

CITIZENS' LABOUR RIGHTS PROTECTION LEAGUE

**SITUATION WITH PROVISION OF THE RIGHTS OF MIGRANT
WORKERS AND THEIR FAMILY MEMBERS IN AZERBAIJAN**

LEGISLATION AND PRACTICE

REPORT ON OUTCOMES OF THE MONITORING

BAKU-2009

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This publication was supported by a grant from the OSI Assistance Foundation

The Monitoring report has been prepared and published within the “**Support to provision of human rights of migrant workers**” project implemented by Citizens’ Labour Rights Protection League with financial assistance of Open Society Institute – Assistance Foundation (Central Eurasia Project)

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SUMMARY

The monitoring conducted within the “**Support to provision of human rights of migrant workers**” project implemented by Citizens’ Labor Rights Protection League with financial assistance of Open Society Institute – Assistance Foundation (Central Eurasia Project) is aimed to determine the situation with provision of the human rights of foreigners and stateless persons working in Azerbaijan and their family members, and to prepare recommendations on elimination of gaps in the legislation and shortcomings in the practice revealed as a result of monitoring. At the same time, depending on the outcomes of the Monitoring determination of the strategy for subsequent actions and implementation of the appropriate actions in compliance with the strategy was taken into account.

The presented report, prepared based on the particular methodology and with application of various monitoring tools, mainly covers the following issues:

The **introductory** part of the report provides information about general problems related to the migrant workers in the world, efforts of international organizations to eliminate these problems, including information about the adopted international documents.

Notwithstanding the fact that there are many international documents imposing obligations on states for protection of all rights, including social rights of migrant workers and their family members in the destination country, the rights of persons within this category are most of all violated. The introduction part of the report also include information about main rights of the migrant workers and international standards regarding their situation in the destination country.

The following section of the report is dedicated to the analysis of the legislation. Within the analysis the legislation is compared with international norms to which the Republic of Azerbaijan is party and these norms are listed. When the national legislation is analysed the principles and standards reflected in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted in 1990 under the aegis of UN and later ratified by the States are considered basic. Within the analysis the legal opportunities for migrant workers for their labour activity in the country provided on the level of legislation and subordinate legal norms, problems arising during

application of these norms and causes of these problems have been analyzed. In accordance with the Constitution International agreements wherein the Azerbaijan Republic is one of the parties constitute an integral part of legislative system of the Azerbaijan Republic and provisions of international agreements shall dominate, except Constitution and acts accepted by way of referendum. It means that, whenever there is disagreement between normative-legal acts in legislative system of the Azerbaijan Republic and international agreements wherein the Azerbaijan Republic is one of the parties, provisions of international agreements shall dominate.

It was determined that in many cases both appropriate legislative acts particularly Laws of the Republic of Azerbaijan on **“The Law Legal Status of aliens and stateless persons”**, **“The Law Exit, Entry and Pasports”**, **“The Law on immigration”**, **“The Law on Labour migration”** and other normative legal acts adopted with the purpose of implementation of these laws disagree with appropriate international norms to which the country is party, and thus human rights or migrant workers are violated.

Migrant workers entering country with the purpose of labour activity may not obtain labour visa. The main reason is existence of shortcomings in the visa system. Thus, labour visa is not issued in the

structures of the Ministry of Foreign Affairs (embassies, consulates, etc.). migrant workers entering the country with common entry visa may not legalise their labour activity and have to face numerous bureaucratic obstacles.

Shortcomings in legislation, serious violations in the practice caused the situation where majority (more than 90%) of aliens and stateless persons working in the country are in illegal situation.

While analysing the legislation the main provisions hindering from conduction of labour activity were shown and the appropriate recommendations have been prepared for their elimination.

Several tools have been used during the monitoring for determining the problems existing in practice. These tools are **Nonstructured interview with migrant workers, Analysis of statistics regarding migrant workers, Conduction of survey.**

The opinion regarding nonstructured interview with migrant workers has been provided in the monitoring report. The main purpose of interviews has been to learn the typical problems or migrant workers and their family members. Migrant workers have been divided into several categories and interviews with them played a serious role in obtaining clear picture of their problems.

When **analysing statistics** related to migrant workers it was revealed that both official and

unofficial statistics do not reflect real quantitative indicators of migrant workers. Thus, till January 1, 2008, 1700 migrant workers from 65 countries of the world have been registered, at the end of the year this number became 4200. In fact, the main reason of increase of registered migrant workers during the year in comparison with previous years is not increase of inflow of migrant workers. This is related to the high fines for employers who employ aliens and stateless persons without personal permit. According to the unofficial statistics, number of illegal migrant workers already exceeded 40 000. But this is also not real statistics. According to the certain sources, only the number of ethnic Azerbaijani's coming for labour activity to Azerbaijan from Georgia is more than 100 000. Thus, there is no exact statistics of migrant workers in the country. And this, on its turn creates serious problems at the labour market of the country.

Survey has been conducted among experts.

The main purpose of the survey was to learn about the impact of migrant workers on labour market and the economy of the country and the real situation of migrant workers in the Republic of Azerbaijan. From this point of view, survey consisted of two parts. The first part was related to the legal situation of migrant workers and their impact on labour market and the economy of

the country. The second part was related to the real situation of migrant workers and their family members and situation with provision of human rights.

According to the opinion of experts participating in the survey, the impact of migrant workers on the labour market of the country is not felt very much at the present stage. But the opinion of the majority of experts is that there are both legal and practical problems for legal activity of migrant workers in the country.

At the end of the report, **Final outcomes and recommendations regarding the monitoring** have been provided. The recommendations are directed both to the improvement of the legislation and elimination of shortcomings in practice. The following conclusions have been made as a result of the monitoring.

- **The legislation is not perfect;**
- **Visa system has shortcomings;**
- **The procedures for obtaining permission for legal labour activity are complicated;**
- **Informal sector comprises more than 50% of the country's labour market. And this creates conditions for migrants workers to be majority in the informal sector.**

INTRODUCTION

People do not in mass leave their home country only in cases of wars, pursuit or natural disaster. There are other situations forcing people to leave their home country for a relatively long period of time. The most wide spread **leaving the home country with purpose to search a job and attempts of people to sell their labour. Such people are called *migrant workers* in the international law.** Such flows of people are usually from countries with continuous social-economic crisis, unemployment and low wages.

Presently millions of people in the world left their countries with the purpose to find a job. Unfortunately, we have to mention that attitude to these people in the hosting country is not unambiguous. Traditionally in most cases they become an object of suspicion and hostility. They may not integrate in the existing situation and it makes them unlucky and depressed and this on its turn brings to increase of xenophobia elements against them.

In many cases immigrated people do not know or poorly know the language, culture, social and legal structure of the host country.

In many cases they do not know salary system, living standards of the host country and as a result the salary that seems relatively high does not meet their needs in the country they moved to.

They do not know the laws of the country and thus do not know their rights and as a result their rights are violated. In such situation migrant workers in many cases are forced to work as slaves.

The existing situation related to the migrant workers has always disquiet the international community. A range of attempts within the framework of International Law have been made for solution of the problems related to the migrant workers.

For solving problems related to the migrant workers International Labour Organization adopted a range of conventions and recommendations. We can show *Migration for Employment Convention (No. 97,1949) of the International Labour Organization* among these. This Convention entered into force in 1952. It also shall be mentioned that as for May 1, 1995 the Convention has been signed by 40 countries. The convention provides that all

regulations (salaries, membership in trade unions and etc.) applied to the citizen workers of the country shall apply to the migrant workers legally entering the country. The convention provides measures that shall be taken by member-states to facilitate the procedures of coming to the country and return.

