also political party, trade union and other public union, or enter the existing union.*

Free activity of all unions is assured'. According to another section of that article 'No one can be forced to enter any union or remain as its member'.

RIGHT TO ORGANIZE AND COLLECTIVE BARGAINING CONVENTION. (No 98). This convention was adopted on 1 July 1948 at the 32nd Session of ILO General Conference. It was ratified by the Republic of Azerbaijan on 03.07.1993. The convention protects trade unions from discrimination in any form, interference by organizations of employees and employers in affairs of each others. Convention propagates implementation of collective negotiations.

EQUAL REMUNERATION CONVENTION. (No 100). Adopted at the 34th Session of ILO General Conference on 29 June 1951 and came into force on 23 May 1953. Convention calls all participant states to provide women with payments equal to the ones given to men for labor of the same value and sets concrete liabilities for participant countries.

According to section 2 of article 25 of Constitution of the Republic of Azerbaijan, *'Man and woman are entitled to the same rights and freedoms'. According to section 6 of article 35 of Constitution 'Everyone… is entitled to get payment, not less than sum of minimum wage set by state, for its work without any discrimination'.*

DISCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION. (No 111). Was adopted on 25 June 1958 at the 42nd Session of ILO General Conference and came into force on 15 June 1960. Convention was adopted to put an end to the discrimination in field of employment and occupation. According to the convention making any difference in specific cases and works assuring

state security is not considered discrimination.

MINIMUM AGE CONVENTION. (No 138). This convention sets minimum age limit for job recruitment. According to LC of the Republic of Azerbaijan minimum age limit for job recruitment is age 15.

ABOLITION OF FORCED LABOR CONVENTION. (No 105). This convention forbids political pressure, punishment for educative, political and ideological views, participation in strike, also involvement in forced labor for mobilization of labor resources, application of labor discipline.

Worst Forms of Child Labor Convention. (No 182). This convention calls on participant states to carry our urgent and effective actions for removal of application of unbearable forms of child labor, as well slavery and analogical practice, force involvement in armed conflicts, prostitution and for pornographic goals and dealing with works damaging health and morality of children.

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COMPARATIVE ANALYSIS OF LABOR RIGHT NORMS WITH RESPECTIVE INTERNATIONAL NORMS SUPPORTED BY COUNTRY

LC of the Republic of Azerbaijan (hereinafter LC) came into force on July 1, 1999, later additions and changes were made to that.

LC is main document regulating labor relations in country and on this point analysis will cover mainly sections and chapters of Code. However, during analysis it will be referred to normative acts that are directly and indirectly related to LC.

LC consists of 13 sections, 48 chapters and supplements. Analysis is implemented upon sections.

Section I of LC is about general norms

This section includes normative legal acts included in labor legislation system, duties and principles of code, ideas of major notions used in labor legislation, provisions on workplaces where code is applied and persons that code does not concern. General section also contains major rights and duties of employee by the labor contract, rights, duties and responsibilities of employer, principles of regulating labor rights of foreigners and those without citizenship, duties of state power bodies in field of labor relations, provisions on the body implementing state control on observation of labor legislation.

Article 16 of LC is dedicated to inaccessibility of discrimination in labor relations. It must be mentioned that provisions reflected here comply with respective norms supported by country, also article 1 of **Discrimination (Employment and Occupation) Convention** of International Labor Organization (ILO).

By article 16 privileges and supplies considered for certain group of employees (women, children, invalids etc) are not counted discrimination regarding other employees and it fully complies with section 2 of article 1 of given convention of ILO.

Article 17 of Code forbids forced labor and forced labor is admitted only in special cases (state of emergency, martial law etc). But article 60 of LC is against to **Forced Labor Convention** (No 29) and **Abolition of Forced Labor Convention** (No 105) of ILO and in certain cases promotes application of forced labor. According to convention 29 forced labor is any job or service for which employee does not give consent voluntarily and required by any person (employer in article 60) by threatening (in this case ceasing labor contract is accepted as threat) or as type of punishment. According to article 60 of LC, employer can transfer employee without its consent to another position temporarily for a month to prevent production necessity and idleness. The article

does not make clear that how many times employer can repeat this case during one working year. So, any employer can involve employee in jobs not related to its labor functions during a year with breaks of several days. At the same time '**production necessity'** is set by employer unilaterally. Notion on forced labor is given in article 144.2 of Criminal Code. According to article forced labor is *'forcing to implement (to do service) certain job by applying threat, force or threatening to use force, also restricting freedom of person except special cases set by legislation'.*

Articles 19 and 20 of LC are about authorized bodies of employees and employers. Despite activity of trade unions is regulated by separate law - Law of the Republic of Azerbaijan 'On trade unions', there is no law on employer unions. At the same time, law on trade unions is old and does not comply with new LC and it results in the fact that activity of trade unions in institutions is based upon the will of employers.

Section II of LC is about Collective contracts and agreements

Chapters 3, 4, 5 and 6 of LC cover general rules of signing Collective contracts and agreements, collective talks and rules of their realization, signing the Collective contracts and agreements, their contents, fulfillment and control on fulfillment. It must be noted that provisions in this section comply with international labor standards and respective conventions of ILO, as well conventions 98 and 154. However, LC does not fully assure liability *"…to assist creation of mechanisms for voluntary realization of collective talks"* stated in section 2 of article 6 of European Social Charter. Mechanisms stated in this section of Code are not perfect.

According to Code, trade union or labor collective are entitled to collective talks with employer, respective executive power body or authorized body of employer for developing, signing the Collective contract and agreement, making change to them. In general, signing

the Collective contract or agreement consists of phases of **talks, signing contract or agreement** and **control on its fulfillment.** Despite very big place is allocated in LC to collective contract institution, there are serious errors in practice. It is first of all linked to the fact that rules and mechanisms meant for holding Collective talks, signing collective contracts and agreements and control on their execution are not perfect.

At the same time, responsibility set for violation of LC by employer and parts equal to that is not serious.

Articles 57, 58, 59 of Administrative Offences Code declare material responsibility for denial of signing collective contract or agreement without any ground, non-fulfillment or violation of collective contract or agreement, non-submission of information required for implementing control on realization of collective talks and performance of collective contract of agreement. Sum of these fines is not so big and does not possess mechanisms. This case can be applied only by implementing studies after submission of complaint to respective executive power body by reps of trade unions or labor collective and this is very difficult according to existing practice in current labor relations.

Section III of LC reflects provisions on labor contract

Chapters 7,8,9,10,11 and 12 of section III of LC reflect bases and rules of signing labor contract, labor conditions, labor function and legal norms regulating their application, attestation of employees and workplaces, its goal and legal norms regulating its realization, bases and rules of putting an end to labor contract, guarantees of employees ceasing labor contract, signing labor contract, changing its terms and documentation of cease.

By article 44 of Code, labor contract must be signed in written form and at least in 2 copies.

Article 43 of Code includes requirements for contents of labor contract. Labor contract is concluded upon mutual agreement of parts and employee can advance proposals to the contract on its

rights and interests. In all cases level of rights and guarantees set by Code for employees cannot be reduced by labor contract.

According to article 53.1 of Administrative Offences Code, officials and legal persons bear material responsibility and certain sum of fine imposed on them **for involvement of physical persons in implementation of any job (service) by employers by not signing labor contract in the way set in LC.** But in practice it is accepted as filling the exemplary form of Labor Contract added to LC. Indeed, Administrative Offences Code states that employer bears responsibility if labor contract reflects rights and guarantees for employees lower than minimum rights and guarantees reflected in LB and labor contract is not signed. On this point, given article of Administrative Offences Code must be either commented or written more concretely.

One of issues causing many disputes in practice is provisions of article 45 of LC on term of labor contract. This article sets 2 forms of labor contract regarding term. Termless - not setting term in advance and temporary - up to 5 years. Despite everything is clear on termless contract, there are serious problems because times contract does not include lower level of contract term and it is misused by employers that sign with employees 1-year contracts at best and 6, 3, 2 even 1-month contracts at worst to keep them dependent. Indeed, if job or service is not permanent, labor contract must be signed according to supposed term of implementation of that job or service. This gap in the Code is used as tool of pressure by employers to employees.

Article 46 of Code reflects rule of signing labor contract and making changes to that. According to article labor contract is signed individually. But labor contract can be signed collectively as well. Sometimes this contract is called contract signed in way of brigade. Application of this type of contract is almost excluded in practice and it is connected to the fact that application of this contract is very problematic and rules of making changes and additions to that are not fully regulated (e.g. making any change linked to one of brigade

members, not considering procedure of empowering one of employees for labor contract etc).

By section 5 of article 43 of Code, labor contract not signed in frame of conditions set in section 2 of article 43 of Code can be considered invalid on initiative of one of parts.

Code exactly states the cases of signing temporary labor contracts. In general, requirements for labor contract are normally regulated by Code. But in practice Labor Contracts are rarely signed. Other monitoring tools found out that reason of this is linked to legislation or incorrect practice. Other chapters include the reasons causing this case.

In this section provisions on attestation of workplaces and employees meet the international labor standards. But regarding attestation of workplaces, attestation of workplaces is almost not held in institutions in the country, specially in small production and service fields. Detailed information is provided in other chapters or sections on this problem and its reasons.

Despite LC includes many provisions on employee attestation, the Cabinet of Ministers approved 'Rules of realization of attestation of employees in the Republic of Azerbaijan' by its decision 97 of 23 May 2001. These rules are brutally violated in enterprises, also commercial and budget organizations in state sector. Realization of employee attestation is excluded in private sector.

Among labor rights violation cases in the country cases of putting an end to labor contracts by employers are many. Saying to put an end to labor contract we mean also stopping labor relations with employees involved in hired labor by not signing labor contract because of fault of employers.

Bases and rules of putting an end to labor contract are reflected in special chapter of Code. This is Chapter 10.

According to Code, labor contract can be put an end on initiative of ones of parts, as a result of cases irrespective of the will of parts. Bases of ceasing labor contract are given in article 68 of Code.

Most disputable cease in prac-

tice is ceasing the labor contract in cases shown in article 70 of Code. In this article contract is ceased mostly referring to section d). According to that section employer can cease the labor contract if *employee does not fulfill its labor functions or liabilities on labor contract, or brutally violates labor duties counted in article 72 of Code.* But section 2 of article 71 of Code determines terms for application of section d) of article 70.

According to the practice, applying section d) of article 70 employers in many cases do not obey terms given in section 2 of article 71.

One of issues regulated by this section is guarantees of employees while ceasing the labor contracts.

Article 24 of European Social Charter supported by the Republic of Azerbaijan is dedicated to prevention of ceasing the labor contracts of hired employees without any ground and material guarantees of employees while ceasing labor contract:

To effectively apply right of employees to protection while ceasing the employment, Parts assume liabilities to recognize the following:

a) right to cease employment based on operational requirements of enterprise, unit or service employees work or without valid reason linked to their conduct or potential;

b) right of employees employment of which is ceased without valid reason to get adequate compensation or respective aid.

On this point, Parts assume liabilities to assure right of employees employment of which is ceased without valid reason to apply with complaint to the independent body.

Despite LC was adopted before the country supported respective article of European Social Charter, majority of provisions reflected in section III meet the requirements of article 24 of ESC. But guarantees set by the Code are seriously violated while ceasing the labor contracts in practice.

Section IV of LC is about work time and its regulation

The Republic of Azerbaijan is participant of **convention of ILO on Reduction of work time up to 40 hours weekdays.** In fact, LC has

concrete provisions on regulation of work time. The Code reflects provisions on 5-day, 6-day, shortened work time, shortened work time for employees working under harmful working conditions, also in works of special character, incomplete work time. However, Chapter 14 of Code includes **rules of regulation of working regime and overtime work.** There are many provisions here application of which causes wrong practice.

This chapter regulates issues such as working regime, total register of work time, duration of night work, employees for whom night work is forbidden, overtime work, last level of overtime works, exclusive cases admitting overtime works, work time register.

According to Code, overtime work is admitted upon order of employer and consent of employee. Code includes the cases admitting and forbidding overtime works and terms of admitting overtime works. But in practice these norms are violated even workplaces where labor legislation is observed. Laos LC regulates terms of work time only within one institution. Work time of employees working on rotation reach sometimes 16-18 hours a day. Major reasons why overtime works are admitted are not linked to the fact that LC does not solve these issues exactly. Respective norms do not include serious punishment for violation of LC and respective supervision bodies cannot implement control on these violation cases.

Next chapters of the monitoring report include other criteria causing violation of work time and rest regime.

Section V of LC contains provisions on rest time and employee leave rights

Article 37 of Constitution of the Republic of Azerbaijan *everyone has right to rest. Those working upon labor contract are assured with working day set by law but not more than 8 hours daily, days off and holidays, paid leave not less than 21 calendar days at least once a year.*

Articles of European Social Charter supported by the Republic of Azerbaijan do not contain article 2. According to section 2 of that

article, participant state *must assure annual paid leave consisted of minimum 4 weeks yearly for the employees.* But Constitution and LC of country sets this minimum as 21 days. This term is according to international labor standards. According to Code, every employee must rest at least 12 hours after working day till next working day, not less than 42 hours after every working week. But according to Code, in special cases total register of work time can be applied. Code reflects provisions on labor and extra leaves, creative and education leaves, social and unpaid leaves.

But by article 114 of LC, provision *'employees must be given paid major leave not less than 21 calendar days'* does not comply with requirements of convention 132 of ILO. According to section 3 of article 3 of Convention, *'leave cannot be less than 3 working weeks yearly'* and section 1 of article 6 of Convention shows that *irrespective of happening in the same time with leave term official holidays and days off are not included in annual labor leave.* But article 114 of LC considers 21 calendar days as minimum leave and does not take into consideration holidays and days off. It means holidays and days off within the leave of employee are not added to leave days.

It indicates to the discrepancy between **Code** and **ILO Convention.** So, leave right stated in LC does not comply with international minimal standards.

Provisions reflected in Code on granting social and other leaves comply with minimal international standards.

But article 146 of Code promotes employers to send employees to long term unpaid leave. Existence of this case brings to many illegalities in practice, as well creation of secret unemployment fact.

Section VI of LC includes labor norms, labor payment norms, rules and guarantees

This section contains labor norms, labor payment norms, forms, rules of wage payment and taxes from wage, average wage and guarantees to keep that.

This section of Code complies

with respective international norms supported by country, including principles reflected in **ILO Protection of Wages Convention (No 95), Equal Remuneration Convention (No 100), article 4 of European Social Charter.**

But setting the minimum wage in the country violates the principles shown in the Code 9article 155, section 2). Social and economic conditions of country are not taken into consideration setting the minimum wage. **Hourly minimum wage** system that is considered social standard is not applied. In this case international standards are not obeyed. Absence of control on correct application of labor norms, existence of double accounting system brings to violation of rules, labor and wage norms of this section of the Code in practice.

Section VII of LC covers labor and execution conduct

According to Code, employer can determine conduct rules inside the institution according to LC. Also employer can award the employee for observing labor and execution conduct and involve employee violating labor and execution conduct in conduct responsibility. In general, rules of application of conduct reproach comply with international norms, also provision on *right to be respected at work* reflected in article 26 of European Social Charter.

But cases that are base for application of conduct reproach are not exactly shown and employers misuse this. Employer wanting to pursue employee or cease the labor contract with employee without serious base uses this gap against employees. Invalid or unsuitable application of conduct reproach by the employer is widespread in practice. On this point, provisions of Code setting application of conduct reproach must be more concrete.