No control mechanisms have been provided in the Convention.

The Convention No 143 adopted by the International Labour Organization in 1975 was dedicated to *Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers*. The Convention entered into force in 1978.

No particular control mechanisms have been provided in the Convention.

Together with abovementioned, International Labour Organization adopted three recommendations regarding migrant workers.

A range of conventions of International Labour Organization in one way or another are related to the rights of migrant workers. These are:

- *C19 Equality of Treatment (Accident Compensation) Convention, 1925*

- *Inspection of Emigrants Convention, 1926*

- *C48 Maintenance of Migrants' Pension Rights Convention, 1935*

- *The ILO Social Security (Minimum Standards) Convention, 1952 (No. 102)*

- *C111 Discrimination (Employment and Occupation) Convention, 1958*

- *C117 Social Policy (Basic Aims and Standards) Convention, 1962*

- *C118 Equality of Treatment (Social Security) Convention, 1962*

- *C122 Employment Policy Convention, 1964*

Because of the certain situations, it was impossible to achieve the full solution of the problems of migrant workers within the abovementioned norms. The main causes are:

- **These norms haven't been accepted by majority of countries;**

- **The obligations of the states stipulated in conventions were not fully implemented;**

- **These conventions did not have control mechanisms.**

Taking these into account in 1990 United Nations Organization adopted **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**. The Convention entered into force after it has been ratified by 20 member-states.

The Republic of Azerbaijan ratified the Convention.

According to the Convention ***“The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.”***

Another definition of migrant worker is provided in the ***European Convention on the Legal Status of Migrant Workers*** adopted in 1977 by the Council of Europe:

“For the purpose of this Convention, the term "migrant worker" shall mean a national of a Contracting Party who has been authorised by another Contracting Party to reside in its territory in order to take up paid employment.”

There are such provisions as - Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship among those provided in the UN Conventions. Besides, the member states shall recognize the following rights of migrant workers:

- ***To take part in meetings and activities of trade unions and of any other associations;***
- ***Right to social maintenance within certain conditions;***

- ***Right to receive any medical care that is urgently required;***
- ***Right of child of a migrant worker of access to citizenship and to education.***

According to the Convention No migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment, the assets of a migrant worker or a member of his or her family are expropriated in whole or in part, the person concerned shall have the right to fair and adequate compensation.

Besides, irrespective of their legal status member states recognize political and property rights of migrant workers including:

- ***Being the subject of law;***
- ***Their right to protection from arbitrary arrest and detention;***
- ***Right of migrant worker to apply to the court in a language they understand, to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing, to have the free assistance of an interpreter;***
- ***In case of expulsion each case shall be examined and decided individually by the competent authority in accordance with law;***
- ***Right to liberty and security of person;***

- ***Right to freedom of thought, conscience and religion. The freedom of expression may be restricted for the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.***

Any migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

Also other rights of migrant workers including right to life, right to protection from slavery or servitude, from being subjected to torture or to cruel, inhuman or degrading treatment or punishment.

At the same time, nothing in the present part of the Convention shall have the effect of relieving migrant workers and the members of their families from either the obligation to comply with the laws and regulations of any State of transit and the State of employment or the obligation to respect the cultural identity of the inhabitants of such States.

The appropriate measures have been taken on the regional level for solution of problems of the migrant workers.

The European Convention on the Legal Status of Migrant Workers stipulates such rights of migrant workers as medical examination and a vocational test. After the migrant worker enters the country the host country shall solve such problems as recruitment of prospective migrant workers, housing etc. The Convention obliges member-states that in the matter of conditions of work, migrant workers authorised to take up employment shall enjoy treatment not less favourable than that which applies to national workers. The Convention founds a Consultative Committee. The Consultative Committee has two main functions. First, it considers proposals to amend the Convention. The second, it shall draw up periodically a report for the attention of the Committee of Ministers.

Although this Convention entered into force in 1983, it has not been ratified by the majority of European states.

Other European documents regarding migrant workers are provided below:

- ***European Convention on Establishment 1955;***

- ***European Convention on Establishment 1972;***

• *European Social Charter 1961 and additional protocol 1991.*

The provisions of the article of European Social Charter on The right of migrant workers and their families to protection and assistance are as follows:

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:

1 to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;

2 to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;

3 to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;

4 to secure for such workers lawfully within their territories, insofar

as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:

a remuneration and other employment and working conditions;

b membership of trade unions and enjoyment of the benefits of collective bargaining;

c accommodation;

5 to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;

6 to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;

7 to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;

8 to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;

9 to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;

10 to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply.

There are also provisions related to the rights of migrant workers in the documents of the Organization for Security and Cooperation in Europe.

Certain provisions of the Helsinki Final Act adopted at the Conference on Security and Cooperation in Europe and the Charter of Paris for a New Europe are related to the migrant workers and guarantees provided to them.

Although documents adopted within OSCE are not legally binding, measures taken into account within its documents, particularly **“OSCE Human Dimension”** mechanism are an important step for solving problems of migrant workers

ANALYSIS OF THE LEGISLATION

The following legal normative acts mainly comprise Legislative system of the Republic of Azerbaijan regarding migrant workers:

- Appropriate provisions of the Constitution of the Republic of Azerbaijan;

- Appropriate International Norms to which the Republic of Azerbaijan is party;

- Appropriate laws of the Republic of Azerbaijan;

- Normative legal acts adopted by the appropriate executive power organs within their authority.

The Constitution of the Republic of Azerbaijan

Article 69 Right of foreign citizens and stateless persons

I. Foreign citizens and stateless persons staying in the Azerbaijan Republic may enjoy all rights and must fulfil all obligations like citizens of the Azerbaijan Republic if not specified by legislation or international agreement in which the Azerbaijan Republic is one of the parties.

II. Rights and liberties of foreign citizens and stateless persons permanently living or temporarily staying on the territory of the Azerbaijan Republic may be restricted only according to international legal standards and laws of the Azerbaijan Republic.

The Labour Code of the Republic of Azerbaijan does not contain any discriminatory provisions against aliens and stateless persons in conducting labour activity. According to the article 13 of the Code “Foreign citizens and stateless persons who

have entered into employment contracts shall enjoy the same rights and have the same obligations as defined in this Code, regardless of their length of stay in the Republic of Azerbaijan, unless provided otherwise by law or an international treaty to which the Republic of Azerbaijan is a party.

Foreign citizens and stateless persons may enter into employment contracts and exercise employee rights by presenting a document confirming their legal right to be in the Republic of Azerbaijan”.

Certain norms determining legal situation of aliens and stateless persons in the Republic of Azerbaijan

The Law of the Republic of Azerbaijan **“On Legal Status of Aliens and Stateless Persons”** has been adopted with the purpose to determine legal situation of aliens and stateless persons in the Republic of Azerbaijan. The main aim of the Law is **“... to regulate public relations, arising in connection with legal status of aliens and stateless persons”**. The law provides definition of aliens and stateless persons and determines their legal status. There are also other laws and normative-legal acts regulating legal situation of aliens and stateless person in the Republic of Azerbaijan, besides the Constitution of the Republic of Azerbaijan and this law. There are **Laws of the Republic of**

Azerbaijan “The Law Legal Status of aliens and stateless persons”, “The Law on Immigration”, “The Law Labour Migration” among these and also decrees adopted for implementation of this laws and other documents. While determining the legal status of aliens and stateless persons in the Republic of Azerbaijan the Constitution and International norms and traditions to which the state is party were considered basic. According to the laws, aliens and stateless persons may have the following statuses in the Republic of Azerbaijan:

- Upon observation of immigration quota, the aliens and stateless persons who have obtained permission for immigration in accordance with terms stipulated in the Law about Immigration may arrive to reside permanently or temporarily in Azerbaijan Republic and by that they get **immigrant status**.

- Aliens and stateless persons arriving to the Republic of Azerbaijan on other legal grounds are considered persons **temporarily residing in the Republic of Azerbaijan**.

Immigration status out of quota may be accorded to:

- an alien or a stateless person who has close relations with a citizen of Azerbaijan Republic;

- an alien or a stateless person who has got married to a person permanently residing in Azerbaijan Republic;

- in other cases provided in the legislation of Azerbaijan Republic.

An immigrant is provided with document certifying his/her status by the appropriate executive authority and is registered.

Aliens and stateless persons temporarily residing in the Republic of Azerbaijan shall be registered in accordance with procedure provided in the legislation and shall leave the Republic of Azerbaijan upon expiration of the determined period.

According to the law the political asylum may be granted to aliens and stateless persons in correspondence with constitution and international norms to which the state is party.

According to the Law "The status of Refugees and IDPs (internally displaced persons" and international norms to which the state is party aliens and stateless persons may obtain refugee status.

According to the Law of the Republic of Azerbaijan "On Legal Status of Aliens and Stateless Persons" Aliens and stateless persons enjoy all rights and freedoms provided in the Constitution on equal basis with citizens of the Republic of Azerbaijan, except for political rights. Aliens and stateless persons have right to obtain property, including immovable property and to exercise rights related to the property, except for right to property in land. Aliens and stateless persons have the rights of personal inviolability and housing inviolability, right to freely move and choose place of domicile. According to the Law aliens and

stateless persons have labour rights. According to the article 11 of the Law "Aliens and stateless persons have analogous rights and bear analogous duties in labour relations along with citizens of the Republic of Azerbaijan, if otherwise is not qualified by the legislation of the Republic of Azerbaijan and international treaties adherent to the Republic of Azerbaijan.

Aliens and stateless persons arriving in the Republic of Azerbaijan for labour activity for a definite time can be engaged in labour activity in compliance with the established order.

In cases, if occupation of definite positions and definite types of activity is stipulated by the citizenship of the Republic of Azerbaijan, aliens and stateless persons can not occupy such positions and deal with such business."

According to the provisions of the law, aliens and stateless persons have right to social maintenance. But this right is not provided in conformance with international norms to which the state is party. Provision of pensions is mainly regulated by bilateral and multilateral agreements concluded between states. The law guaranties such rights of aliens and stateless persons as right to marriage, right to rest, right to housing, liberty of conscience.

Article 19 of the Law quarantees the right to education for aliens and stateless persons. According to the article "Aliens and stateless persons

permanently residing in the Republic of Azerbaijan have a right to get education on the equal grounds with citizens of the **Republic of Azerbaijan. For other aliens and stateless persons education is paid (except for compulsory secondary education), if otherwise is not qualified by laws of the Republic of Azerbaijan and international treaties adherent to the Republic of Azerbaijan**".

According to the Law, aliens and stateless persons have a right to join public unions, but they can not establish political parties and be members of political parties.

One of the important provisions of the law is related to the expel of aliens and stateless persons out of bounds of the Republic of Azerbaijan. According to the article 27 of the Law, **"When arising a necessity of ensuring the national security, protection of public order, health protection, rights and interests of population as well as when a rough infringement of requirements of the legislation of the Republic of Azerbaijan on legal status of aliens and stateless persons takes place, aliens and stateless persons, which do not have status of immigrant can be expelled out of bounds of the Republic of Azerbaijan, in accordance with decision of the appropriate court (judge) in order determined in the legislation."**

It shall be mentioned that the words "which do not have status of immigrant" and "in accordance with

decision of the appropriate court (judge) in order determined in the legislation" were later added to this provision of the law. In previous practice expel of immigrant out of bounds of the state was conducted based on decisions of the relevant state body (Ministry of Internal Affairs). It contradicted to the state Constitution and provisions of the international norms to which the state is party and violated human rights and freedoms.

Notwithstanding the amendments made to the law, the previous practice is applied in reality and the judicial practice in this sphere is imperfect and is not in favour of immigrants.

According to the law, the order of expel of the immigrant from the country is determined by the appropriate executive authority. If the immigrant does not leave the country within the provided period, he/she is arrested with the decision of the court (judge) and forcibly expelled out of frontiers of the Republic of Azerbaijan. The immigrant who does not agree with expulsion may apply to the court regarding this issue, but appeal to the court does not interrupt execution of the previous decision and this on its turn makes consideration of the appeal in court impossible. The complainant has difficulties in conducting procedural actions related to the appeal because of being expelled from the country.

If alien and stateless person who obtained immigrant status is considered a person who suffered from human trafficking, the

administrative expulsion out of the frontiers of the Republic of Azerbaijanis not applied against this person within one year.

The Statute on **“Special Documents of alien and stateless person permanently residing on the territory of the Republic of Azerbaijan”** has been adopted with the purpose of application of the Law of the Republic of Azerbaijan **“On Legal Status of Aliens and Stateless Persons**. According to the Statute “the document identifying the personality of stateless person permanently residing on the territory of the Republic of Azerbaijan – is Identity Card provided to them in accordance with and in the form determined by the legislation of the Republic of Azerbaijan”. The Statute determines forms, types and order of issuance of the Identity Cards. According to the Statute “alien who wants to stay in the Republic of Azerbaijan more than 30 days obtains the certificate about registration of the person which is provided in the form proved by the appropriate executive authority of the Republic of Azerbaijan”.

Legislation on Immigration

The **Law of Azerbaijan Republic on Immigration** was adopted with the purpose to regulate immigration of aliens or stateless persons to Azerbaijan Republic and relations connected with it.

The law regulates issues related to arrival of immigrants to the Republic of Azerbaijan. According to the article 4 of the Law, **“An adult**

reached 18 years old and being a capable alien or stateless person shall be entitled to submit an application for immigration to the Republic of Azerbaijan either directly or through diplomatic or consular missions of Azerbaijan Republic to the relevant executive body.”

For this purpose they shall submit to that organ the documents required by the law. The appropriate executive authority consider and take a decision about application for immigration to the the Republic of Azerbaijan not later than six month. The decision may be either to deny an application or accept it.

According to the article 7 of the law **“A foreigner or stateless person’s application for immigration to Azerbaijan Republic may be denied:**

1) if his/her immigration poses a threat to the state security of Azerbaijan Republic;

2) if he/she is infected with virus of dangerous transmissible disease, put in the list defined by the relevant executive body;

3) if he/she does not have documents providing his/her identity;

4) if for obtaining a permission for permanent residence in Azerbaijan Republic he/she has provided false documents or untrue information;

5) if he/she has committed a grave crime during the last 5 years;

6) if he/she has been earlier expelled from Azerbaijan Republic;

7) if an alien or stateless person and his/her family members

arriving for permanent residence do not possess sufficient financial means to meet their minimum demands, except cases when they are provided by citizen of Azerbaijan Republic or person permanently residing in Azerbaijan Republic.”

Grounds for denial of application for immigration conform to the Constitution and appropriate international norms to which the state is party. At the same time the provision that denial **“if their immigration poses a threat to the state security and public order of Azerbaijan Republic”** is pretty abstract.