Section VIII of LC is about mutual material responsibility of employer and employee

According to the Code, '*Carrying out commitments of labor contract in labor relations the employer and the employee bear*

mutual material responsibility for damage caused by one to another in the way set by this Code and respective legal acts'. Code lets set the material responsibility of parts more exactly in labor contract or document attached to that and confirmed upon consent of parts. But in this case material responsibility of employer in contract and documents attached to that must not be lower than that stated in LC, and material responsibility of employee before employer must not be *higher* than that shown in LC and other norms.

This section of Code reflects cases created by mutual material responsibility of parts, degree of responsibility, rules of setting it. While employer bears *full material responsibility* before employee, employee bears *full material responsibility in separate cases.*

Despite this section of Code is corresponding with principles stated in international norms, the norm dedicated to the damage caused by employer to health of employee does not comply with rules applied in advanced countries (detailed in Labor Protection section).

Section IX of LC is titled Labor Protection

According to section 6 of article 35 of Constitution of the Republic of Azerbaijan, '*everyone is entitled to work in safe and healthy circumstance'.*

Section 9 of LC reflects labor protection norms, rules, principles, legal, organizational-technical and financial guarantees of labor protection, guarantees for implementation of right of employee to labor protection, responsibility of employers on labor protection.

Cabinet and respective executive power bodies have adopted numerous decisions and rules for application of provisions reflected in this section. Among ILO conventions supported by the Republic of Azerbaijan ones on direct and indirect protection of labor and health are many. But it must be noted that Azerbaijan has not supported articles 2 and 3 of European Social Charter. Non-ratification of these articles shows also that government

cannot fully implement all legal and organizational-technical actions in field of labor protection.

Section IX of Code does not include any provision against international labor standards. But the section is loaded with simple provisions with inexact mechanisms. Numerous governmental decisions and rules also are not able to fill this gap, e.g. rules of **'Workplaces attestation'** have been established by decision 38 of 06.03.2004 of the Cabinet. But application of these rules in practice is very faulty and it results in growth of dynamics of production casualties and professional diseases.

Gaps and defects in Code and respective legal acts are not enough for creation of healthy and safe working conditions in workplaces.

As a result of corrosion of major production funds physically and morally, accidents in production, non-implementation of necessary preventive actions in production fields harmful for health and toxic, in a word, non-creation of necessary working conditions and incorrect application of technical safety rules, technical safety and sanitary-hygienic norms are seriously violated at workplaces.

Duties set by Code for state bodies are not concrete.

Decision of the Cabinet of January 9, 2003 on setting the rules, terms of granting the payments to the employee whose health is damaged by production accident or professional disease or to family members of employee died because of this reason is not enough for fair compensation of damage caused to health of employees.

Despite the gap in legal acts, including LC regulating labor protection, majority of these norms are old and does not meet needs of time and modern economic system. State is too backward for quantity and quality parameters in creation of norms in field of labor protection in the background of rapid changes happening in modern production processes.

Despite legislation entitles the employee to deny the job causing danger for its health, in practice denial of such job results in dismissal of employee from job and in this case there are not mechanisms

for restoration of its rights. Even if in case of fair court investigation, it is impossible for employee or person implementing its defense to prove the existence of the danger happened for health of employee. So, there is not concrete mechanism here to assure right of employee.

LC and other legal acts set state control system for observation of labor protection rules. But in reality the inspection controlling labor protection rules does not have real control mechanism. At best, the inspection verifies documents submitted by employer and in many cases is not able to monitor the real circumstance. Also actions taken towards prevention of unnecessary inspections in workplaces, decisions made on this weaken control system of the inspection that is already ineffective.

Existence of illegal workplaces and unregistered employees in country, also as labor protection legislation does not entitle the inspection to implement supervision in workplaces operating upon civil-legal contracts makes this control more ineffective.

Wide application of 'black accounting' in country is obstacle before employee having lost health because of production accident or professional disease or members of family of employee died because of this reason to get fair compensation.

In practice, cases of denial of paying compensation for damage caused to health of employees in workplaces are too many. Labor contracts are not signed in workplaces, employees are unaware of their rights and these result in violation of labor protection rules.

Section X of LC contains regulation of labor relations of women, those aged under 18 and working in agrarian sphere

Chapters 37 and 38 of this section comply with international norms supported by country, also section a of article 7, section 2 of article 10 of International Pact on Economic, Social and Cultural Rights, section 3 of article 4, articles 8 and 20 of European Social Charter, ILO Conventions 10, 15, 16, 45, 58, 59, 60, 77, 78, 79, 90,

100, 103, 123, 124, 138, 149, and in a number of cases, minimal rights and privileges reflected in them are superior than ones stated in those documents.

But other chapters of Code are not concrete, application mechanisms of provisions are not exact and it brings to serious mistakes in practice. Also despite criminal and administrative codes of country determine criminal and administrative punishments for violation of women and children labor rights, their application in practice is almost excluded.

Even if the Code bans any discrimination against women, it has no mechanism to prevent the discrimination.

Despite chapter 39 of this section of Code is titled **Features of regulation of labor relations of employees in agricultural institutions**, this chapter contains mostly abstract provisions with no mechanism, not setting any rule. Serious gaps in this chapter promote application of forced and slave labor in agrarian sector.

Section XI of LC is about labor disputes and rules of their solution

Chapters 40, 41, 42 and 43 of section XI of LC talks about collective labor disputes and rules of their solution.

According to LC subject of collective labor disputes is holding talks for signing collective contracts and agreements, signing collective contracts and agreements, making changes and additions to valid collective contracts and agreements, assurance of performance of collective contracts and agreements, disputes happening because of solution of other labor and social, economic issues for meeting needs of collective members. Parts of collective labor disputes are employers, employees (labor collective or a part of that) or trade unions.

Procedures set by LC for advancing collective demands in base of collective labor disputes, considering these demands, methods of solution of collective disputes by reconciling ways and holding strike for settlement of collective disputes are unreal and impossible.

On this point, chapters 40, 41, 42 and 43 of section XI of LC do not comply with article 36 of Constitution of the Republic of Azerbaijan and violate principles reflected in section d of article 8 of International Pact on Economic, Social and Cultural Rights, section 4 of article 6 of European Social Charter supported by country.

Provisions reflected in this section do not entitle employees to use right to hold a strike as tool of starting collective disputes and solve disputes. Reasons to this are the following:

- Article 260 of LC counts the issues causing the collective disputes that can be regulated by Code. This list is limited and a number of issues causing collective disputes and strikes existing in international practice have not been shown.
- Article 261 of LC shows a part of labor collective as part of collective labor dispute. But according to next provisions dispute part is entire collective and employer. According to section 2 of article 261 of Code, *'Non-fulfillment or full non-fulfillment of collective contracts or agreements, also collective demands because of other labor and social issues are advanced in general meeting of employees or trade union organization (union). Decisions are adopted on majority of votes of employees, and in trade union organization (union) in the way set in its charter for other decisions'.*

According to requirement of this provision, even a part of labor collective (for example, one of shops at a big plant) must obtain decision of labor collective or trade union organization to advance a collective demand.

- Code reflects reconciling methods for solution of collective demands. These methods are consisted of ineffective and long lasting procedures. Application of these methods can be used to create artificial obstacles for the part advancing collective demands, make pressures on trade union body managing these processes or part representing labor collective.
- Holding strikes for settlement of collective labor disputes is impossible by obeying all the requirements of Code. Code does

not include any provision entitling employees to directly start a strike before undertaking procedures set (advancing collective demands, talks and correspondences with employer, using reconciling methods etc). Vice versa, to start the strike it needs to obey requirements shown in article 262 of Code - to obtain decision of general collective or meeting of members of trade union organization (or conference). Employer must be informed in written form at least 10 days ago to start strike. Strike started by not undertaking the procedures set is considered illegal.

- Material and conduct responsiblity are set for strikes held by not obeying the requirements given in Code.

So, chapters 40, 41, 42 and 43 of section XI of LC do not comply with article 36 of Constitution of the Republic of Azerbaijan and make impossible conduction of strikes by obeying the rules set by Code. At the same time, specification of collective demands and reasons for realization of strikes is against international practice and norms. **Legislation does not admit conduction of strikes for purposes of solidarity (solidarity strikes), also recognition of trade unions and acceptance by employer as part, objection to social policy of government etc and this is against international standards.**

INDIVIDUAL LABOR DISPUTES

Chapters 44 and 45 of section 11 of LC reflect provisions on individual labor disputes, their parts and subject, ways of solution and other issues.

Regarding provisions of LC on collective labor disputes, solution ways and mechanisms of individual labor disputes are more perfect. Every employee is entitled to start dispute according to individual dispute subject reflected in Code and directly make a suit to court to solve the dispute. No court fee is paid to courts on labor disputes in advance. Terms set by LC for submission of suits to courts for solution of individual labor disputes are reasonable.

But in order to solve such individual labor disputes creation of an institution considering the dispute till courts is meant but this is based

on voluntarism principle. Signing collective contract parts can establish a body within the trade unions to consider the dispute till courts. Code and any other legal act do not set mechanisms and rules of creation of this body. Only some trade unions have regulations on such commissions. But if employees of institutions where these commissions function apply not to court but to this body, right of that employee to submit suit to court within 1 month from start of labor dispute is extended for more 3 months. If parts do not agree with commission decision they keep the right of submission suit to court.

Rules of holding strike lonely set by article 36 of Constitution of the country are not fully regulated by Code and as a result in practice such actions result in application of strict administrative reproaches on employee.

Section XII of LC covers employee social insurance

According to LC *'While signing labor contract with every employee the employer must assure its compulsory insurance in legal manner. Labor contract must contain information on insurance of employee, also whether it has been insured additionally or not'.*

According to Code, except application of compulsory insurance system, volunteer insurance by employees themselves and additional insurance implemented by employers can be applied. Insurance issues are more widely regulated by Law on Social Insurance and several legal acts. But legislation on social security and social insurance do not fully meet requirements of European standards and it is not by chance that the Republic of Azerbaijan has not ratified article 12 (social security right) of European Social Charter.

Section XIII of LC reflects final norms

This section reflects provisions on administrative and criminal responsibility of parts for disobedience of labor legislation, legal regulation issues on application of Code.

Section 1 of article 315 of this section causes several problems. According to that provision *'If labor contracts verbally signed with employees upon existing labor legislation until LC of the Republic of Azerbaijan has come into force and officialized by orders and executive orders of employer are not compiled in written form upon mutual consent of parts, they are considered valid with legal results on labor relations until these relations are ceased'.* In practice, employers force employees in labor relations to sign temporary labor contracts until Code comes into force.

■

NORMS ASSURING LABOR RIGHTS OF EMPLOYEES OF OTHER CATEGORY

Law of the Republic of Azerbaijan on State Service

Labor relations with employees of certain category are regulated by other legislative acts. But LC also is involved in regulation of labor relations with employees of this category. Law on State Service concerns executive power bodies, servants involved in state service in apparatuses of legislative and judicial power bodies. State service of persons working at prosecutor's offices, judicial, national security, customs, tax, foreign affairs and courier communication bodies, National Bank of the Republic of Azerbaijan is regulated by other laws of the Republic of Azerbaijan considering provisions of the Law of the Republic of Azerbaijan on State Service on right of citizens entering the state service, implementation of admittance into state service upon contest and transparency.

Other laws include laws on Prosecutor's Office, Police and etc.

Certain provisions of Law are on employment and labor relations of citizens working in state service or wanting to enter state service.

According to classification set by law, state servants are divided into 7 categories and these positions are divided into different degrees of specialization.

Rights set by law for state servants do not restrict their rights set by Constitution. But the Republic of Azerbaijan has not ratified existing international norms on assurance of rights of state servants, also **ILO Labor Relations (Public Service) Convention** (№151). But law on State service reflects right of state servants to associate in trade unions (article 19.0.10). But another provision of law (article 20.1.6) forbids state servants to partake in strikes and other actions upsetting activity of state bodies. This provision is against international standards. Specially saying other actions upsetting activity of state bodies it is not clear which cases are meant.

Also terms of state service employment are determined by the law in such way that along with objective criteria, subjective ones also can play role here. For instance, those accepted to state service of sixth-ninth category must undertake promotion stage also except test. Passing this stage is not ground for acceptance for state service. It is right of head of state body to select one of several candidates to one vacancy. Person set by head of state body is probationer for one year, if it justifies itself during this time (it is set by special curator), it works for more 2 years of probation and labor contract is signed with it. Only after this time is over (if labor contract is not ceased within this time) termless labor contract is signed with that person. According to legislation, 3-year term set for being full-right employee at state service is too long. This case makes the employee dependent on head of state body. In practice, rights of employees in this situation are violated, they are involved in overtime works, also works not related to their labor functions, works that are lower than ones the servant must fulfill. Such cases bring to a number of violations of rights of employees, corruption, negative and criminal actions such as sexual harassment. Employment of servants working in administrative positions and belonging to first-fifth category and their promotion are based on subjective criteria mostly.

By the law, despite 40 hours weekly are set, state servants can be involved in unpaid jobs of up to 5 hours monthly. Involving in jobs

for more than 5 hours head of state body must pay compensation for those hours. This provision of legislation does not comply with section 2 of article 37 of Constitution. In practice, state servants work 12-15 hours daily.

Regulation of labor relations in municipality bodies

Differed from state servants, regulation of labor relations of persons in municipality service is in worst situation. Law of the Republic of Azerbaijan on Municipality Service has almost no provision on regulation of labor relations with municipality servants.

According to section c of article 6 of LC, LC does not relate to MPs and persons elected to municipalities. According to article 2 of Law on Municipality Service, municipality members are not considered municipality servants. By article 10 of Law '*Work time, leave, rule of imposing and granting pensions and other aids and other social securities are regulated by legislation of the Republic of Azerbaijan'*. This provision causes serious errors in judicial practice of country. There are numerous cases that when municipality servant makes suit to court on violation of labor rights and refer to respective articles of LC in this time courts do not meet the suit referring to article 6 of LC. Another case, for instance, when municipality servant brings an action to court upon LC in case of application of administrative reproach on it courts say article 10 of the law does not contain provision on regulation of such disputes by LC. So, either legislation itself must reflect respective rules for regulation of labor relations of municipality servants or the law must exactly state the issues to be regulated by LC.

Contracts signed with foreign companies and employee rights

One of serious problems in field of labor is linked to application of the domestic legislation in foreign companies, specially transnational companies functioning in the country. As a rule, during labor relations in foreign companies rules against national norms and international norms supported by coun-

try are applied. These rules applied violate rights of employees affirmed by Constitution and respective legislative acts. In many cases, particularly while signing labor contracts foreign companies fully ignore LC and other legal acts. Article 4 of LC includes foreign companies in the list of workplaces where LC is applied.

According to article 5 of LC, 'If contracts signed between the Republic of Azerbaijan and foreign states, international organization do not state other case, this Code is applied without any condition in workplaces founded in the Republic of Azerbaijan by respective foreign states, their physical and legal persons, international organizations, persons without citizenship and registered according to legislation and operating'. According to article, labor relations differed from ones set by Code can be formed only if other case is considered in international contracts. Also, even if such case exists, such contracts must comply with other international norms supported by country (for example, ILO conventions). International contracts signed by the Republic of Azerbaijan with several foreign oil companies do not contain other cases of regulation of labor relations. Vice versa, regarding construction of **Baku-Tbilisi-Ceyhan** oil pipeline, **Human rights commitments** of that company reflects such a provision: "BTC Co. assumes a commitment that; **Host Governments are able to regulate human rights and health, labor safety and environment issues upon local legislation and according to respective standards".**

So, from legal point of view, all foreign companies operating in country, also physical persons with citizenship of foreign country or without citizenship applying hired labor must obey principles and rules stated in LC and other legal acts. Otherwise, they must bear administrative and criminal responsibility according to domestic legislation.