It is impossible to determine what do these cases consist of and how just they are. In practice this provision provides opportunity to the appropriate state bodies to make decisions based on its conclusions not the law. That is why the threat to the state security and public order shall be clearly explained. Although article 8 of the Law states that **“A decision to deny a permission for immigration to Azerbaijan Republic may be appealed against to a court in accordance with laws of Azerbaijan Republic.”**, in practice such appeals are unproductive and complicated.

According to the Law, in case of denial an application for immigration shall be reconsidered not earlier than in one year after the first decision was taken.

The legal status of immigrant in the Republic of Azerbaijan is regulated by the international

agreements to which the state is party and the law of the Republic of Azerbaijan **“On Legal Status of Aliens and Stateless Persons”** and other normative legal acts.

Persons who obtained immigrant status and their family members are moved to the Republic of Azerbaijan accordance with the law of the Republic of Azerbaijan about exit from the Country, entry into the Country, and about Passports. Immigrants and their family members arriving to the Republic of Azerbaijan are registered in accordance with legislation of the Republic of Azerbaijan. The qualified state body has been established for regulation of immigration to the country. The appropriate executive body determines immigration quota for implementation of state control in the field of immigration.

But because of large amount of aliens and stateless persons whose status is not determined and those illegally residing on the territory of country determination of the quota is impossible. Each immigrant arriving to the country may voluntarily learn the legislation of the country. Appropriate executive body shall take appropriate measures for this purpose.

A range of other normative legal acts have been adopted by the President and the appropriate executive bodies for regulation of immigration issues.

Labour Migration and the Norms Regulating It

A range of laws and legally binding acts have been adopted with the purpose to determine rights and obligations of the migrant workers provided in the Constitution of the Republic of Azerbaijan and appropriate international norms to which the state is party and legally regulate the processes related to them. The Law of the Republic of Azerbaijan on “**Labour Migration**” is one of the main laws among these norms. The law determines the legal, economic and social grounds of the labour migration problems, regulates relations in the field of labour migration.

“The processes of labour migration are regulated in accordance with this law, but some laws on migration do not meet the demands of the times. Particularly, serious shortcomings in determining the types of visas and in issuing visas hinder the law on Labour Migration from being fully implemented”¹

According to the Law “**Labour Migration means changing the place of residence by physical persons to perform disbursed labour activities**”. According to the law labour migration means also Domestic labour migration which means changing the place of

residence by physical persons within the territory of the Republic of Azerbaijan to perform disbursed labour activities. Migrant worker means a “**physical person migrating from one country to another to perform disbursed labour activities**”. According to the law family members of migrant workers mean spouse of the migrant worker, his/her children under 18 and parents under his/her tutorship.

The law also determines **Volatile labour migration** which means daily movement of the persons, permanently residing in frontier area points, to and from the neighbouring country for the purpose of the performance of labour activities. The law also provides definition of the **Labour migration**.

According to the Law on Labour Migration the quota is determined for labour migration. **Labour migration quota is established for each year to set up limitation of aliens allowed to arrive in the Republic of Azerbaijan to perform labour activities for the purpose of regulating labour migration to the Republic of Azerbaijan.**

The law determines the range of migrant workers. According to the law, the following are not considered migrant workers:

Those who permanently reside in the country of employment; who have a refugee status; who have got a political asylum; who have registered and acted as a private businessman;

¹ Informed Migration. Reference guide for Migration Practitioners. Azerbaijan. International Organization for Migration. Baku-2004

managers of the organisations established under international agreements; employees of diplomatic representations and consulates; employees of international organisations; who are on a business travelling; who perform religious activities in the officially registered religious organisations and societies; who take practice during a period of holiday within the framework of higher educational programmes; accredited employees of media; sailors; artists and actors; professors, lecturers and teachers invited to higher educational institutions.

Aliens and stateless persons from all other categories implementing labour activity are considered migrant workers. There are certain conditions for the persons related to this category for performing labour activity on the territory of the Republic of Azerbaijan. These conditions are provided in this law and other documents adopted for implementation of this law.

Every able-bodied and over 18 years old alien or stateless (hereinafter referred to as alien) is entitled to perform labour activities within the territory of the Republic of Azerbaijan. According to the law **Principal conditions for performing labour activities by aliens involve: (I) existence of a job vacancy that is not demanded by a citizen of the Republic of Azerbaijan having skills and qualification required for such job, (ii) inability of employment services to meet employers' need in manpower at the cost of local**

labour resources, and (iii) labour migration related international treaties, to which the Republic of Azerbaijan is a party.

According to the Article 8 of the law **“Aliens and stateless persons employed by person or legal entity (employer) may arrive to the territory of the Republic of Azerbaijan with special visa providing the right to implement paid labour activity in the Republic of Azerbaijan issued by the appropriate executive authority based on the personal permit”**. According to the requirement of the Law Aliens and stateless persons who arrive to the territory of the Republic of Azerbaijan to implement paid labour activity in the Republic of Azerbaijan shall obtain appropriate permission while being in the country of origin and prepare appropriate documents.

“Foreigners are allowed to work legally in the Republic of Azerbaijan by performing paid activities if they were granted an individual permission for this. Since 2001 Foreigners employed by physical and legal entities must obtain a visa individually issued by MFA, granting them a work permit for Azerbaijan. A “physical entity” is an individual, while a “legal” (or juridical) entity is a company, organisation, firm, or corporation etc. In practice, due to an outdated visa system, labour visas are not issued. For entering Azerbaijan

foreigners must obtain an ordinary entry visa”²

The Republic of Azerbaijan bears international responsibility for maintenance of family members of migrant workers. From this point of view the Law contains provisions related to social protection of migrant workers and their family members. According to the article 10 of the Law, **“The labour migrants and their family members have equal to citizens of Azerbaijan, performing labour activities and their family members, rights to social maintenance (except pension provision). The pension provision to labour migrants and their family members shall be regulated in accordance with bilateral or multilateral international treaties to which the Republic of Azerbaijan is a party”**.

Although the provision related to rights of labour migrants and their family members to social maintenance (except pension provision) are stated in the Law, in practice rights of labour migrants and their family members to social maintenance are not provided. The main reason for that is their illegal position. Because of this, rights of labour migrants and their family members to social maintenance

(except pension provision) are violated, even migrant workers who become disabled after accident at the place of work or because of occupational diseases may not obtain any compensation.

With the purpose of implementation of the Law of the Azerbaijan Republic «On Labour Migration» the Cabinet of Ministers of the Azerbaijan Republic issued Decree No 214 on December 6, 2000. **Regulations on issuance of personal permits to foreigners for carrying out of paid labour activity on the territory of the Azerbaijan Republic** have been approved by this Decree. The Regulations regulate application of norms provided in the constitution of the Republic of Azerbaijan, International Norms to which the state is party, the Law on Labour Migration and other normative legal acts. In fact, this document adopted for determining procedures related to the paid labour activity of migrant workers, for establishing legal grounds for implementing necessary technical activities for migrant workers to start their labour activity, creates multiple obstacles for migrant workers instead. Improper application of these Regulations by the appropriate authorities forces migrant workers to perform illegal labour activity in the country.

According to the article 1.2. of the Regulations **“The foreigner arrived to the territory of the Azerbaijan Republic with the**

² Informed Migration. Reference guide for Migration Practicioners.Azerbaijan. International Organization for Migration. Baku-2004

purpose of carrying out of personal labour activity can work in the Azerbaijan Republic only under the personal permit, issued for his name”. It is seen from the provision that the foreigner or stateless person who arrived to the territory of the Azerbaijan Republic with the purpose of carrying out of personal labour activity shall previously find a job and afterwards obtain **personal permit**. As we see, migrant workers do not have right to apply directly to the state body. The process easy at first site is very complicated in practice. Thus, according to the Regulations, to obtain the personal permit, an employer should submit the **“reference, proving the necessity of involvement of foreign employee for each envisaged workplace”** to the appropriate executive authority. In practice provision of such “proving reference” is very difficult. More precisely, any executive authority may consider the reference as not well-grounded. For example, the appropriate executive authority may show that there are enough professionals permanently residing in the country. According to the article 1.4 of the Regulations **“...The main conditions for carrying out of labour activity by the foreigners are availability of vacant work places, to which the citizens of the Azerbaijan Republic having the vocational training and specialty corresponding to requirements of work places not pretends and**

failure of the employment service to provide the employees to the employers from local manpower resources”.

According to the Regulations, to obtain the personal permit, an employer should submit the **“notarized copy of certificate confirming the specialty of the foreign employee, required for carrying out of envisaged work”** among other documents. We can see from the Regulations that migrant worker without speciality have no opportunity to conduct labour activity in the Republic of Azerbaijan. Because, no other cases are provide in the Regulations and provision of the certificate confirming the specialty is an important condition.

One of the main problems creating obstacles for legal activity of migrant workers in the country is that the migrant worker arriving to the country shall enter the country particularly as migrant worker. Otherwise, alien or stateless person who entered the country on other grounds **“... should obtain visa conferring the right to carry out labour activity on the territory of the Azerbaijan Republic on the basis of personal permit ”.**

According to the Law of the Republic of Azerbaijan **“The Law on Exit, Entry and Pasports”** and the Statute on application of the Law of the Republic of Azerbaijan **“The Law on Exit, Entry and Pasport”** **“Aliens and Stateless persons”** may enter the Azerbaijan Republic as specified

by Law on condition of passage through special check-points on a basis of personal passports and permission — visa, issued in accordance with international agreements”. According to the law and the statute the simplified permission — visa system is applied for exit and entry of the aliens and stateless persons. At the same time in accordance with various bilateral and multilateral agreements the permission — visa system is not applied for a range of countries for entry to the Republic of Azerbaijan. These countries also include CIS countries. If we'll take into account that 90% of migrant workers came to Azerbaijan from Georgia and non-visa regime is applied between this country and the Republic of Azerbaijan then the situation becomes clear. In practice, very seldom we may meet migrant worker from Georgia who obtained official migrant worker status in Azerbaijan. Although ten thousands of Georgian citizens arrive to Azerbaijan and perform labour activity the amount of Georgian citizens performing their labour activity with personal permit has been 235 persons for January 1, 2008. in Azerbaijan. Till January 2009 this amount increased to 355. Thus, persons arrive to the country with other reasons, although their primary purpose is to look for job and perform labour activity. Aliens and stateless persons arriving to the country on legal grounds with other reasons, but then performing labour activity may not register and have to

live and work in illegal situation. And this brings to the violation of their rights by employers and organs of internal affairs. When performing labour activity without employment agreement they may not demand realization of their labour rights, receive informal salaries and are not ensured. Because of illegal residing in the country they face threat of being expelled from the country. Their family members may not use medical services; education for their children becomes a problem.

Because of complicated procedures and conditions provided in the legislation hinders employers and aliens and stateless persons arriving to the country for performing labour activity from legalization of their activity. According to the article 3.1 of the **Regulations on issuance of personal permits to foreigners for carrying out of paid labour activity on the territory of the Azerbaijan Republic “Personal permit is issued for the period of 1 (one) year. Term of personal permit may be extended 4 times, each time not more than for period of one year. For extension of the term of personal permit the employer should apply to the Ministry of Labour and Social Protection of Population of the Azerbaijan Republic 1 month prior the expiry of the personal permit”.** Together with application the employer shall submit all other documents as it was required initially and shall justify the

necessity of prolongation of the period.

Another restriction provided in the Regulations is related to the change of position and place of work. The article 1.3. of the Regulations show that, **“Labour contracts with the foreigners should be concluded for the period corresponding to the validity of personal permit.**

Employer cannot forward the foreigner obtained the personal permit to another employer”. This provision restricts the right of migrant worker to freely choose place of work in accordance with his/her profession and specialization and conclude employment agreement. To forward the foreigner to another place of work the employer shall apply to the Ministry of Labour and Social Protection of the Population of the Azerbaijan Republic. And this is resulted with reiteration of the whole procedure and loose of time. Thus even if such permit will be obtained, according to the regulations, its term shall not exceed the remaining part of the previous permit.

Any change in Identity Card or loose of personal permit by the foreigner brings to the reiteration of the procedure.

Aliens and stateless persons shall leave the country after 5 years they lived and performed labour activity in the Republic of Azerbaijan and shall live in the country of origin or the third country at least one year. Presently,

there are ten thousands of migrant workers residing in Azerbaijan for more than 10 or 15 years which did not leave the country or left for a very short period of time (less than 1 year), which in no case may obtain personal permit by observing all procedures. If we take into account that many of these people have lost their citizenship during this period and became stateless persons (or are considered stateless persons) then settlement of the problems requires more serious decisions. In the world practice the naturalization method is applied to such persons. But in the Republic of Azerbaijan settlement of such problems is a long and complicated process. Granting citizenship is authority of the President of the Republic of Azerbaijan. According to the Regulations payment of state duty is also applied.

Another serious problem is related to the disputes which may arise between migrant worker and employer. According to the article 4.1. of the Regulations **“In case of early termination of labour contract concluded between the foreign employee and employer, the personal permit issued to the foreign employee becomes null and void”.**

As we can see termination of labour contract concluded between the foreign employee and employer for any reasons puts that person in out of law situation. In this case the person shall leave the country. According to the article 4.2. of the Regulations **“ In case of expiry of**

personal permit or termination of labour contract the foreign employee must leave the territory of the Azerbaijan Republic”. Although, everyone has right to restore his/ her right by means of court.

Thus, laws and other normative legal acts adopted by the appropriate executive authorities contradict the international norms to which the state is party and provide such complicated and abstract conditions that neither physical nor legal entities may employ alien or stateless person within these condition. This may happen only if the official of the appropriate state body will agree to it (i.e. based on personal conclusion, not the legislative norms). And this in many cases brings to the negative situations, arbitrariness of officials, creation of bureaucratic obstacles and corruption. As a result, presently, ten thousands of aliens or stateless persons perform disbursed labour activity in the country, but these persons do not have personal permit for this activity. Therefore, majority of these persons have to work in the informal sector. Till January 1, 2008, the amount of aliens and stateless persons performing disbursed labour activity with personal permit was 1700. It was possible to obtain personal permit for these migrant workers from 65 countries, because they worked for large foreign companies. In January 1, 2009, the amount of aliens and stateless persons

performing disbursed labour activity with personal permit was 4367.

According to the Regulations, the right to conduct control over attraction of the foreign employees to the labour activity was delegated to the appropriate department of the Ministry of labour and Social Protection of Population. And this department has right to conduct inspection of the exploitation of foreign labour force in accordance with appropriate normative legal acts.

During inspection, the official of the appropriate department of the Ministry may obtain information, certificates from employer and foreign employees, may conclude acts or notifications regarding revealed violations, may consider the issue of termination of the personal permit, may solicit the expulsion of the foreign employee from the country.