So, part of activity of foreign legal and physical persons related to labor relations in country is regulated by legal norms. Serious violations in the practice are not connected to legislation in many cases. Further information is contained in next chapters.

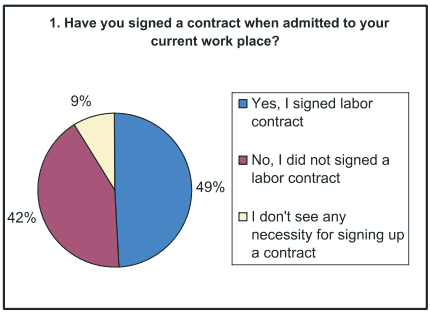
■

OPINION POLL "Problems of labor relations between employers and employees in Azerbaijan"

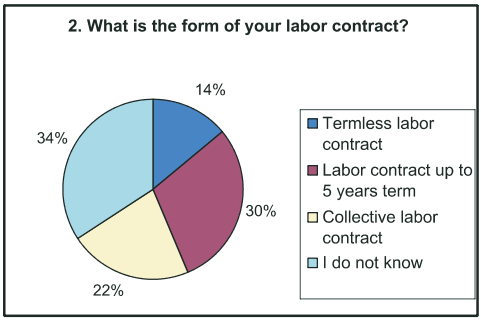
In October-December 2006 Citizen's Labor Rights Protection League conducted an opinion poll among 200 citizens of Azerbaijan. The poll was conducted in three cities: Baku, Ganja and Sumgait. The main criterion for selection of the respondents was their employment at the time of the survey at various businesses, institutes, organizations, etc. Respondents were filling in survey forms that consisted of 21 questions in Azerbaijani language.

While data processing 9 survey forms were rejected as were not filled in properly, and 191 were processed further. The results of this data processing are presented in the current report.

Giving answers to the first question whether survey participants have concluded labor contract at their current place of employment, 49% of respondents gave positive answer, 42 % negative answer and 9% asserted that they do not see any necessity in concluding the labor contract. Next six questions were addressed only to those who had contractual relations with their employers.

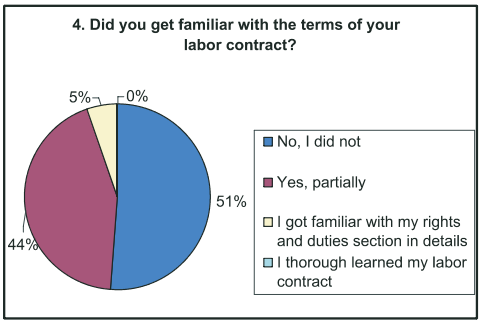


The question of the form of the labor contract was answered in the following way: 22% of the participants have timeless labor contract, 30% contract of a limited term (up to 5 years), and 14% have collective (brigade) labor contract. The interesting fact is that 34% of respondents admitted that they do not know the form of the labor contract



concluded by them. But the answers to the next question bring the light to this issue.

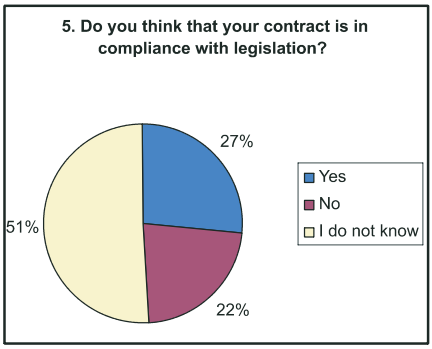
The third question was addressing the issue of the second identical copy of the contract that according to legislation should be given to employee. 59% of the respondents answered that they did not get the second copy, 20% received a second copy and 21% could not answered



the question since they did not remember surely this fact.

While answering the forth question 51% of survey participants replied that they did not read through the terms of their contracts, 44% read it partially, 5% studied the rights and duties section in details, while none could state that s/he examined the contract thoroughly.

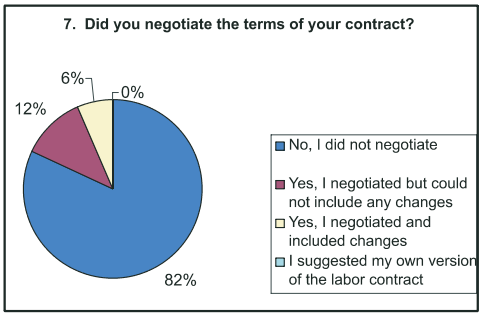
In the next question respondents had to evaluate their contract from juridical point of view, and the majority of participants (51%) replied that they do not know, 27% think that their contract is in compliance with legislation and 22%



consider their contracts was composed not correctly.

The major problem with contracts is the following: they do not reflect the rights and duties of the employer and employee as indicated by 59% of survey participants, whereas 41% think that their contracts fully list all duties and responsibilities of the parties.

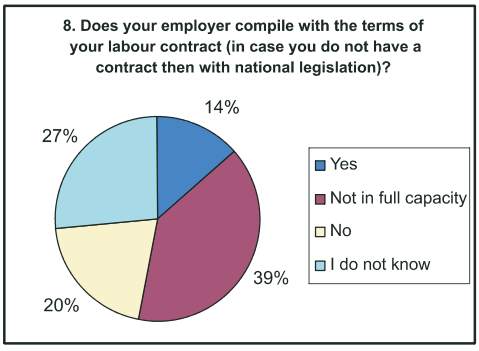
At the same time 82% of respondents did not negotiate with their



employers their duties and responsibilities, 12 % indicated that they had intention to make changes to the contract but they did not succeed in that, 6% negotiated the terms of the contract and could do changes to it and none suggested employer his/her own version of the contract.

Hence, even the respondents who concluded the contracts at their work places stated that it does not protect them from violation of the labor rights reflected in the labor legislation of the Republic of Azerbaijan.

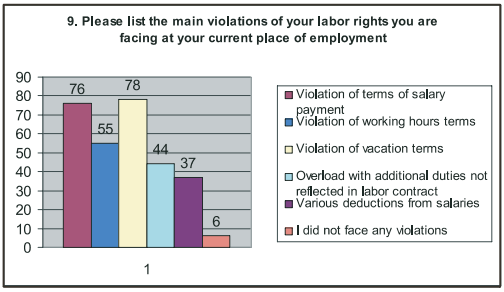
The eighth question was addressed to all survey participants irrespective of the form of contractual relations with their employers. The majority of respondents con-



sider that their employer does not fully follow the provisions of the labor legislation of Azerbaijan, whereas 20% think that their employer does not respect legislation at all. Only 14% think that at their work place their rights are fully respected and 27% had difficulty in answering this question.

While answering the next question on the character of the violations, the survey showed the following picture: the majority of the respondents (26%) expressed their dissatisfaction with their employer who violate their vacation rights, the next issue is violation of the working hours (19%), then comes violation of the salary payment terms (25%), then overload with additional duties not reflected in the labor contract (15%), and finally various salary deductions (13%). Only 2% of survey participants restated their position checking up answer 'Other' and writing next to it that they did not face any rights violation at their current place of employment. This figure of the respondents who consider that their employers do not violate labor rights is significantly smaller than the figure shown above in the answers to the question # 8. This fact acknowledges the issue that employees often do not recognize violation of their labor rights and admit them as part of their usual labor relations.

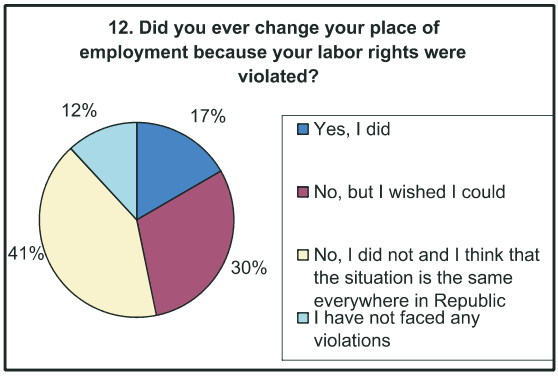
At the same time while answering the next question 41% of the respondents consider that they are in need for protection of their rights, 31% also confessed their need for protection, at the same time expressed their fear that this can spoil their relations with employer, that's why they prefer



not to undertake any active steps in this direction. 20% of the respondents do not consider that their rights need protection, and 8% could not answer the question since they do not have enough information on labor rights.

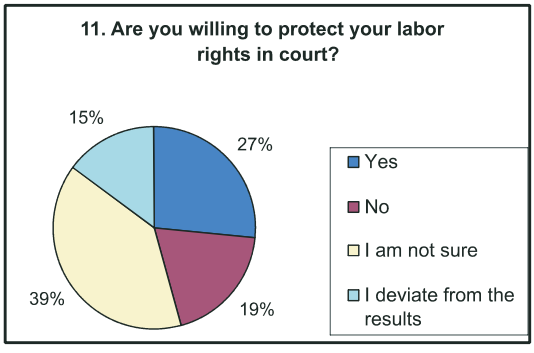
The next question sounded as "Are you willing to protect your rights in the court?" and 27% of the survey participants replied in a positive way, 19% responded negatively, 39% could not answer the question, and 15% are afraid of the results of such steps since this can spoil their relations with employers.

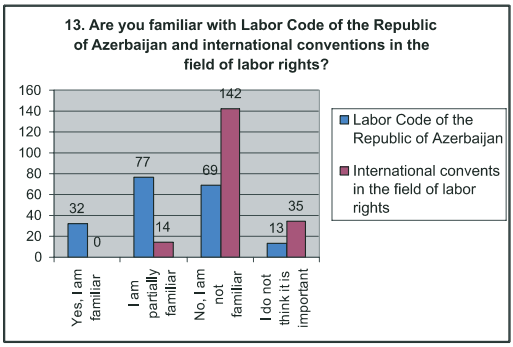
In the next question survey participants were recalling their past experience, on whether they have ever changed their place of work because their rights have been violated. Almost every fifth respondent answered positively (17%), 30% of the participants admitted that they did not yet change their place of employment, but are willing to do that. However, the biggest share of survey participants consider that the change of the employment place will not bring any consequent changes since the situation with human rights is the same in all sectors in Azerbaijan. And 12% of respondents restated that they do not face any violations.



In the next question respondents had to evaluate their level of knowledge of the national and international labor legislations. The comparative scale is presented in the table at the right, and visually it is clear that the national legislation is more familiar to the respondents rather than international conventions.

So, 32 people (17%) think that they have full information on Labor Code of Azerbaijan, 77 people (40%) are acquaint-

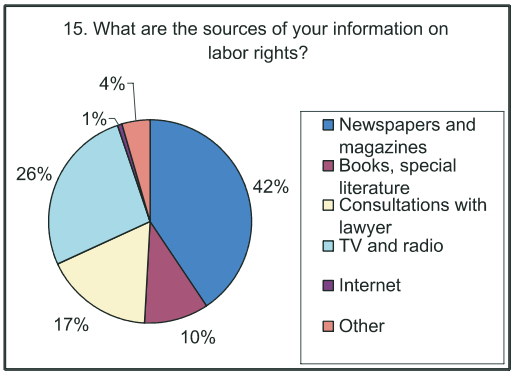




ed with national legislation partially, 69 people (36%) does not know anything about the code and 13 respondents (7%) do not think that it is necessary to know the Code. At the same time the different percentage is shown while answering the next question on international conventions, when 142 respondents (75%) does not know anything about them, 14 people (7%) know them partially, and 35 people (18%) do not think that it is necessary to learn international legislation.

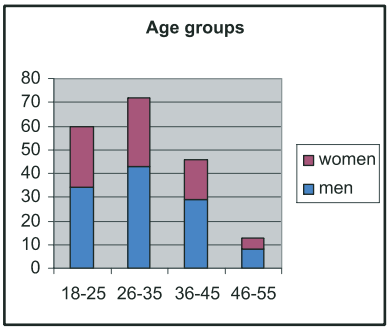
According to the responses, survey participants pay greater interest to the national legislation and do not consider international conventions as having the equal juridical force. However, in Azerbaijan all ratified conventions have primary force to the national legislation in case of any disputes among them. So, the answers to the last questions confirm that respondents do not know the details of the juridical provisions stipulated in national legislation.

The interesting picture was shown when the data on the next question on the sources of information on labor rights was processed. So, the majority of respondents indicated as a primary source of information newspapers and magazines (42%), 10% do read different types of special books and literature, 26% get information from television and radio programs, and only 1% of the respondents use internet for this purpose. The interesting fact is that 17% of the survey participants have consultations with lawyers in case they



have any disputed or doubts, what can be considered as a sign that the trust of employees to lawyers and willingness to get qualified assistance. At the same time 4% of participants marked the section 'Other' and expressed their concern since they have difficulties in obtaining information on the questions on labor rights.

In total as it was stated above 191 survey forms were processed, that were filled in by men (60%) and women (40%). The division to the

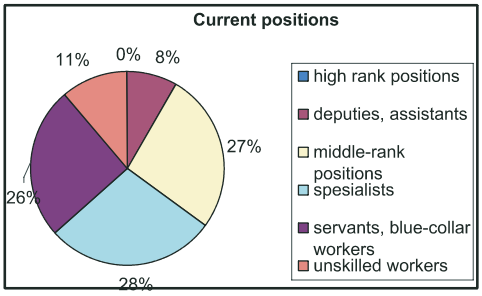


age categories is the following: 31% are people of the young age - 18-25, then comes 26-35 - 38%, 36-45 - 24% and finally 46-55 years - 7%. None of the respondents were below 18 or above 56 years old. Then 57% of survey participants are married, whereas 43% are single.

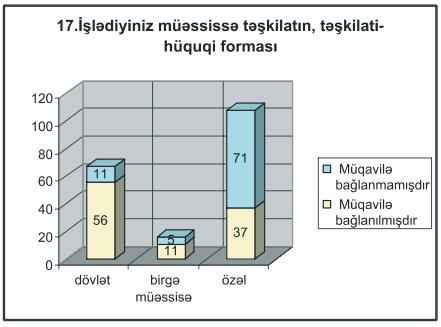
Further 7% of respondents have the length of labor experience less than one year, 33% from one year to five years, 35% from six to ten years and 25% more than ten years.

None of the respondents are holding the high-rank positions within their places of employment, 8% indicated that they are assistants or deputies of their employers, 27% consider themselves as employees on the middle-rank positions, 28% are specialists, 26% are servants or blue-collar workers, and 11% are unskilled workers.

The next question was addressing the organizational and juridical form of their place of employment. So, 35% of the respondents work in the state sector, 8% in the joint companies, and the majority of workers 57% work in the private sector. When processing the data it is clear that the majority of the respondents that are employed in the state work have labor contracts. Only 11 state servants indicated that they do not have labor contracts. Possibly this is due to the fact that in previous Labor Code that was in force till 1999, there was an institute of the oral contract, that remained in force even after adoption of the new national Labor Code. The similar situation was in the joint companies, where the majority of workers have labor



contracts. The problematic situation is in the private sector where the majority of the survey participants (66%) do not have any contractual relations with their employers, and only 34% have labor contracts.



Analysis of violation of labor rights upon statistics

One of monitoring tools applied in monitoring process was analysis of violation of labor rights upon statistics.

Statistics were collected in the way shown below.

- *Study of statistics on cases heard in base of labor disputes in courts of 6 districts of Baku City in first half of 2006;*

- *Complaints received by Ombudsman apparatus on violation of labor relations and their classification;*

- *Complaints received by Azerbaijan Trade Unions Confederation on labor relations and their classification;*

- *Complaints received by Public reception rooms of Citizens Labor Rights Protection League on labor rights and their analysis;*

- *Analysis of statistics received from State Statistics Committee.*

To obtain these statistics Citizens Labor Rights Protection League submitted written information inquiries to courts, Ombudsman, Trade Unions Confederation, State Statistics Committee and collected necessary statistics. Trade Unions Confederation has provided statistics and implemented analysis of that statistics.

Parameters of statistics obtained are submitted.

Parameters of labor disputes heard by courts

Parameters for courts of 6 districts of Baku City for first half of 2006 were as following.

District court title	Number of suits received	Number of suits met	Suits met partly	Suits denied	Suits stored, not reviewed	Execution ceased	Review continued	Sent on relationship	Appeal submitted
Yasamal	16	2		4			10		6
Narimanov	50	19	11	20					16
Sabail	68	29		39					19
Khatai	20	3		8	2	1	4	2	3
Binagadi	27	17		2	2		6		
Nasimi	13	2		8	1	2			
Total on districts	**194**	**72**	**11**	**81**	**5**	**3**	**20**	**2**	**44**

Titles of dispute cases on above given suits

District court title	Suit number	On restoration of work	On wage and other payments	Other labor disputes
Yasamal	16	16		
Narimanov	50	35	3	12
Sabail	68	25	4	39
Khatai	20	12	3	5
Binagadi	27	10	17	
Nasimi	13	5	8	
Total on districts	194	103	35	56

According to the first table it can be said the situation is not so bad. Courts of 6 districts of Baku City received only 194 suits on labor disputes for 6 months. 72 of these suits were met fully, 11 partly. Figures are not so bad at first sight. The matter is that for last years many useless decisions have been adopted on suits made to courts on labor disputes and already court mechanism that is considered the only mechanism for solution of labor disputes in country is counted ineffective tool.

On this point persons labor rights of which are violated rarely apply to courts. A number of suits met in first instance courts are then

annulled as a result of appeal submitted by employer or if suit is not met at first instance court, majority of appeals submitted from court decision is denied. Another fault practice is that court decisions are not performed. Thousands of valid court decisions on labor disputes are not executed in the country. Majority of them have been adopted via money, job restoration, money compensation for forced employment.

Complaints on labor rights violation Human Rights Commissioner (Ombudsman) apparatus received

In first half of 2006 **Human Rights Commissioner (Ombudsman)** apparatus received 265 complaints on labor disputes or labor right violation.

128 of these complaints were about ceasing labor contract, 19 on not giving payments to employee lost health because of production casualty or professional disease or setting incorrectly, 56 on not paying wage or not paying timely, 62 about violation of other labor rights.

Looking at quantity parameters of complaints received, it is seen that like in courts, majority of complaints received by Ombudsman apparatus also are connected to cease of labor contracts.

Applications, complaints and appeals received by Azerbaijan Trade Unions Confederation on creation of labor relations or violation of labor rights

As a rule, employees that are members of trade unions apply to Azerbaijan Trade Unions Confederation and Republic Committees of field trade unions that are members of Confederation and their first organizations. Number of such appeals was 134271 in 2005. Not all these appeals were complaint. A number of appeals, specially many of those received by first organizations and Republic Committees were submitted to get aids.

The Confederation received appeals and complaints for getting

specific legal aid or getting help for restoration of labor rights violated.

For instance, complete legal aid was rendered to 141 of those applying to Confederation for job restoration, 316 of them were restored to job by different ways (courts, talks etc). Defense in 83 court cases carried out was provided directly by Confederation lawyers.

33% of appeals and complaints received by Confederation during 2005 cover illegal dismissal from job, not paying wages and aids or paying them improperly, 4% concern activity of trade unions, 39% rendering material aids, and 24% formation of rest and treatment.

Applications, complaints and appeals received by Citizens Labor Rights Protection League

Citizens Labor Rights Protection League Baku Office and **public reception rooms** it has arranged in districts in frame of various projects receive appeals mainly concerning legal aids. Majority of them wanting to get legal aid apply because of violation of labor rights. But as Organization has implemented for last years legal aid activity in those areas regarding construction of BTC oil pipeline and South Caucasus Gas Pipeline majority of complaints were related to violation of right to property.

Those applying to Organization regarding labor rights violation and solution of labor relations started because of that can be divided into 2 groups. These are those applying in collective way and those applying individually.

During 10 months 2006, 48,2% of appeals were about illegal job dismissal, reductions, 14,4% on not paying wages and other payments or paying them improperly or delaying their payment, 3,6% illegal overtime job, 1,2% pursue by employer because of different reasons, 32,6% violation of other labor rights, as well reimbursing the damage caused to health.

■

Organizing non-structured interviews with experts

Objective of the monitoring was not only to study illegalities and their character, but also find out causes to these illegalities. Upon previous experience of Organization we had such a conclusion that employers violate labor rights not always purposefully. Sometimes employers violate these rights not on purpose, because of reasons not depending on them, because of lack of necessary resources (including personnel resources).

To study reasons of such cases non-structured interviews were organized with a number of employers or their representatives. As a result of interviews problems of employers in field of assurance of employee labor rights were found out. Interviews involved mainly founder of legal person dealing with small and middle business, employer if founder is not employer. Despite standard questions were given to those persons, it was done not regularly and structured way but in course of the conversation. Questions given were the following mainly:

1. *Do you conclude labor contract with employees?*

2. *What is reason for not concluding?*

3. *Do you instruct employees on labor protection rules?*

4. *If Yes, how?*

5. *Do you make notes in workbooks for employees?*

6. *Are there domestic rules of institution?*

7. *Are employees given leave?*

8. *What are typical problems in relations with employees?*

9. *Do you have contract with employees on full material responsibility?*

10. *Is collective contract signed in your institution?*

11. *Why, if not?*

Bodies led by employers involved in non-structured interviews deal with trade, service, production and construction works. Number of employees in such bodies was 10 and more.

As interviews were organized with employers of private institutions majority of replies were the same. Majority of respondents said they have not signed labor contract with employees. Only several employers said they have signed with labor contracts with some of employees but these contracts are formal and consist of 1 copy. But many of employers said they have established official labor relations with some of employees (wage is given by signing wage table, workbook is registered etc).

According to employers reason for not signing labor contract with employees is *'we did not see need for it'*. According to them employees do not demand any labor contract. Asking them if state bodies conduct inspection on labor contracts they were replying *'Control bodies are interested in more serious issues'* but some of employers asked them about existence of such contracts and they imposed even fine on them. Employers involved in interviews said they are not able to prepare labor contract or use more funds for maintaining human resources specialist. They explained it with the fact that *'we already have too many costs not considered'*.

All the employers involved in interviews said they do not instruct employees on labor protection rules. In none of these institutions employees are given **initial, periodic, extraordinary and one-time** instructions on labor protection and safety technique. In necessary cases, employment of employees and periodic forced medical check-up are not carried out. Not many of employers involved in interviews said employees are instructed on safety rules, but it was done not in base of certain norms but in primary way.

Employers make notes in workbooks of employees in official labor

relations upon their request. Some of employers said they officially obtain the workbooks for the beginners, but majority underlined they leave it to employees. Question about obtaining state social insurance certificate for those not in official labor relations was *'majority of our employees work in other workplaces also and they perhaps have got that certificate there'.*

Employers interviewed said there are not conduct rules inside the institution, conduct rules, working regime and etc are settled verbally.

Majority of questions concerning the characteristic problems occurring during labor relations with employees was replied that employees are intended to break labor conduct, leave the job without any warning in advance when they find better job, are not responsible about their job. Employers in field of service were not pleased saying the employees (mainly in field of motor service, domestic service etc) deceive the customers, render low quality service to them and that is why institution loses its permanent customers.

Despite in majority of workplaces involved in interviews employees are given expensive appliances and labor tools, contract *'on complete material responsibility'* are not signed with them. Manu of employers said they are not aware of existence of such contract. In none of institutions led by interviewed employers collective contract is not signed with labor collective and none of them has trade union organization.

Employers interviewed were purposefully selected. All these institutions are private with small number of employees. Non-structured interviews held with a small number of employers fully prove that the analogical situation is specific to majority of institutions of this type in the country.

Such small institutions where major workforce of country works are not under influence of LC of the country. Not laws but conclusions and subjective terms of employers play the main role in regulation of labor relations in these institutions.

■

Conducting observations by attending the institutions

Experts involved in the monitoring by the Organization conducted observations by attending the pilot institutions. As access to a number of institutions was impossible experts there were instructed and given special note sheets. Subject in these institutions to observation were actions taken for observation of safety technique rules.

Observations were held in state and private institutions. As observations involved big institutions, it was observed that labor protection and safety technique rules were partly obeyed. Situation of production and service spheres (small printing houses, carpenter's workshops etc) that have small number of employees is worse. Report on the monitoring implemented by experts in selected pilot institutions is submitted below.

REPORT

on results of monitoring of Real state of institution according to legislation of the Republic of Azerbaijan in field of Labor Protection and Safety Technique

To assure right of employees to work under safe and healthy conditions technical safety, sanitary, hygienic, treatment-preventive actions, norms and standards set by LC of the Republic of Azerbaijan and other legal acts, also collective contracts, agreements, labor contracts, Constitution of the Republic of Azerbaijan, respective legislative bases, special rules and norms, decisions and instructions must determine and study causes for production casualties, implementation of preventive actions for their prevention, protection of labor of employees via technical and medical ways.

Above given documents reflect all the issues in theoretical manner concerning duties of employers, employees, respective bodies and execution mechanisms in creation of healthy and safe working conditions. In order to study state of application of those reflected in the documents in state and private institutions the monitoring was held in the following ways in 30 institutions - 19 state and 11 private (plants, trusts, manufacturing, building, factory, restaurant, educational centers, workshops) - upon questionnaires of 30 questions made in advance by 5 experts possessing experience in this field:

- *Distant observation;*
- *Entering the territory of institution;*
- *Talking to the acquaintances working in the institution.*

The following were found out at result of the monitoring:

In article 223 of section IX of LC of the Republic of Azerbaijan labor protection services creation of which is necessary in institutions in all fields of economy are 80% in the situation reviewed.

According to construction norms and rules, fencing the area where the works are implemented is carried out by majority of institutions.

Assurance with safety posters and signs, which are collective protection means, in administrative buildings and production yards of institutions is 70%. But not all of existing posters and signs meet the standards (size, color, language etc).

Use of individual protection means by employees to prevent or minimize harms during casualties is 70%.

Existence of the meeting points for employees during the accident is 60%.

Assurance of uniforms for employees that is one of major principles of labor protection is 75% on 30 institutions.

Instructing before starting the job for safe implementation of jobs is 85%.

As stated in construction norms and rules, it was found out that emergency plans have been compiled to leave the building in case of fire and other accidents and reserve exits are considered in all institutions.

In order to determine and prevent the fire that can happen, assurance of fire warning signal systems in administrative buildings and storages is 60%.

To extinguish the fire happened because of different reasons in short time supply with respective fire extinguishers is 75%.

Natural and artificial ventilation systems exist in majority of institutions to prevent pollution of air in production buildings from harmful gas, steam and dusts, assure meteorological conditions and cleanness of air in rooms.

Initial and periodic medical checkup of employees to prevent professional diseases is assured 65%.

Internal and external communication systems exist in all institutions to inform any bodies or employees in the event of any accident.

Existence of rest room where employees may rest and get warm in hot and cold weathers is 90%.

'Terms of stopping job outdoor or buildings not heated in cold time of year, also in hot weathers and giving breaks to employees' set by LC of the Republic of Azerbaijan are obeyed 50%.

Washing working clothes of employees is 25%.

90% employees are supplied with drinking water (ordinary and carbonated).

Gas bags (propane, oxygen, carbon …) that are biggest source of danger are colored respectively and properly stored in special places allocated for them - 90%.

Necessary conditions for wash of employees to assure observation of sanitary and hygienic rules by employees in production are assured 85%.

Medicines and boxes are arranged 65% in buildings, vehicles and territory included in infrastructure of institutions for rendering first aid in case of casualties.

Reliable assurance of good condition of electric units working in high tension, electric lines, electric engines and other electric devices to ensure their safe functioning is organized 80%.

Supply with searchlights assuring illumination of entire territory in night is provided in many of institutions.

Placing trash baskets in administrative buildings and areas to prevent unsanitary is arranged 70%.

Compliance of illuminating systems (natural and artificial) with norm that is one of main factors of external production environment affecting the person during labor process is 80%.

Social insurance of employees is 50%.

Manual lifting of heavy cargos by employees in production yards is 60%.

According to LC of the Republic of Azerbaijan, attestation of workplaces by employer is implemented 40%.

According to legislation, overtime work of employees without their consent is 30%.

Despite the parameters above mentioned reflect average situation in 30 institutions, in comparison with state institutions, labor protection and safety technique rules are mostly violated in private institutions.

Many discrepancies found out in many institutions:

1. Employees working in private institutions do not undertake initial and periodic medical examination;

2. Job is not stopped in strong wind and hot;

3. Lack of safety posters and signs;

4. Lack of medicine boxes (in vehicles and territory);

5. Non-insurance of employees in mainly private institutions;

6. Non-attestation of workplaces;

Reasons to discrepancies:

1. Lack of funds;

2. Saving funds;

3. Irresponsibility of employer;

4. Lack of qualified personnel;

5. Weak state control.

Factors bringing to causes of discrepancies:

1. Employees do not have required level of knowledge of their rights;

2. Control of respective executive bodies is absent or too weak;

3. Employee has risk of losing job and because of this reason it does not want to advance demand;

4. Labor contracts are not signed with employees;

5. Absence of trade union organization in institution;

6. Customers do not demand official documents on management of supervision on labor protection and safety technique and weak control on this work;

Proposals:

1. Making additions and changes to legislation and other legal acts to lift effectiveness of state and public control on observation of labor protection rules in institutions;

2. Training the engineers at high schools on specialization of labor protection and safety technique;

3. Assurance of implementation of employment of inspectors conducting control on labor protection and safety technique by test;

4. Disclosure by every institution on labor protection and safety technique in its charter;

5. Removal of dependence of labor protection services on employers;

6. Taking extra actions for creation of trade union organization or other authorized body representing the collective in institutions;

■

Analysis of press

Analysis of press was applied as secondary tool.

3 popular press organs of the country were followed for 3 months and materials posted on them on labor relations were registered. Press organs involved in the analysis were the following:

1. *525-ji Gazet - daily newspaper, circulation 2525 in ordinary days, 4025 in Saturday. Webpage available.*

2. *Echo - Russian-language daily newspaper, circulation 6000 in ordinary days, 9000 in Saturday. Webpage available.*

3. *Azadlyg - daily newspaper, circulation 6566 in ordinary days, 8626 in Sunday. Webpage available.*

Analysis started on October 1, 2006 ended on December 31, 2006. All 3 newspapers involved in analysis widely publish materials on socio-economic, also labor rights.

Results were as following.