Attraction of the foreigners or stateless persons by the employer to the work without obtaining individual permits, with violation of the requirements of the legislation is penalized by fine. The amount of fine is very huge in the scope of the country. According to the article 53 of the Code on Administrative Violations it shall involve penalization on officials at the rate of thirty thousand to thirty five thousand manats (36 585-42 682 USD)

Thus, the procedures contradicting the Constitution, international norms to which the state is party including UN

Convention on the Protection of the Rights of Migrant Workers and Members of Their Families, were determined by means of the Regulations. Starting labour activity by observing all the procedures is disadvantageous for alien employees and the employers. At the same time, alien or stateless person who entered the country in any way and found a job is not interested in legalization.

The State Migration Program of the Republic of Azerbaijan

The President of the Republic of Azerbaijan approved **“The State Migration Program of the Republic of Azerbaijan”** for 2006-2008 by his order adopted on July 25, 2006. The main purpose of the Program is **“...to execute state policy in the sphere of migration, bring legislation in conformity with international standards, elimination of law abuse, provide national safety and stable socio-economic and demographic development, effectively use of labour resources, and organize proportional settlement of the population. Use of the intellectual and labour potential of migrants and the elimination of negative consequences of illegal migration as well as migration and human trafficking, implementation of social protection activities”**. It is stated in the State program that, **“The biggest part of the external migration in the Republic of Azerbaijan is represented by the**

labour migration. As we see the development of country’s economy, the number of foreigners who take part in the internal labour market is getting higher. The favourable geographical location of the Republic of Azerbaijan as well as the economic reforms that are carried out in the country, the contracts signed leading worldwide companies, the commissioning of Baku – Tbilisi – Jeyhan oil pipeline named after Heydar Aliyev, the restoration of the Great Silk Way and the implementation of other international communication projects have become as causes of the increase of labour migration flows.”. It is stated in the document that, **“It is necessary to conduct the strict registration and record the statistics of migrants in order to ensure the State regulation of migration processes. The information contained in the official statistics bodies on foreigners who stay in the territory of the country does not reflect often times the real situation.**

At the same time, there are illegal migrants in the territory of the Republic of Azerbaijan – foreigners that came into the country, and live or work here violating the dispositions of the current legislation.”.

It is stated in the State program that, In the result of the effect of no visa entry and exit regime that exists between the Republic of

Azerbaijan and several States, insufficient control over aliens and stateless persons, who cross the territory of our country as a transit or enter into the Republic of Azerbaijan for the short stay and mistakes committed by relevant State bodies in the implementation of laws, the number of foreigners who attempt to use illegally the territory of our country as a way for entering into third States or living in the Republic of Azerbaijan with any legal reasons is increasing. Even if it is proved in the State Program approved by the President of the Republic of Azerbaijan that the policy in the field of migration has gaps, during about three years of Program implementation no effective measures have been taken to substantially change the situation. It shall be mentioned that, instead of measures on improvement of situation of migrants including migrant workers in the country the measure on prevention of their entry to the country prevailed. From this point of view protection of migrants' rights was placed on the last stage among the priority spheres in the Program. The priority issues also reflected prevention of illegal migration. At the same time prevention of entry of illegal migrants including migrant workers to the country by administrative means prevails. However, the conditions for legal labour activity of migrant workers in the Republic of Azerbaijan were not created. The abovementioned documents which shall provide legal grounds for

migrant workers to enter the country, have many shortcomings and create conditions for officials to take decisions based on their conclusions not the law. The document contains the following measures that shall be taken by the appropriate state bodies together for prevention of illegal migration:

- to speed up the process of creation of the integrated migration control system which will realized the effective activities;

- while protecting legal interests of migrants, to undertake measures against aliens and stateless persons who breached the legislation of the Republic of Azerbaijan, including the improvement of legislation which envisage their deportation;

- to activate negotiations process with neighbouring states and conclude relevant agreements which envisage obligations and responsibilities in combating illegal migration;

- to form the common system of registration of aliens and stateless persons which will contain data of number, place of residence, profession of aliens and stateless persons and other necessary information (Information Centre on Migration).

Certain events have been determined with the purpose of implementation of State Program on Migration of the Republic of Azerbaijan. Several of these measures are related to the migrant workers. These measures include the following:

- Applying of immigration quotas taking into account the needs of internal labour market;

- Preparation of proposals about the expediency of adherence of the Republic of Azerbaijan to the European Convention on the legal status of the labour migrants.

- Analysis of the current status of labour migration processes and preparation of relevant report

- Preparation of proposals on the creation of the relevant system which ensures the conduct of monitoring on attracting foreign work force and its use in the Republic of Azerbaijan

- Undertaking the necessary measures to improve the relevant forms of statistical reports related to labour migration, increasing the work efficiency for registration and tracking of labour migrants

- Creation of normative and legal basis to conduct strict registration of migrants who are to be deported from the Republic of Azerbaijan, as well as persons who intend to obtain the status of a refugee (seeking shelter), organizing their places of detention and ensuring the their activities

Appropriate executive bodies have been attached to the implementation of these measures.

In fact implementation of these measures could cause improvement of the legal and real situation of migrant workers. At the same time present situation at the labour market hinders effective implementation of the many of

these measures. One of the main hindering factors is that about 50% of the labour market is informal labour sector. At the same time, majority of migrant workers who perform disburced labour activity are occupied in the informal sector. The main reason why they are occupied in the informal sector is that they are unable or do not want to determine their status as it was mentioned above.

Responsibility for violation of the Immigration regulations

Violation of regulations related to immigration by aliens and stateless persons in the Republic of Azerbaijan, also violation of regulations on entry to, exit from the country, registration and etc creates certain relations in accordance with legislation of the Republic of Azerbaijan. A range of provisions of the Code of Administrative Violations of the Republic of Azerbaijan are determining material responsibility for these violations. Residence of foreigners or persons without citizenship at the territory of Azerbaijan Republic without registration, or their stay at the territory of Azerbaijan Republic without registered permission (visa), except occasions envisaged by international agreements, entails administrative deportation of foreigners or persons without citizenship beyond limits of Azerbaijan Republic with imposition of penalty in amount of

one hundred to four hundred manats (121-484 USD).

According to another article of the Code on Administrative Violations, violation by foreigners and persons without citizenship in Azerbaijan Republic of rules of residence in Azerbaijan Republic i.e.

- Residence without documents on residence right in Azerbaijan Republic;

- Residence by documents, which are acknowledged invalid;

- Violation of established rules at fixing up in a job work, non-observance of established order of registration or residence permit, either transportation and selection of place of residence;

- Evasion from leaving on expiry of term of stay established by legislation;

- Non-observation of rules of transit journey via territory of Azerbaijan Republic shall entail imposition of penalty: on foreigners or persons without citizenship- one hundred to four hundred manats (121-484 USD), with or without deportation outside the boundaries of the Azerbaijan Republic.

If official persons of enterprises, offices and organisations of Azerbaijan Republic, receiving foreigners or persons without citizenship, providing their care or acceptance to work, accomplish their obligations, connected with observance of conditions of stay of foreigners or persons without citizenship in Azerbaijan Republic and transit journey via territory of Azerbaijan Republic, violating

established order of their registration, removal from registration, legalisation of residence documents for them, transportation and change of residence place in Azerbaijan Republic, then shall entail imposition of penalty on officials in the amount of three hundred to five hundred manats (366-610 USD).