During 3 months total number of all article posted on labor sphere was 79. 31 of them were published on Azadlyg, 28 on 525-ji Gazet and 20 on Echo newspapers. Articles were about ceasing by employers the labor contracts with employees, casualties happened because of disobedience of labor protection and safety technique rules, different money demands by employees (not paying wages in time, non-reimbursement for damage caused to health or improper reimbursement etc) and violation of other labor rights. Materials posted on the newspapers were classified in the following way:

Analysis of the press also complies with results obtained as a result of application of other tools. Majority of articles covered cease of labor contracts by employers in illegal way and occurrence of labor disputes in this base. According to the

Press agency title	Number of articles published	Articles on ceasing the Labor contract on different reasons	Articles on violation of labor protection and technical safety rules	Articles on money demands	Articles on violation of other labor rights
Azadlyg	31	13	3	8	7
525-ji Gazet	28	8	0	11	9
Echo	20	2	1	8	9
Total	**79**	**23**	**4**	**27**	**25**

articles, majority of labor disputes started by employees because of money demands begin after cease of labor contracts with employees. In many cases employees do not begin labor disputes because of cease of labor contracts signed with them (or existing de facto). They cannot get the money they must receive after cease of labor contract. There are such institutions where employers cannot pay wages of employees for months, sometimes years, or these payments remain as debt. Leaving the job employee demands its payment but employer does not want to pay it. Numerous disputes occur concerning granting the monthly aids, treatment costs and other payments for damage caused to health of employees as a result of casualties happened in production or professional disease. Form of property of many of institutions has changed. New owners do not want to carry out commitments linked to casualty or professional disease happened many years ago, despite they have assumed commitments for previous debts ad damages while transferring the institution under their property.

Dynamics of casualties happening in production, particularly in construction is rapidly increasing. On this point, casualties happening are still important theme for the press as labor protection and safety technique rules are not obeyed.

However, preparing materials on labor right violation such press organs prefer incidents concerning mass violation. From this point of view, cases of violation happening in field of labor and relating to individuals only do not catch attention of the press.

■

Final opinion on monitoring results

ANALYSIS OF LEGISLATION

Main norm that was analyzed was Labor Code. As well a number of other laws containing provisions regulating labor relations for employees of separate categories have been analyzed.

Legal norms reflected in LC are divided in 2 groups.

These are:

- *General norms concerning all hired employees and*
- *Special norms for hired employees of separate categories (women and children (juveniles), those working in agriculture etc).*

Such differencing in Code is made on sections or chapters. For example, chapter 34 of section 10 of Code is dedicated to regulation of labor relations of employees in Agricultural institutions. Or other chapters of section 10 are about features of use of labor of women and those aged under 18.

Making such differencing in the Code is positive and this specifies and simplifies application of Code. Unfortunately, differencing in the Code is not fully implemented.

For example, in practice it is impossible to apply general norms of Code on employees working in Mass Media or Non-Governmental Organizations in all cases. On this point, inclusion of sections or chapters titled *'Features of regulation of labor relations of employees in Mass Media', 'Features of regulation of labor relations of employees in Non-Governmental Organizations', 'Features of regulation of labor relations of those involved in house works'* in the Code would help removing several illegalities in practice.

Following cases were discovered as a result of the analysis.

Some provisions of national legislative acts regulating labor relations are in contradiction with corresponding articles of Constitution of the country

Articles 35, 36 and 37 of Constitution of the Republic of Azerbaijan concern Labor Right and its realization. These articles reflect rights of everyone to labor, rest, leave, labor and health protection, reasonable wage and etc. Section 3 of article 36 states that **'no one can work by use of force'.** Constitutional provisions are general and that is why there are not provisions in LC and other legislative acts regulating labor relations directly contrary to Constitution. Constitutional Court of the Republic of Azerbaijan adopted several decisions on changing some of these provisions. But lawyers implementing the monitoring of the legislation claim these acts contain a number of provisions restricting Constitutional rights. These:

- *Even if article 17 of LC bans forced labor, according to article 60 of Code, employer can involve employee in jobs not related to their labor functions without their consent for 1 month. Also the article does not show how many times a year employer can apply this case. In this case, employer can involve employee without its consent in other jobs for 1 month and when this term is over and employee fulfills its labor functions for a few days employer can involve the employee in other jobs for next 1 month. So, applying this rule employer can make employee do other jobs not related to its labor functions. This case can be classified as forced labor according to international norms and in this case the right stated in section 3 of article 35 of Constitution is violated. Article 60 lets employer involve employee in forced labor. Gap in the article lets employer repeat this case.*
- *Chapters 40, 41, 42 and 43 of LC do not comply with article 36 of Constitution. Despite article 36 of Constitution states right of everyone to hold strike lonely and along with others, the given chapters restrict this right and even makes legal use of that right impossible.*

Some provisions of national legislative acts regulating labor relations do not comply with principles of international norms supported by the country

- *Article 60 of LC does not comply with ILO **Forced Labor Convention** (No 29) and **Abolition of Forced Labor Convention** (No 105).*
- *According to article 114 of LC, provision 'employees must be provided with paid main leave not less than 21 calendar days' does not comply with requirements of ILO Convention 132*
- *Chapters 40, 41, 42 and 43 of section 11 of LC violate principles stated in section d of article 8 of International Pact on Economic, Social and Cultural Rights, section 4 of article 6 of European Social Charter supported by the country.*

Gaps in legislation and problems caused by these gaps in practice

Gaps in LC and other legislative acts were confirmed once again during the analysis. Gaps in LC can be linked to 2 causes - objective and subjective causes.

While preparing LC state has considered many authorities and rights for regulation of labor relations between employees and employers. This is right approach indeed. Major role of state in regulation of labor relations is creation of respective legal basis and implementation of control on regulation of labor relations in base of rules set by legislation. On this point, Collective Contract institution has widely been reflected in Code. Every collective is entitled directly or via authorized body to hold **Collective talks** with employers, sign **Collective contracts or agreements** and **control** implementation of terms set by these contracts and agreements.

At the same time employers are entitled to establish their unions and hold collective talks, leave their function of signing collective contracts or agreements to that body or enter the relationship with collective directly or by body representing that.

Unfortunately, this tool stated in LC that lets solve a number of

issues via dialog has not been formed in the country as an institution. Reasons of this have been shown in the analysis.

Just because of this reason there are a number of issues in LC that are not regulated and **we assess these as objective gaps in the legislation.**

At the same time, several issues remain open in Code and errors occur during application of provisions. These gaps occur because of **subjective reasons - mistakes made during lawmaking and cases not taken into consideration.**

Despite many of LC provisions comply with progressive and international labor norms, many problems occur during their application. Reasons for this are that some bills have not been adopted so far, there are not mechanisms to prove the violation of provisions by employers, employees do not know their rights, employee is pursued while demanding its right, in some cases even criminal case is opened against employee or it is involved in administrative responsibility and because of this even while being aware of violation of their rights employees are afraid of complaining.

As shown above, problem linked to signing the labor contract is one of most serious problems in labor field of country. Despite LC, other legislative acts include provisions on labor contracts, compulsion of signing them, sanctions on material responsibilities of employer and institution for breaking labor relations with employee by not singing labor contract, in many institutions, specially in small and middle business institutions labor relations are replaced by verbal agreement. The worst is that in many cases labor relations with employees are not officialized in any form.

One of gaps in the Code is in the section setting mutual material responsibility of employee and employer. In this section provisions on material responsibility of employer are incomplete and inexact, mechanisms of involving employee in material responsibility are not exactly shown and this lets employer accuse the employee of causing material damage to it. Employer uses such case not only

for involving employee in material responsibility but also as an excuse to cease the labor contract with it.

LABOR CONTRACTS

Results gained upon other tools applied in analysis of Labor Legislation and monitoring let us say that labor contracts are not formed as an institution in labor sphere. Even in institutions where Labor Contracts are attentively made and principles are rules stated in article 43 of LC are obeyed Labor Contracts are formal. In many cases Labor Contract is unilaterally presented by employer and signed by employee by not reading it.

Method widespread is that spaces in the exemplary form given at the end of LC are filled and given to employee to be signed.

Offences found out during monitoring and linked to LC are following:

- *Labor relations with employees are not officialized in any form. No clerical and financial record confirming acceptance of employee to job and dealing with labor activity in that workplace exist. All relations are implemented in base of verbal agreement.*
- *Labor relations with employee are officialized and employee gets wage set by the staff table, its employment is officialized by order, notes are taken in workbook, taxes and social payments are taken from its wage and employee is insured according to wage. But written labor contract set by legislation is not signed with employee.*
- *Labor Contract is signed with employees but this record is formal, signed by not obeying the requirements of legislation and no additions and changes are made to those contracts while labor functions, terms of labor conditions are changed. Contract has no copy and compiled in 1 copy only.*
- *Wage shown in labor contract is seriously differed from real wage. Lower wage (usually, in sum of minimum wage set on the republic) is imposed for the employee in contract and employee is insured according to that sum. Such contracts are applied in workplaces where 'double accounting' or 'black accounting' is applied.*

■ *Labor Contracts are signed in the way irrelevant to legislation of country (it is specific for foreign companies mainly) and in this time rights of employee declared by Constitution and respective legislation, international norms supported by country are restricted.*

■ *Despite consistency of job or service rendered, against to section 4 of article 45 of LC temporary labor contract is signed with employees. Term of contract is set in such contracts usually 3, 6 months, sometimes even 1 month, or 1 year.*

■ *Despite features of job or service demand creation of labor relations by signing labor contract, civil-legal contracts are signed with employees. Such contracts free employer from a number of liabilities.*

During monitoring other offences also were found out regarding officialization of labor relations but the above mentioned are encountered mostly.

COLLECTIVE CONTRACTS AND AGREEMENTS

Collective Contracts and Agreements are shown as important institution in Labor Legislation. Attaching special importance to this institution by LC is very positive case. Major role of state in regulation of labor relations is creation of respective normative base and implementation of state control on realization of those norms. According to LC major tool in regulation of labor relations between employees or their authorized body and employer is just collective contracts or agreements. On this point, collective contracts are considered one of sources of labor legislation and play the role of local (intra-institution) normative act.

It must be noted one of directions applied for long time by Citizens Labor Rights Protection League was just problems connected to Collective Contracts and Agreements, collective talks concerning them and Collective disputes. On this point, Organization had certain conclusions on these problems till the monitoring

process. Majority of these conclusions were proved during monitoring.

■ *In many cases collective contracts and agreements are signed in institutions in state sector only. But not in all the state institutions these contracts are signed. Signing the collective contracts in private institutions is implemented in exclusive cases. Collective contracts are not signed and creation of trade unions is not admitted in foreign companies, transnational companies and their contractors. Creation of trade unions was possible only in several foreign petroleum companies. On this point, there is no body for signing collective contracts on behalf of the collective with employer.*

According to information provided to us by Azerbaijan Trade Unions Confederation, total number of trade unions organizations in structures of field trade unions is 18671. By January 1, 2006, 11821 Collective contracts were signed in institutions, departments and organizations where those organizations function. Also 85 collective agreements were signed on those fields. In institutions, departments and organizations where collective contracts are not signed they are replaced by agreements signed between trade unions Republic Committees and respective executive power bodies or companies. 3251 of institutions, departments and organizations where concluded collective contracts are signed are private, 41 joint ventures and 49 foreign companies. Other contracts were signed with state institutions.

Consulting the figures submitted by Confederation it is obviously seemed that collective contracts are signed in too small number of institutions, departments and organizations operating in country. Major reason to this is absence of trade unions in those institutions, departments and organizations.

By information given from Confederation, so-called private contracts are signed in several foreign companies. Number of such contracts is 1100. These contracts are differed from collective ones for form and contents.

- *Many of Collective Contracts analyzed during monitoring are signed formally. Collective Contract includes provisions of LC either directly or they are party changed. But rules stated in legislation are valid despite collective contracts are signed or not and employer must obey them.*
- *Contracts either do not include specific terms on employees social and labor rights not stated in legislation or such terms do not bring to fundamental improvement of labor and social state of employees.*
- *Contracts contain general provisions 'such as to use all methods and means set by legislation to protect legal rights of employees'. Such provisions do not lay any additional liability on the employers.*
- *Signing Collective Contracts in budget organizations loses its importance. Employer of budget-funded institution, department or organization just does not have opportunity to hold talks with collective or trade unions representing it, to accept any condition affecting material and social state of employees. All funds allocated are determined in advance by the upper instance according to items and employer has no other opportunity but using these funds on purpose.*
- *Not in all cases employers are interested in signing collective contracts and assuming more commitments than set by legislation. Involvement in material responsibility set by articles 57, 58, 59 of Administrative Offences Code for denial of collective talks or signing collective contracts and non-fulfillment of other liabilities linked to collective contracts has no serious mechanism in practice. In any case employer has chance to avoid the responsibility (It is enough if employer says there was no proposal for holding collective talks).*

A number of minimal requirements were not included in LC while it was under development in 1999. These issues were to be regulated by collective contracts. But the result is that collective contracts are not signed or several minimal rules not reflected in Code are not included in collective contracts.

So, despite Code widely reflects social partnership, this partnership does not exist in reality. Because only one of parts - employees are

interested in such partnership. Neither employers nor respective state bodies are interested in involvement of wide range of employees in discussion of any issue linked to institution.

Analyzing section 11 of LC above we arrived in such a conclusion that by obeying all rules reflected in LC it is impossible to start collective disputes and hold strikes. In such case it is impossible to implement in institutions collective talks with employer as equal part, sign collective contracts and control its execution even if trade unions are independent. Finding too many obstacles for collective disputes and holding strikes in base of these disputes while developing LC objective of authorities was to create a base for not having labor collectives as equal partner.

LABOR COMPENSATION

According to LC, labor compensation must be realized upon payment by the hour and piece-rate payment. Piece-rate system is set according to tariff (official) wages and production norms (time norms). In practice, wage is sometimes set for employees upon production norms only. It brings to violation of rights of employee. *Minimum wage is given notion in section 2 of article 155 of LC. According to Code, Minimum wage is social norm setting lowest level of monthly wage for unspecialized labor and service taking into consideration economic, social conditions.*

By section 3 of that article, M*onthly wage of employee having worked its monthly work time norm and implemented its labor functions cannot be lower than sum of minimum wage set by state.*

Requirements set in these provisions are not reflected in practice. According to section 2 of article, minimum wage must be according to living wage. But minimum wage set on the republic for the moment is several times lower than living wage.

During monitoring it was discovered that in many workplaces no wage is given for overtime job. But according to legislation, in payment for the hour system extra wage not less than double sum of hourly tariff (official) wage must be

paid for every hour of overtime job and in piece-rate system extra wage not less than hourly tariff (official) wage of piece-rate employee of respective category (specialized) by paying piece-rate wage fully must be paid. Collective contracts can set higher wages for overtime jobs. Admitting overtime jobs in foreign companies, specially in oil companies employees are purposefully made work for 12-14 hours and paid wage not meeting the requirements of legislation.

In many workplaces employees are not paid wages for months without serious grounds. According to LC, *if payment of wage is delayed because of fault of employer and this case has not caused individual labor dispute, the employee must be given payment in sum of at least 1% of wage for every day delayed.* Payment of extra sum to the employee by employer voluntarily for delayed wage was not registered in practice. Vice versa, in labor disputes linked to these reasons employers use all means not to pay extra wage to employees. There were many such cases in court practice of Citizens Labor Rights Protection League. For example, upon demand of employee 9employees) court adopted a decision on payment of extra wage by employer, and employers achieved annulment of this court decision in appeal instance. It is possible due to errors of judicial system of country. There are serious defects in payment of wages when employees leave the workplace, leave on leave.

Summarization of results of other observations, studies and non-structured interviews organized during monitoring brought to such a conclusion that in majority of private institutions so-called 'double accounting' or 'black accounting' method is applied for compensation of labor. Difference between real wage of employees and wage that employee receives by officially signing is ten times sometimes.

In another case, all relations with employees are established informally and wage of employees are paid not on account of legal funds of institution, but of undeclared incomes of employer.

Payment system called 'wage given in envelope' is widespread in

labor compensation. This system is applied more widely in some state structures and big business organizations. In this case except getting wage by signing the wage table employees receive extra money in envelope. In state bodies this case is created by corruption, in business structures it is connected to evasion from taxes and social payments. This case does not cause serious problems for employees in state institutions. Because employees of this category have assured wage and they are insured according to that wage and can get grants in case of social insurance incident. But in business structures (mainly in private business structures) employees either are not paid wage (labor relations are not officialized) or small wage is paid (in many cases, in sum of minimum wage set on the republic).

Negative results caused to employees by payment of wage by 'double accounting', 'wage given in envelope' or 'black accounting' are the following:

- *Labor relations are illegal with majority of those getting illegal wage. Such employees work as much as others, in many cases more than others but they are considered unemployed. In another case, even if labor relations are officialized, wage those employees get is small. Imposing fines on wages of such employees dependent on employers or stopping payment those persons have no chance to complain. Employers wanting to punish employee start paying only legal wage to them.*
- *In the event of social insurance incident such employees cannot get any grant. Most dangerous is that employees do not create any guarantee for future. Reaching pension age such employees will not receive a worthy pension for the labor they have used.*
- *Persons having no official wage or possessing small official wage cannot benefit of credits, specially lax hypothec credit system that is applied at present.*
- *Paying illegal wage employer avoids taxes and thus, commits crime set by legislation. Employee agreeing with such payment helps the employer in committing crime.* ***Right to get equal wage for equal labor*** *is one of rights violated in most brutal way in the country. Unequal*

payment method widely applied in foreign companies must not be accepted as violation of labor rights only. It also causes discrimination in labor sphere - violation of civil rights. In all transnational corporations operating in country differential payment system is applied for equal labor. Different studies and analysis held by Oil Workers Rights Protection Committee, Citizens Labor Rights Protection League, Human Rights Institute of National Academy of Sciences proved existence of serious offences in labor compensation system in foreign petroleum companies.

Paying the wage in foreign companies the employees are differentiated upon countries and regions they belong to. Employees involved from western countries get ten times higher wages regarding other categories. Other categories such as employees coming from South-East Asian countries, those from India and Bangladesh exist. Lowest category is local employees that are paid the lowest wage for the same labor. Respective structures of the country, including State Labor Inspection, Republic Prosecutor's Office have taken no action against the offence obviously committed. During monitoring it was registered no action taken by the given bodies against this obvious violation.

As extra wage is given to employees in some state institutions, it was found out that also **illegal payments are taken from wage.** Different prizes, payments in form of extra to wage are set for employees and then big part of that money is received back illegally. This case is specific to majority of state commercial structures and sometimes to budget organizations.

Level of wages in budget organizations is miserable. Labor compensation does not comply with Constitution and international norms supported by country specially in field of education, healthcare, culture, science. For last years there is tendency of lifting wages of state servants. But while wages of some category of employees in some 'power structures' are lifted, wage of others remain in previous small level. Existence of such case can indeed be assessed as discrimination.

LABOR AND HEALTH SAFETY

To work in fair and effective circumstance is right of everyone stated by Constitution. However, both analysis of legislation and monitoring held to study the state of practice showed once again that state in field of human labor and health safety in labor sphere is too unbearable.

If provisions set by labor legislation and other normative acts to assure labor and health safety are in level to meet minimal standards, the state of application of legislation forms diametric contradiction. Attestation of newly opened and existing workplaces either is not held or this attestation is formal. Lack of labor conditions meeting sanitary-technical requirements required for employees in workplaces, physical and moral erosion of appliances in use, not supplying employees with uniforms, serious violation of working regime, not instructing employees with technical safety rules in times and cases set and ineffective activity of state control bodies towards labor and health safety brings to yearly growth of **casualties and professional diseases in production.** Even if according to official statistics these figures are stable by years. It happens because majority of casualties and professional diseases in production, even some of death cases happened as a result of casualty in production are hidden.

According to the information Citizens Labor Rights Protection League has obtained from State Statistics Committee, parameters of victims of casualties happened in production in 2005 were as following.

On economic activities	Number of those having lost ability and died as a result of casualty in production (person)	Of them number of the dead (person)
Agriculture, hunting, forestry	6	1
Mining industry	37	5
Processing industry	36	3
Electric energy, gas and water production and division	16	10
Construction	40	14
Wholesale and retail commerce, repair of motors, domestic products and personal possessions	9	5
Transport, warehouse economy, communication	12	5
Other economic activities	33	11
Total on republic	**189**	**54**

In order to determine that these figures do not reflect the real statistics, it is enough to look at the quantity parameters of complaints received during the year by Courts, Ombudsman apparatus, public organizations, as well trade unions on labor disputes linked to reimbursement of damage caused to health.

Slight traumas are not registered. Persons having lost health for long time because of production casualty are treated under name of domestic trauma. At best employers pay their treatment costs and wage for days employee was absent.

As it was mentioned, those died because of production casualty are also hidden from statistics but as such incidents catch attention of the public and because of coverage on media to hide such incidents is a bit difficult. It can be seen comparing this with total number of victims of casualties. Death cases form 28,5% of total figure.

This percentage had to be too small if registration of all traumas happening in the production is realized correctly. According to our observations death cases form several percents of casualty victims. One of reasons bringing to all these cases is that employers violating labor protection rules are not involved in material and criminal responsibility set by legislation. Articles 54, 55 and 56 of Administrative Offences Code state material responsibility for employers not obeying the labor protection requirements. But in practice labor inspectors impose such fines mainly on employers of state institutions and small institutions. Inspectors rarely impose a fine on employers in field of construction and production protected by top officials, as well in foreign oil companies. Article 162 of Criminal Code states money fine, deprivation of possession of office up to 5 years or life imprisonment for up to 5 years for the guilty if health of employee is damaged as a result of violation of labor protection and technical safety rules or if employee dies as a result of production casualty.

Law enforcement bodies do not carry out criminal pursue concerning the facts. In reply to the inquiry addressed by the Organization to the General Prosecutor's Office of the Republic it was stated that *'9 criminal cases on casualties happened in production have been investigated during*

2005 upon article 162 of Criminal Code of the Republic of Azerbaijan and 4 of them were heard at the courts and verdicts of guilty have been issued, execution on 5 cases has been ceased'. Opening of only 9 criminal cases for 54 death cases, upon the official statistics, and ceasing 5 of them indicates to the existing situation. If death happens because of production casualty no serious punishment is applied despite the criminal case is opened.

Those getting professional disease because of violation of labor protection and technical safety rules are not registered. According to information of Health Ministry, in 2005, 86 persons caught professional disease with diagnosis set for the first time in life. This figure does not reflect reality. Despite the list of professional diseases on professions and workplaces has been approved by respective executive power body. Mostly, employees cannot prove the loss of health just because of production activity.

WORK TIME AND REST TIME, LEAVES

According to article 37 of Constitution of the Republic of Azerbaijan, daily work time must not exceed 8 hours, but this norm is not obeyed in many workplaces. LC, Law on State Service admits overtime jobs in exclusive cases. According to LC, consent of employees is required while involving them in overtime jobs and this case is officialized by order of employer. Also payment for overtime jobs is implemented upon superior terms. More widely was mentioned during analysis of legislation. The state in the practice is miserable. It was found out during the monitoring that involvement of employees in overtime jobs is widely applied in state budget and commercial organizations, private structures, specially foreign companies. No documentation is implemented admitting overtime jobs. As a result, when casualty happens during implementation of overtime job the employer says the employee remained at the workplace by himself. Superior payment to employees while admitting the overtime jobs is implemented in state

institutions mainly. In many institutions illegally determined production norms make employees do overtime job. To meet the living wage of itself and its family the employee does overtime job and it is paid for the job done. Any payment for working hours is not carried out. The illegalities in this field has reached such a level that a number of companies, specially foreign oil companies have included the overtime job in labor contracts and it is accepted as an ordinary case. Rights of employees to rest in working day and during working week are brutally violated. No break is given to employees working 10-12, sometimes 15 hours and rest till next working day is less than 12 hours. Adding here the time employee uses to reach the workplace (sometimes several hours), daily rest time is 6-8 hours. It brings to violation of right of employees to rest, also violation of labor and health safety rules and loss of health of employees. Constitution of the republic declares annual paid leave not less than 21 days. But according to approximate studies, up to 80% of employed population cannot use this right. Employees of private institutions, specially small and middle ones can get unpaid leave for short time at best. Mass character of this case brings to total violation of article 37 of Constitution. During interviews held with employers of workplaces with small number of employees they confessed they give no leave to employees. As labor relations with employees are not officialized in some private institutions women do not use right to social leave (pregnancy and maternity leave). Persons continuing education by not leaving the production cannot use in many cases the right to creativity and education leaves. This right is partly assured only in state sector. Employees working in private sector and getting education are obliged to go on unpaid leave in this period. Studying during the monitoring the complaints received by different bodies it was found out that many of complaints concern realization of the right to leave. Employees that cannot realize their right to leave for years are not given money compensation for leaves they have not used while leaving the job. As a result, some of those undergoing violation of right apply to courts and unfortunately, in many cases they cannot restore their legal rights in courts.

COLLECTIVE LABOR DISPUTES AND PRACTICE ON THEIR SETTLEMENT

In institutions where Labor Relations are established according to legislation collective disputes happen usually when parts hold collective talks on the eve of signing collective contracts and collective contract terms are seriously violated by employers. At present creation of collective disputes in Azerbaijan is not linked to any of these reasons. Main reason of this is that despite domestic legislation widely reflects collective dispute institution, its application in practice is too weak. Above we included figures provided by Azerbaijan Trade Unions Confederation and only 11 821 collective contracts have been signed in the country. It covers very small part of institutions in country. Full majority of these contracts are formal and signed upon will of employer. Even if Trade unions organizations that are part of contract on behalf of the Labor Collective can include any provision in the collective contracts for the interests of employees, it is realized not on account of the will of trade unions or labor collectives but on account of charity of employers. In this case, occurrence of any dispute in Azerbaijan in phase of collective talks is not real. Because labor collectives and their authorized bodies do not have possibility and power to create a dispute. Practice shows that non-fulfillment of labor contracts signed does not cause occurrence of serious collective disputes. Considering that majority of institutions in country does not have a body representing labor collective and there is not any dialog between employees and employers, a view becomes clearer. Studies we implemented during the monitoring showed that such collective talks are formal in institutions where collective contracts are signed and no incident happens.

Collective disputes happening in labor collectives take place in many cases not in base of rules and procedures set by legislation but in unexpected and chaotic way. Such cases mainly include creation of unbearable working conditions for employee by the employer, not paying or delaying wages, any injustice towards collective member (it is specific to foreign oil companies or their contractor organizations mainly). Such

disputes usually start with stop of job temporarily (warning strike) and holding mass event (meeting) inside the institution. In this case provisions stated in articles 40, 41, 42 and 43 of LC are not obeyed. Requirements of Code are not observed for starting the disputes or using the reconciling tools. Above we mentioned that obeying these requirements it is impossible to begin collective disputes and hold strikes. From adoption of LC so far no case has been registered on holding any trial at courts on start, continuation of collective disputes according to legislation and solution of collective disputes.

All this prove that legislation in this field has defects and it results in impossibility of its application in practice.

INDIVIDUAL LABOR DISPUTES AND PRACTICE ON THEIR SETTLEMENT

Differed from collective labor disputes, individual labor disputes happen often in labor field of country. Analyzing the complaints and claims received during certain time by pilot courts, Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan, Azerbaijan Trade Unions Confederation and Citizens Labor Rights Protection League, decisions adopted on them or actions taken such a conclusion can be made that majority of labor disputes in labor sphere are solved in favor of employers and even in cases when labor legislation is obviously violated regarding employees employee cannot restore its rights. Of 194 claims entered in first half of 2006 in courts of 6 districts of Baku City 83 were partly or fully met and it is not bad figure. But following processes happened later it is apparent that majority of claims met are annulled in Appeal instance. In other cases court decision is not implemented by employer. A number of those who restore their rights via courts or other bodies undergone pressures by employer. As a result of this, employee is obliged to leave the workplace voluntarily.

In case of wide expansion of unofficial labor sphere (shadow labor sphere) in country, employees working in such workplaces cannot start labor disputes if their rights are violated. For such employees even applying to court becomes very com-

plicated problem. They even cannot prove that they are in labor relations with employer with which they have a row.

Monitoring found out that majority of those starting labor disputes do not apply to court. Main reason of this is lack of trust in courts, appeal to court demands funds and low level of legal literacy and information.

Mechanisms of settling the labor disputes beyond the courts, also activity of bodies in institutions considering labor disputes is excluded almost. Number of institutions where such bodies function is limited and these bodies existing in institutions are formal. There is almost no state body able to affect the employer. State Labor Inspection does not pay attention to violation of labor rights in institutions where it has opportunity to supervise. Our observations showed that a number of big companies (including state, private and foreign companies) have unofficial bargains with courts. None of claims against these companies is met.

Monitoring found out that creation of individual labor disputes in workplaces is connected mainly to application of conduct reproach (mostly ceasing the labor contract by applying article 70 d of LC), staff reduction, unsatisfactory level of professionalism, specialization (profession) (for this decision of attestation commission is obtained formally), expiration of labor contract, cases concerning wage and other payments, reimbursement of damage caused to health.

DISCRIMINATION

Article 16 of LC states inaccessibility of discrimination in labor relations. According to the article, *'Admitting any discrimination in labor relations among employees for citizenship, sex, race, religion, nationality, language, residential place, property state, faith, political views, affiliation with trade unions or other public unions, service position, working qualities, professionalism competence, other factors not connected with results of labor, setting privileges and comprises directly or indirectly upon those factors, also restriction of rights is forbidden'.*

At the same time, the Republic of Azerbaijan is participant of *ILO Discrimination (Employment and Occupation) Convention* (No 111).

During analysis of legislation and other legal acts no provision admitting the discrimination for factors reflected in Code and convention has not been found out.

However, during monitoring it was proved that there is open and secret, direct and indirect discrimination in labor relations because of different factors.

Discrimination happens upon following factors mostly:

■ **Different payment for equal labor**

This discrimination is applied towards local employees. Foreign employees working in foreign companies, including oil companies and their contractor companies get many times higher wage than local employees. Despite companies try to link it with low wage level in country, it has no legal base.

■ **Application of different labor conditions, different nutrition and different living conditions in workplaces and discrimination in this base**

This discrimination also is applied on local employees. Foreign companies provide foreign employees of same category with residential place with better conditions, equipped with air conditioner, modern heat system, sanitary junction, but local employees are provided with places not meeting hygienic-technical norms, or level of which is lower than that of foreigners. There is difference also between foods given to employees in separate companies.

If local and foreign employees do not work in the same place, then, there are differences in labor conditions.

■ Employees wanting to assembly in trade unions or demand their rights undergo discrimination and pursue in both national private and foreign companies. Those wanting to create alternative trade unions in state institutions face discrimination and pursue.

■ **Discrimination for political relationship**

Discrimination cases in labor sphere include discrimination and pursue for political relationship. Persons that were member of oppositional parties before and have no political affiliation at present are rarely encountered in state service. Even those whose close relatives are members of oppositional parties are not accepted to such jobs. After mass actions took place after 2003

Presidential elections oppositional teachers, majority of employees of other budget organizations were fired from job. Such pursue cases caught attention of international and foreign countries organizations as well.

■ **Discrimination towards women**

Constitution of the republic, other norms does not include any provision letting discrimination towards women in labor relations. Country has supported all major international norms directed to removal of discrimination against women, also respective conventions of ILO.