The article 457 of the Code on Administrative Violations is related to the Execution of the decision on administrative repatriation from the territory of the Azerbaijan Republic of foreigners and individuals without citizenship. According to the article **“Aliens and Stateless persons shall leave the territory of the Azerbaijan Republic within a timeframe stipulated by the resolution on their administrative repatriation.”** The article states that **“Costs incurred in relation to administrative repatriation of foreigners or individuals without citizenship from the territory of the Azerbaijan Republic shall be covered by these persons.”**

If these persons do not have funds for repatriation from the territory of the Azerbaijan Republic such costs shall be covered by the host entities, enterprises and organisations and for foreigners or individuals who visit the Azerbaijan Republic on personal business- by the relevant executive authority of the Azerbaijan Republic..

Admittance to the citizenship

One of the serious problems migrant workers face in the Republic of Azerbaijan is related to the admittance to the citizenship. Many migrant workers for certain reasons lost the citizenship of the country the citizens of which they were before. But part of migrant workers residing in the country did not have citizenship at all. Majority of these people related to both categories were citizens of the former Soviet Union. After the collapse of the Soviet Union as a result of various negative events in the former Soviet Republics they had to leave that places and had to emigrate. Presently there are stateless people who came as refugees to Azerbaijan from Georgia and Middle Asia did not register and presently performing illegal labour activity and entrepreneurship. Great part of these people does not have identification documents. Although these people try to obtain the citizenship of the Republic of Azerbaijan they are unable to do it.

According to the article 52 of the Constitution of the Republic of Azerbaijan **“A person having political and legal relations with the Azerbaijan Republic and also mutual rights and obligations is the citizen of the Azerbaijan Republic. A person born on the territory of the Azerbaijan Republic or by citizens of the Azerbaijan Republic is the citizen of the Azerbaijan Republic. A person is the citizen of the Azerbaijan Republic if one of**

his/her parents is the citizen of the Azerbaijan Republic”. From this point of view, persons who came in past to Azerbaijan and could not obtain citizenship do not have problems with obtaining citizenship for their children born in Azerbaijan. But however, there are some problems related to obtaining citizenship for the children of aliens and stateless people born in Azerbaijan. At the same time later problems related to the citizenship bring to the problems of access to health care and education.

The Law of the Republic of Azerbaijan on the Citizenship of the Republic of Azerbaijan was adopted on September 30, 1998 with the purpose of provision of the rights stipulated in the article 52 of the Constitution of the Republic of Azerbaijan and regulates issues related to admittance to the citizenship and loss of citizenship. At the same time the **Statute on regulations regarding consideration and settlement of the citizenship issues** was approved by the Decree of the President of the Republic of Azerbaijan on August 30, 1999.

According to the article 11 of the **Law of the Republic of Azerbaijan “on Citizenship of the Republic of Azerbaijan”** a person shall acquire the citizenship of the Republic of Azerbaijan in the following cases:

- when born on the territory of the Republic of Azerbaijan, or born from

citizens of the Republic of Azerbaijan;

According to this provision of the Law both principles of the international law related to the citizenship “jus soli” and “jus sanguinis” are applied. At the same time person is the citizen of the Republic of Azerbaijan if both or one of his parents is the citizen of the Republic of Azerbaijan irrelevant of the place of birth.

- as a consequence of admission to citizenship of the Republic of Azerbaijan;

- by reasons stipulated by bilateral and multilateral international treaties of the Republic of Azerbaijan;

- by other reasons stipulated by the present Law.

The article 12 of the law states that, **“A child born on the territory of the Republic of Azerbaijan from stateless persons is a citizen of the Republic of Azerbaijan.”**

The article 13 of the law states that, **“A child born from unknown parents on the territory of the Republic of Azerbaijan is a citizen of the Republic of Azerbaijan”.**

If we pay attention to these provisions of the Law, we see that the rules for obtaining citizenship of the Republic of Azerbaijan are very liberal and there are few restrictions. From this point of view appropriate regulations and procedures provided in the Constitution and appropriate legislation conform to international

standards. However, the situation in practice is more complicated. At the same time other provisions of the Law and the Statute establish many restrictions which create serious problems for aliens and stateless persons, including migrant workers who want to obtain citizenship.

Article 14 of the law determines bases for Admission to the citizenship of the Republic of Azerbaijan. According to this provision **“Aliens and Stateless persons living on the territory of the Republic of Azerbaijan already for 5 years and submitting a document about the knowledge of the state language may be admitted to the citizenship of the Republic of Azerbaijan upon their application in compliance with this Law irrespective of racial and national affiliation, sex, education, language, religious beliefs, political and other convictions, place of residence.”**

According to the article 109.20 of the Constitution of the Republic of Azerbaijan, President of the Republic of Azerbaijan settles questions concerning citizenship. Thus, appropriate documents shall be submitted to the President of the Republic of Azerbaijan with observance of the procedures provided in the legislation and other normative acts. President may admit or reject the applications of alien or stateless person.

Settlement of the citizenship issue on the presidential level requires passing a long and

complicated way from the person who wants to obtain a citizenship. Migrant workers in many cases may not settle their citizenship problem because this is a long procedure which may last for years and decades and requires expenses.

According to the Statute on regulations regarding consideration and settlement of the citizenship issues the person who wants to obtain citizenship of the Republic of Azerbaijan shall fill in an application addressed to the President of the Republic of Azerbaijan in the form approved by the President of the Republic of Azerbaijan and submit it to the Ministry of Internal Affairs of the Republic of Azerbaijan.

Also the following documents shall be enclosed to the application:

4 photographs (3x4 cm);

Certificate from the place of residence about the family composition;

Receipt on payment of the state duty;

Certificate from the place of residence certifying that the person resided in Azerbaijan during last 5 years;

Certificate from the ministry of education about knowledge of the state language of the Republic of Azerbaijan.

In addition to these documents if the person is a citizen of the state with which the Republic of Azerbaijan has agreement about prevention of the double citizenship shall submit a document proving the attitude of the state to the fact that

its citizen will become a citizen of the Republic of Azerbaijan. If the applicant may not provide such document by reasons independent of him/her then it shall be mentioned in the application.

Even if collection and submission of these documents is easy at first sight, in fact it is very complicated and sometimes impossible process. Thus, it will be impossible to obtain these documents for the person who illegally lived and worked in Azerbaijan for a long period..

Persons legally residing but illegally performing labour activity (without personal permit) will also face problems while submitting documents for obtaining citizenship. Thus, the 14th section of the application is related to the labour activity of the applicant. The person who wants to obtain the citizenship shall state place of work, address of the employer, time of being employed and dismissed.

Many of the migrant workers do not have official and permanent place of residence, therefore they may not provide certificate about the family composition and registration according to the place of residence.

If the person who wants to obtain citizenship is ethnic Azerbaijani from Georgia (a citizen or a person who was a citizen of Georgia but then lost the citizenship), it is easier for him/her to provide a document proving the knowledge of the state language. But, this procedure is also problematic for those who are not ethnic Azerbaijanis and whose mother language is not Azeri.

Although according to the legislation the measures shall be taken for learning of the state language by aliens and stateless persons, in reality activity in this field is very poor. Alien of stateless person willing to obtain citizenship has to study the language on his/her own expense, but in many cases they do not have means for that. Thus, they may not obtain the appropriate certificate.

According to the Statute, if the persons which are not citizens of the Republic of Azerbaijan or of any other country, but registered in the Republic of Azerbaijan according to the place of residence till January 1 1992, applied for citizenship of the Republic of Azerbaijan till September 30, 1999 a little bit different

procedure is provided for them. These persons shall apply to the Ministry of Internal Affairs not for obtaining a citizenship, but for obtaining the identification card of the citizen of the Republic of Azerbaijan.