According to LC, prohibition of employment of women in some workplaces is considered discrimination. These prohibitions are connected to physiological features of women and have been included in legislation to protect women, specially maternity. Vice versa, as it was mentioned above in analysis of LC, there are many superior rights and privileges in LC concerning women.

However, discrimination against women in labor field is not excluded. Such discrimination cases exist in practice.

■ There are provisions in LC banning discrimination, also against to women. According to article 240 of LC, denial of signing labor contract with woman who is pregnant or has a child aged under 3 is banned. In this case, woman is entitled to demand explanation from employer and apply to court.

But the above given provisions are not effective and applied in practice. Its application in practice has not been realized so far. Despite such cases are too many, no appeal has been received by courts. The reason is that proving such case by the court is impossible. To provide a basis for not employing the woman who is pregnant or has a child aged under 3 the employer can show legal bases (no vacancy, unavailability of job offered for pregnant woman etc).

■ One of discrimination against women is linked to their age and physical appearance. Sometimes age limits are set for employment of women and it is illegal (for instance, age limit 18-25 etc). Citizens Labor Rights Protection League has received many appeals by women who were not employed because of physical appearance. Those applying said they were not employed because of short height or overweight. In

many cases the job that they were to fulfill has nothing common with their age and phycial appearance.

- Promotion of women in too weak in comparison with women. It is specific for state bodies specially. For instance, while 70-80% of employees in health and education systems of country are women, women working in managing positions are 20-35%. Women working in senior positions in these fields possess mainly middle managing positions (school director, head doctor of polyclinics and maternity center, sometimes head doctors of clinics etc).
- There are not direct differences between wages of women and men. No different payment has been registered between wages of man and woman working on the same position and profession (only the officially paid wage is subject). But there are differences between average level of wages of women and men in the country. Women have no access to positions and professions with high wage. Wage in fields (medicine, culture, education, light industry etc) where women traditionally work is lower than other spheres. Employers prefer to accept men to the positions with high wage.

Thus, despite discrimination against women in labor sphere is forbidden by domestic legislation, administrative and criminal responsibility is determined for such discrimination, in practice requirements for gender during employment are open sometimes. At the moment, state takes no serious action to prevent such cases.

DISCRIMINATION AGAINST PHYSICALLY RETARDED PERSONS

Assurance of employment of the physically retarded persons in the country is serious problem. Despite LC of the Republic of Azerbaijan and Law on Prevention of invalidity, rehabilitation and social protection of invalids and other normative acts include respective provisions on assurance of labor rights and worthy employment of invalids, protection of their labor and health, in practice labor rights of these persons and also their civil rights are brutally violated. In article 25 of Law on Prevention of invalidity, rehabilitation and social protection of invalids *'Quota set by legislation is determined for the invalids in institutions, departments and organizations irrespective of form*

of property, except those list of which is set by respective executive power body'.

Employers not obeying the quota must transfer certain payments to State Social Protection Fund. Also institutions where 30% of employees are invalids are fully freed of 50% of profit tax, institutions where 50% of employees are invalids are fully released of profit tax. But there are serious problems in application of law and mostly the law is not obeyed. Application of this law is not real while secret economy and *'double accounting'* (or black accounting) is widely applied.

When employer knows that the one wanting to be employed is invalid denies employing it on different excuses. Main reasons to this are that there are certain privileges for invalids (e.g. right to paid leave for longer period in comparison with others) and high risk of these persons to get professional disease. Also, employers bear responsibility while assuring the invalids with jobs that may damage their health.

As a result of this a number of invalids are obliged to hide their invalidity from employers. In this case, they are deprived of privileges set by LC, also right to leave of 42 calendar days and at best they use the right to paid leave set for healthy employees.

Despite Law on Prevention of invalidity, rehabilitation and social protection of invalids determines creation of specialized workplaces for invalids, but neither state nor private bodies make efforts to create such workplaces.

According to article 26 of that law, institutions must allocate workplaces and create new ones for employees having become disabled because of production casualty, or caught professional disease and become invalid as a result of this. Employers ignoring these rules must transfer 120 equivalents of Minimum wage to State Social Protection Fund. Unfortunately this is not applied in practice. Persons having caught professional disease or possessing production invalidity because of fault of employer lose in many cases their job too.

Invalids have special weight among the unemployed of the country. Non-assurance of employment of such people causes their isolation from society and discrimination against them.

MUTUAL MATERIAL RESPONSIBILITY OF LABOR CONTRACT PARTS

Despite LC states mutual material responsibility of employer and employee that are parts of labor contract, creation and features of this responsibility and there are also government decisions on this, material responsibility of parts is not applied in practice according to legislation. In many cases employers do not sign contract with employees on full material responsibility. Employers involved in non-structured interviews in frame of monitoring underlined they have never signed contract with employees on complete material responsibility. Despite such contracts meet the interests of employers first of all, it is not applied in practice.

As a rule, employees are involved in partly material responsibility, but in many cases except reimbursement of material damage caused to employer by employee employers apply conduct reproach on the employee, and mostly, this reproach is not adequate to the damage caused.

Usually employers cease the labor contract with employee.

Despite employers bear full material responsibility for damage they cause to employees, they deny reimbursement of damage. As mentioned above, it concerns the damage caused to health of employee.

STATE OF ASSURANCE OF FREEDOM OF ASSEMBLY IN WORKPLACES

Law on Trade Unions was adopted on 24 February 1994. Other legislative acts adopted later, also LC neutralized a number of provisions of that law. According to article 19 of LC, *'Trade union organization can be created in institutions upon pure voluntarism principles making no difference among employees, getting no permission from employers in advance'.*

According to the Code, organizations established in institution must be created as first organization of any field trade union functioning already. According to article 1 of Law on Trade Unions, *'Trade Unions are independent public, non-political organization operating upon their charters and this Law where employees working in field of production and non-production, also pensioners and persons studying are voluntarily assembled upon individual member-*

ship Principle in level of workplace, professions and republic for protection of their labor, social and economic rights and legal interests'. By article 3 of Law, *'…at least 7 persons are entitled to assemble in trade union organization and adopt its charter'.* It seems from provisions that organizations founded in institution can be formed as first organization of trade union organization possessing charter and respective state registration. Because in the domestic practice there are not independent trade union organization created in institution. Only separate trade unions were registered in due time in one of Production Units of State Oil Company and it continues to operate as first organization.

According to information of Azerbaijan Trade Unions Confederation, at present there are 18 671 trade union organizations in country that are united at 26 field trade unions affiliated to the Confederation. This figure is too low and covers small part of institutions, specially state sector institutions. As Journalists Trade Unions not included in the Confederation and without state registration have no structure (first organization) cannot function as trade union.

Existing trade unions are not able t be social partner of employers, despite in institutions where these structures exist rights of employees are protected better than institutions with no trade unions.

There are serious obstacles for creation of trade unions in a number of companies specially foreign oil companies. Efforts by employees face serious resistance, initiators undergo pressure. Despite domestic legislation sets serious punishments for creating obstacle to assembly at trade unions, these provisions are 'dead provisions' and not applied.

Membership fee from employees in institutions where trade unions exist are taken by management. Every person employed is considered member of trade union. Employees not wanting to be member of trade union must submit written notification on this to accounting of the institution. Despite no norm on this exists, it has been established in this way in the practice.

So, freedom of employees to come together in workplaces has not been assured. Activity of any trade union organization against the will of the employers or foundation of new trade union organization is very complicated.

VIOLATION OF LABOR AND OTHER HUMAN RIGHTS IN TRANSNATIONAL CORPORATIONS

As noted above, reasons for violation of employee rights, specially labor and other rights of local employees in foreign companies, including transnational corporations (TNC) is not connected to legislation so much. Cause to these total violations is not defects or gaps in legislation but too indifferent attitude towards laws and non-application of any punishment for this by respective state bodies. Violation of employee rights in foreign companies, specially in big ones starts before signing labor contract with employment and selection of employees. Procedures, requirements and documents set for employment in oil companies are not reflected in domestic legislation. During employment and signing labor contract requirements reflected in articles 42-47 of LC are ignored.

In official information of Expert Commission of International Scientific Board of Human Rights Institute of National Academy of Sciences dated 28 April 2006 violation of rights of citizens of the Republic of Azerbaijan at foreign oil companies operating in the Republic of Azerbaijan is shown on concrete directions.

Results obtained as a result of surveys Citizens Labor Rights Protection League implemented at foreign oil companies in frame of Monitoring coincide with conclusion of Human Rights Institute experts.

Human Rights Institute experts classify violation of rights of Azerbaijani citizens working in foreign companies as following.

Violation of rights of employees in foreign companies while signing labor contracts*

Labor contracts are signed by not taking into consideration requirement of articles 42-61 of LC and terms reflected in exemplary form. Also, signing labor contract provisions of articles 45, 47 of Code are ignored. According to article 45 of Code, if job done or service rendered is permanent, labor contract must be signed without setting term.

Violation of requirements for labor rights of employees

According to LC, labor functions of employee must fully be counted in

labor contract. As a rule, these functions are not shown in labor contracts or given in general and abstract manner. In some cases provisions such as 'fulfills all instructions of employer' are included in column 'Labor Functions'.

Wage Violations

Article 16 of LC (inaccessibility of discrimination in labor relations) is brutally violated. Foreigners are paid 10-25 times higher wage for equal labor that local employees.

Leave violations

Labor contracts do not reflect terms on main and extra, social, creativity leaves and unpaid leaves.

Violation of right of employees to social insurance

Labor contracts do not include terms on compulsory state insurance of employees and forced insurance of employees in dangerous spheres. Violating the domestic legislation labor contracts do not include provisions on social insurance and employees are not insured.

Violation of Labor Protection rules

Labor contracts do not cover terms on labor and health safety and creation of hygienic conditions.

Violations in field of signing and ceasing the labor contract

Labor contracts do not contain terms of rules of ceasing labor contracts according to the way set in articles 68-70, 73-75 of LC. Ceasing labor contracts articles 9-12, 62, 71, 72, 185-187, 189 of LC are brutally violated.

Violation of contract terms

In many cases, against the will of employee termless contracts are replaced with temporary ones. Sometimes misusing unawareness of employees of their rights termless labor contracts signed with them are replaced with temporary ones.

Violation of terms on work time and rest time

Labor contracts do not include provisions on rules of giving wage if overtime job is admitted.

Violation of rights of employees to assemble in trade unions

Legislation does not let employers and other participants of labor relations interfere in implementation of public control functions of trade unions reflected in labor legislation and other legal acts and disobedience of their legal and well-grounded requirements. It is liability of all economic subjects, foreign companies operating in the country to promote protection of employees of trade unions set by legislation. But serious obstacles are created at foreign oil companies for realization of these rights.

Violation of labor rights of women

State sets privileged terms for women having signed labor contract and working already for realizing labor rights. Unfortunately, no foreign oil company obeys guarantees considered for women by articles 240-246 of LC.

It was found out as a result of the interviews taken in frame of the monitoring from some employees, having worked at foreign companies and fired from job, also working at present, that an employee fired from job for being active in one company, also initiating to create trade union or demanding the management to respect its rights is not employed then in another company. There is secret agreement among Companies on this issue. There is no information on regulation of this agreement by verbal or any secret document.

Also, illegalities happening in foreign oil companies towards local employees are not connected with violation of labor rights only. Other violations in foreign companies towards local employees are the following:

- *Different work regime*
- *Different living conditions (without air conditioner, with simple conditions)*
- *Different nutrition*
- *Abusive and humiliating attitude*
- *Outraging national feelings*

■

* Official information of Expert Commission of International Scientific Board of Human Rights Institute of National Academy of Sciences dated 28 April 2006 (slightly shortened).

Causes found out as a result of monitoring and bringing toviolation of human rights in labor relations

LEGAL CAUSES

Referring to the analysis of legislation regulating Labor Relations and the final opinion it can be mentioned that some of causes bringing to mistakes in practice are licked with legislation. There are such provisions in legislation that seem normal at first sight but during their application labor standards are broken and it results in violation of labor rights. Some of legislation gaps can be removed by signing individual labor contracts and collective contracts in the way set by legislation. But the situation in the country in field of signing both individual and collective labor contracts is not satisfactory. Despite Administrative Offences and Criminal Codes determine material and criminal responsibilities for violation of labor legislation, in practice application of these provisions happens very rarely in comparison with violations. Criminal punishment for production casualties is applied rarely and inadequately (light punishment).

EXISTENCE OF SHADOW LABOR MARKET

Existence of 'shadow' labor market in labor market of country is one of major factors bringing to mass violation of labor rights. Even if there is official or unofficial statistics, number of those dealing with labor activity by not entering official labor relations is not less than those working by entering official labor relations. Involvement of hundreds of thousands of people in labor activity within unofficial labor relations means that labor legislation is not applied concerning these people. Labor activity of such employees is beyond control of state and trade unions.

INEFFECTIVENESS OF STATE CONTROL

State Labor Inspection has been established by Ministry of Labor and Social Protection of Population upon decree of the President of the Republic of Azerbaijan dated 27 January 1997. Till this decree functions of this body were performed by structures affiliated to Trade Unions. Even if leaving the control to the state body is positive, this innovation did not cause establishment of labor relations according to existing legislation and rules. Then, control on signing labor contracts was left to Taxes Ministry. After this, these two ministries were assigned to function in this field in coordinated form. Unfortunately, none of these changes brought to creation of effective state control in Labor sphere. Taxes Ministry checks mainly existence of labor contracts (according to number of employees) in institutions where they conduct inspections. Quality parameters of labor contracts are not verified. For example, if temporary labor contract has been signed against section 4 of article 45 of LC or rules reflected in article 43 of LC are not obeyed in the contract, no attention is paid to this as a rule. It has already become an ordinary if labor contracts are not signed according to labor legislation and those contracts include provisions restricting labor rights of employees. This is the most serious in violation of labor rights.

Attestation of workplaces also is formal. In many workplaces labor protection and safety technique is not obeyed. No effective action is taken against illegalities that happen from employment of employees and continue during all the labor activity. It results in total violations in labor sphere of the country.

INEFFECTIVENESS OF PUBLIC CONTROL

Bodies inside the institution where public control may be implemented in most effective way are trade unions. Unfortunately, trade unions exist in small part of institutions in country. Existing trade unions are as a rule dependent on employers, or have no opportunity to affect them, or employers are indifferent to them. But the monitoring proved that in workplaces where trade union organizations exist labor legislation is obeyed even if partly. But ineffectiveness of public control must be underlined as one of reasons of mass violation of labor rights in country. NGOs dealing with social and labor rights have no opportunity to directly interfere in processes ongoing inside the institution. Activity of NGOs is lim-

ited mainly with rendering legal aids, forming public campaigns and educative actions.

INEFFECTIVENESS OF JUDICIAL MECHANISM

Indeed, process of proceeding an action for settlement of labor disputes in courts is not so difficult. Also, according to article 298 of LC, respective state duty and court expenses are not paid in advance while suit is brought for judicial settlement of individual labor relations of employee or employer claiming violation of rights regulated by LC. However, according to all parameters obtained as a result of tools applied in frame of the monitoring, the one of main and serious problems occurring in regulation of labor relations is linked to courts. Activity of courts is directed not to prevention of total violations happening in labor sphere but, vice versa, to stimulation of these violations. Major factors characterizing ineffective judicial system are the following:

- *Corruption;*
- *Overloaded court judges;*
- *Non-specialization of judges because of which they do not have full idea of problems. There is no judge in majority of courts of country having perfect knowledge of labor legislation;*
- *Employees do not apply to courts in time, that is why suits are denied (end of term for suit);*
- *Lack of effective defense (from side of lawyer, representative of trade unions etc);*
- *Change or annulment of court decisions in next judicial instances;*
- *Non-fulfillment of court decisions.*

APPLICATION OF DOUBLE ACCOUNTING IN INSTITUTIONS

Application of double accounting (or black accounting) in the institution is one of main reasons for violation of employee rights. Employees are insured for wage they receive not actually but officially by signing or aids and compensations for employee getting labor invalidity as a result of casualty in production or having died of this reason (for family of the dead) are imposed according to official wage. In another case, labor relations with employee are not officialized. In this case, employees cannot receive any aid in the event of social incident. In case of production invalidity and professional disease such employees cannot prove their involvement in labor activity in the institution the incident has happened.

■

Recommendations

Results we have obtained by holding the monitoring of state of assurance of labor right, part of socio-economic rights, in the country show that several aspects of relations in labor sphere are subject to the review. Aspects that must be reviewed are important regarding both normative acts and their application.

Taking into consideration monitoring results, reports made so far on labor rights and opinions and proposals of experts in the events held in frame of the project the working personnel implementing the monitoring have developed recommendations. These recommendations are addressed to corresponding state bodies, trade unions and other respective public unions, employers unions and respective international organizations.

Comparative analysis of normative acts included in Labor Legislation system of the Republic of Azerbaijan with respective international norms supported by the country found out that several provisions of national norms do not comply with international labor standards. But such discrepancies and contradictions are not many. But the general conclusion is that Labor Code (LC), other respective laws and decisions do not assure the legal basis required for regulation of labor relations at present. Many gaps in norms included in labor legislation system cause serious mistakes in practice that results in violation of labor rights. Taking these into consideration, we recommend the following:

- Domestic labor legislation needs cardinal changes and additions. Changes periodically made to LC and other respective norms, different decisions of Constitutional Court cannot solve the problem.
- Except changing the labor legislation of the country, corresponding changes and supplements must be made to Criminal and

Administrative Offences Codes, degrees of responsively for violation of labor rights, also right to labor and health protection, work under effective and fair conditions, rest, assembly must be specified and made severe.

On Collective Contracts

- Irrespective of subordination, property form and other parameters in all institutions Collective Contracts must be signed. If signing such contracts is not possible in institutions, departments and organizations where number of employees is small, then those institutions must unite and create employer unions, also employees at those institutions must unite and establish trade unions. In this event, employees working in institutions even with several employees can be part of collective contract. For this, law on unions of employers must be developed and adopted first.
- Either separate report form must be made to be submitted to State Statistics bodies or one of other report forms received by institutions must include terms in special column for containing the information on collective contract. Institution, department and organization not signing collective contract must show valid reasons for this.
- Control on signing collective contracts must be carried out by respective state body and national body of trade unions as well.
- Special recommendations, contract forms must be made and distributed not to have collective contracts in formal character.

On Labor Contracts

- Attitude on collective contracts must fundamentally be changed. Knowledge of employees of state bodies controlling signing of labor contracts on labor contracts must be improved. In many cases persons implementing the control have low expert qualities and as a result of this labor contracts signed not in accordance with principles set by LC are not considered. At present signing of labor contracts is controlled by tax agencies. And they approach the signing of labor contracts from point of view to involve more taxes in state budget. They are not interested in restriction of labor rights of employees in Labor Contracts. So, existence of labor contracts does not indicate to the assurance of employee rights. Labor contracts must be assessed also for quality parameters.
- Administrative Offences Code includes material responsibil-

ity for legal and physical persons involving the employee in job by not signing labor contract. But material responsibility for including provisions restricting rights of employees set by legislation against the rules set by LC also must be reflected.

■ Realization of jobs and services by signing civil-legal contracts is widespread. But physical persons acting upon such contracts are fully unprotected. There is no state body to control labor activity of such persons. To prevent violations happening during labor activity of persons working in base of civil-legal contracts corresponding changes must be made to legislation, part of this sphere related to labor activity must be taken under control of respective state bodies.

On regulation of work time regime

Provisions exactly setting the working regime must be included in LC. Admitting overtime jobs the rule of its officialization must be shown exactly (at the moment LC permits overtime jobs upon consent of employees. But there is no special rule (for instance, written consent) on the realization of this consent).

On leaves

Paid leaves must be provided in all institutions. Corresponding articles of LC must be unified with Paid Vacation Convention of International Labor Organization. Replacement of leaves with money compensations must be admitted in exclusive cases.

On labor compensation

■ Wages of employees must be lifted according to value and results of their labor, specialization and degrees of specialization, professionalism in such way that employees can meet their minimum demand by this wage. In such case funds possessed in workplace will become main source of income of employees. It will have positive impact on quality and quantity parameters of production and cause improvement of welfare of population.

■ Irrespective of form of property in all workplaces state control and state guarantee must be established for minimum compensation of labor. Everyone must be provided with compensation of labor used.

■ Government must deny minimum wage system used as normative basis in labor compensation, apply **hourly minimum wage** system considered new **social standard.** Setting minimum wage per hour **living wage** of the person with

working ability must be taken into consideration.

- Tax relieves must be set for institutions where labor compensation is less, specially for light industry institutions. Extra funds coming from such relieves must be directed to lifting wages. In this case, difference between average level of wages of men and women will be reduced much. Because number of women in light industry institutions is more than one of men.
- Mechanisms of control on labor compensation must be included in Three-sided Main Agreement, serious administrative and criminal responsibility must be determined for persons violating labor compensation principles.
- Provision reflected in LC on commitment of employer on paying compensation to the employee for delay in payment of wage must be improved with specific mechanisms. Concerning the institutions or physical persons that cannot pay the wages of employees for long time the legislation must contain such provisions that employees can get wages.

On labor protection

- Existing legislation and normative base in field of labor protection must be improved. Normative acts, also hygienic norms in this field must be unified with international standards.
- All production and non-production fields must be certified according to requirements of labor protection and safety technique and working process in institutions not meeting these requirements must be stopped.
- Extra privileges and compensations must be given to those working in harmful workplaces, employees must be sent to respective preventive institutions for restoration of health.
- Insurance system must be preferred in paying compensations to those undergoing production damage and getting professional diseases.
- Disease sheets submitted by employees losing ability temporarily must be analyzed, causes of professional diseases must be studied and preventive actions taken.
- State Labor Inspection must be separated from Ministry of Labor and Social Protection of Population and changed into independent body. Authorities of this body must be increased. It must be empowered to hold audit of institutions regarding meeting the labor protection requirements and to implement certification.
- Criminal punishment is set by article 162 of Criminal Code for

violation of labor protection rules. But this punishment is already applied for casualty happened. On this point, criminal punishment must be determined for brutal violation of labor protection and safety technique rules in workplaces. Compulsory attestation of workplaces must be held in existing and newly created institutions (specially building institutions), activity of institutions not meeting these requirements must immediately be stopped and administrative or criminal case started according to scale of offense.

On settlement of Collective Disputes

Chapters 40, 41, 42 and 43 of Code must be developed again and unified with the Constitution of the republic. Procedures and rules for employees to advance Collective demands must be simplified. The Code must be included mechanisms assuring the right of a part of collective to advance collective demand and hold a strike.

On bodies settling Labor Disputes

- Special actions must be taken for consideration of cases on state labor disputes in courts upon easier procedures. Solving dispute between employees and employers courts must use reconciling methods (considering that employee and employer must operate together and their litigation must not reach the level of hostility) mostly. On this point, formation of reconciling judges institute existing in advanced countries would help settlement of not only labor disputes but also other civil disputes.
- It would be purposeful to determine special judges in courts specialized on labor disputes, create in future courts specialized on labor disputes. Discussions are going on in Russian Federation and other CIS countries on establishment of such courts.
- LC must include as important term the creation of bodies considering labor disputes till courts, show concrete rules and mechanisms of creation of such bodies.
- If creation of such body is impossible in small institutions and collectives with small employees, the Code must reflect rules and mechanisms of creation of the body considering labor disputes among institutions. Responsibility for establishment of these bodies must be left to State Labor Inspection.
- Extra guarantees must be set for employees holding strike lonely. Involvement of employees holding strike lonely according to legislation in conduct reproach must be forbidden.

On regulation of labor relations with employees of special category

■ Stratification of population in the country, growth of number of people with wide range of possibilities and financial resources caused growth of employees of special category. At the moment number of employees belonging to the category of housemaids, servants, nurses, personal drivers, guards in private estates is increasing. But labor legislation does not concern to this category of employees. LC must reflect special chapter taking into consideration features of labor activity of employees of this category. Insurance of these employees involved in hired work, protection of their labor and health and other issues must be regulated by legislation. In practice, there is no case of creation of official labor relations in people dealing with such jobs.

■ LC must set special chapters for workplaces where regulation of labor relations in accordance with LC is impossible. These chapters should be titled 'Characteristics of regulation of labor relations in NGOs', 'Characteristics of regulation of labor relations in mass media' etc.

On enlightenment of employees on Labor Legislation

■ Development of special state program for mass enlightenment of employees and involvement of trade unions and Non-governmental organizations in implementation of this program is very important. Many of human right violations in labor sphere happen because employees do not know their rights, or they do not have sufficient idea of their rights.

■ Educative actions must be taken in workplaces on employee rights and visual means reflecting labor rights must be placed in the institutions, workplaces in places visible for everyone.

On documentation of labor activity of employees

Workbook - approving labor activity and seniority of employees has lost its previous essence. Workbook is partly replaced by 'State Social Insurance Certificate'. There is need for new record reflecting labor activity of employee (employment, dismissal, specialization experience). Submission of this document during employment must not be laid as absolute term. The one electron information base must be created to follow labor activity of employees. If seniority is required on certain specializations, professions, extract from that base can be submitted.

■

Appendices

APPENDIX 1.

Questionnaire

1. Have you signed a contract when admitted to your current work place?

a) Yes, I signed labor contract
b) No, I did not signed a labor contract (please, pass to the question #8)
c) I don't see any necessity for signing up a contract (please, pass to the question #8)
d) Other (please specify)_____

2. What is the form of your labor contract?

a) Termless labor contract
b) Fixed-term labor contract (up to 5 years term)
c) Collective labor contract
d) Other (please specify)
e) I do not know

3.Were you given the second identical copy of your contract?

a) Yes
b) No
c) I do not remember
d) Other (please specify)

4. Did you get familiar with the terms of your labor contract?

a) No, I did not
b) Yes, partially
c) I got familiar with my rights and duties section in details
d) I thorough learned my labor contract

5. Do you think that your contract is in compliance with legislation?

a) Yes
b) No
c) I do not know

6. Does your labor contract presisly show all your rights and duties?

a) Yes
b) No

7. Did you negotiate the terms of your contract?

a) No, I did not negotiate
b) Yes, I negotiated but could not include any changes
c) Yes, I negotiated and included changes
d) I suggested my own version of the labor contract

8. Does your employer compile with the terms of your labour contract (in case you do not have a contract then with national legislation)?

a) Yes
b) Not in a full capacity
c) No
d) I do not know

9. Please list the main violations of your labor rights you are facing at your current place of employment

a) Violation of terms of salary payment

b) Violation of working hours terms
c) Violation of vacation terms
d) Overload with additional duties not reflected in labor contract
e) Various deductions from salaries
f) I did not face any violations

10. Do you think that you need protection of your labor rights?
a) Yes
b) No
c) Yes, but I do not want to shatter my relations with employer
d) I do not know

11. Are you willing to protect your labor rights in court?
a) Yes
b) No
c) I am not sure
d) I am afraid of the results

12. Did you ever change your place of employment because your labor rights were violated?
a) Yes, I did
b) No, but I wished I could
c) No, I did not and I think that the situation is the same everywhere in Republic
d) I have not faced any violations

13. Are you familiar with Labor Code of the Republic of Azerbaijan?
a) Yes, I am familiar
b) I am partially familiar
c) No, I am not familiar
d) I do not think it is important

14 Are you familiar with international conventions in the field of labor rights?
a) Yes, I am familiar
b) I am partially familiar
c) No, I am not familiar
d) I do not think they are important

15. What are the sources of your information on labour rights?

a) Newspapers and magazines
b) Books, special literature
c) Consultations with lawyer
d) TV and radio
e) Internet
f) Other (please specify)

16. You age group
a) 18-25
b) 26-35
c) 36-45
d) 46-55
e) above 56

17. Gender
a) Man
b) Woman

18. Marital status
a) Married
b) Single

19. Length of service:
a) Up to one year
b) From one year to five years
c) From 6 years to ten year
d) Above ten years

20. Your current positions
a) high rank positions
b) deputies, assistants
c) middle-rank positions
d) spesialists
e) servants, blue-collar workers
f) unskilled workers

21. What is the juridical status or organizational form of your current place of employment?
a) state
b) joint company
c) private
d) Other (please specify)

APPENDIX 2.

Questionnaire used for conducting observations by attending the institutions

FINAL NOTES

On results of monitoring of real state at the institution in accordance with existing legislation of the Republic of Azerbaijan in field of Labor Protection and Safety Technique

No	Requirements of existing legislation	Assessment, in %
1.	Is there Labor Protection service (responsible person) at the institution?	
2.	Has the area of operation been fenced?	
3.	Are there safety signs and posters?	
4.	Are individual safety means used?	
5.	Is there assembly point in the event of incident?	
6.	Do employees work in uniforms?	
7.	Are employees instructed before starting job?	
8.	Are there emergency exits in the buildings?	
9.	Are there evacuation plans in the area and buildings?	
10.	Are there fire warning systems?	
11.	Are there firefighting bags?	
12.	Are there ventilation systems in the buildings?	
13.	Do employees undertake initial and periodic checkup?	
14.	Is there internal and external communication system?	
15.	Is there rest room for employees?	
16.	Is job stopped in strong wind and hot?	
17.	Are working dresses of employees washed?	
18.	Are employees supplied with drinking water (ordinary and sparkling)?	
19.	Are gas bags (propane, oxygen, carbon ...) properly stored?	
20.	Are employees supplied with conditions for wash?	
21.	Are gas bags (propane, oxygen ...) in suitable color	
22.	Are there medicine boxes (in vehicles and area)?	
23.	Are electric lines and panels in order?	
24.	Is the entire area properly lightened by searchlights?	
25.	Are there trash baskets?	
26.	Does lighting system meet the norms?	
27.	Have the employees been insured?	
28.	Are heavy loads handled?	
29.	Have the workplaces been attested?	
30.	Are employees involved in overtime job?	

APPENDIX 3.

Approximate list of questions used during non-structured interviews with experts

1. Do you sign labor contract with employees?
2. If not, why?
3. Do you instruct the employees about labor protection rules?
4. If yes, how?
5. Do you take notes in workbooks for employees?
6. Are there domestic rules in institutions?
7. Are employees provided with leave?
8. Which are typical problems concerning employees?
9. Do you have contract with employees on complete material responsibility?
10. Is collective contract signed at your institution?
11. If not, why?

APPENDIX 4.

Registration form used for the monitoring of the press

N O T E S

on analysis

of the press in frame of the project titled **Monitoring of Assurance of Socio-Economic Rights in the Republic of Azerbaijan and Formation of Campaigning,** implemented by Citizens Labor Rights Protection League and financed by Eurasia Foundation due to funds of United States Agency for International Development **(USAID)**

Title of press organ	Date of publication of press organ	Number of releases	Title and summary of release	Contents of release (cease of labor contract, reduction, reimbursement of damage etc)	Notes

Citizens' Labor Rights
Protection League

MONITORING OF STATE OF ASSURANCE OF LABOR RIGHTS
IN THE REPUBLIC OF AZERBAIJAN

LEGISLATION AND PRACTICE

MONITORING REPORT

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