Thus, although there is appropriate normative legal base existing in the country for obtaining citizenship and these norms are enough for obtaining citizenship, in reality thousands of people (majority of them are illegal migrant workers) may not obtain this right for years.

NONSTRUCTURED INTERVIEW WITH MIGRANT WORKERS

During the monitoring process nonstructured interviews have been conducted with migrant workers occupied in different spheres.

Mainly the following questions have been given to migrant worker during interviews:

1. When and how you entered the country?
2. What you did to start your labour activity (i.e. which procedures you used to start your labour activity)?
3. Why you work particularly at this work place? Did you try to work at another place and with another profession?

4. How did you establish relations with employer? Do you have employment agreement?

5. Did the employer provide accommodation for you?

6. Which problems you face regarding the fact that your immigration documents are out of order and you are in illegal position?

7. Which problems do your family members face?

8. Can your children obtain free compulsory education?

Also other questions were given to the migrant workers together with

these questions. But these questions were not important for monitoring. 52 migrant workers attracted to interviews may be divided mainly into the following groups.

- Those who legally arrived to the country, but performing labour activity without personal permit;
- Those coming from countries which do not have visa regime with the Republic of Azerbaijan, but performing illegal labour activity (these are ethnic Azerbaijanis from neighbouring Georgia);
- Those who illegally entered the country without any visa and performing illegal labour activity;
- Performing labour activity with personal permit.

During interviews with migrant workers who legally arrived to the country, but performing labour activity without personal permit it was discovered that majority of them arrived to the country 5-7 years before and some of them even earlier. From this we may conclude that if they would obtain personal permit to perform labour activity, presently they had to be out of frontiers of the country.

All these persons noticed that, they may prolong their immigrant status each time, but they never thought about legalization of their labour activity. Their employers do not want to obtain personal permits for them.

Majority of these persons mentioned that they had to work at

several places. Application of high fines for employment of aliens and stateless persons without obtaining personal permit in accordance with legislation even worsens situation of this category of employees. Majority of those attracted to interviews mentioned that it becomes more and more difficult to perform illegal labour activity.

Employers fire them out without any previous notification (exactly fire, because employment agreements were not concluded with them and their labour relations were not formalized in any way), decrease the salaries, make them work overtime and perform work other than their primary job. A part of these persons mentioned that they are not provided with separate accommodation. Majority of these persons live collectively in small apartments on the outskirts without proper utilities. Those with family members live with their families in apartments without any conditions. None of the interviewed migrant workers receive separate payment from the employer for accommodation expenses and none of them is accommodated by the employer.

Aliens and stateless persons coming to the Republic of Azerbaijan from countries which do not have visa regime with the Republic of Azerbaijan comprise the main part of the migrant workers in the country.

Majority of these persons are ethnic Azerbaijanis from neighbouring

Georgia. There is no visa regime between Georgia and the Republic of Azerbaijan, therefore they may enter the country without any obstacles and register according to the place of residence. But, did not obtain any permission to perform labour activity. These persons are occupied mainly at the small production workshops, construction brigades and in the trade sector. This category of migrant workers mainly performs labour activity at the trade, nourishment and production units possessed by their relatives or acquaintants who already obtained citizenship of the Republic of Azerbaijan. Being ethnic Azerbaijanis creates conditions for them to live and perform labour activity illegally. But at the same time labour rights of the majority of these persons are violated. Majority of migrant workers attracted to the interview related to this category stated that they work without any employment agreement and receive low salaries. Persons related to this category state that the main problem for them is inability to obtain citizenship. But at the same time many of these persons obtained immovable property (the plots of land are registered in the name of their relatives who are citizens of the Republic of Azerbaijan). Migrant workers attracted to the interviews show that another problem for them is absence of access for their children to the health care. Large part of newborn children is not

vaccinated and this on its turn brings to infectious diseases.

As it was mentioned before, because the visa system is imperfect, those who want to come to the country to perform labour activity obtain common visa to enter the country and then obtain immigrant status. Only after this they start their labour activity by means of their employer who obtains 1-year personal permit for them. While analysing legislation above it was shown that even those who pass all procedures to perform labour activity face multiple problems in labour relations. Thus, these employees are in situation fully dependant from their employer. But, according to the state Constitution, all employees have equal right and any discrimination is inadmissible. During interviews with migrant workers who perform labour activity with personal permit they mentioned that employer attracts them to the jobs which are not stipulated in the employment agreements, makes them work overtime and on holidays and weekend and do not pay for overtime work. Migrant workers mentioned that, when they try to protest employers threaten them with termination of the employment agreement. And this means that the personal permit immediately loses its force. In such situation migrant worker loses his/her immigrant status and has to immediately leave the country. According to the

legislation migrant worker may complain to the court about violation of his/her labour rights, but in practice it is very difficult. Thus migrant worker who leaves the country may bring a suit and participate on the court hearings only via attorney or a representative. Majority of migrant workers are insolvent that is why they can not do it. From this view point the situation of migrant workers who perform labour activity based on personal permit is harder and they have less opportunity for protection in comparison with illegal migrants. Migrant workers illegally residing in the country and illegally performing labour activity continue to stay in the country and may find new job after they loose the previous one. Another problem of aliens and stateless persons performing labour activity with personal permit is a very short period of the personal permit. According to the Law on Labour Migration and **Regulations on issuance of personal permits for carrying out of paid labour activity on the territory of the Azerbaijan Republic by the foreigner and specimen of this personal permit** the term of the personal permit is one year. Personal permit is issued for the period of 1 (one) year. Term of personal permit may be extended 4 times, each time not more than for period of one year. Aliens and stateless persons shall leave the country after 5 years they lived and

performed labour activity in the Republic of Azerbaijan and shall live in the country of origin or the third country at least one year. There were several persons among interviewed migrant workers who worked the last year. They shall leave the country next year. They said that there is a need for them at their work place and the employer is willing to continue relations with them. At the same time these persons do not want to leave the country

They will face unemployment and social problems in the country of origin or the country of which they are citizens. But employer has to terminate their employment agreements. In such situation migrants prefer to illegally perform their labour activity. Another problem of this category of migrant workers is that they are unable to change their place of work. That is why these people have to work only at one place of work and at one position. Legal activity will force them to leave the country. Migrant workers performing legal labour activity also mentioned that their family members face problems in access to the medical services and education.

In addition to the abovementioned there are also aliens and stateless workers employed by foreign companies in the country. Majority of these companies do not provide information about these employees to the Migration Department of the Ministry of Labour and Social

Protection of Population. Although there is big number of such employees we could not talk to any of them. These persons are not interested in spread of any information about them. This category of migrant workers are considered as relatively maintained migrants. Although foreign companies consider them as illegal category in accordance with their country of origin. Employees

brought from European and other developed countries receive higher salary and they have better working conditions. The other category of employees contain those from South-East Asia and Africa. Although these persons have less benefits that those from western countries their salaries are higher than those of local staff.

ANALYSIS OF STATISTICS REGARDING MIGRANT WORKERS

The statistics related to aliens and stateless persons in the country are very superficial and do not reflect real indicators. In the process of monitoring the reasons for the statistics being incorrect and inaccurate were discovered. These reasons are mainly as follows:

- There is non-visa regime or simplified visa system between Azerbaijan and a range of countries. There are also countries of the Commonwealth of Independent States (Former Soviet Republics). From these countries, particularly from Georgia many people enter the country without obstacles and live in Azerbaijan. Majority of these people did not apply to the appropriate state bodies for registration according to the place of

residence. As a result exact statistics may not be collected about them;

- Persons from a range of countries including countries of South-East and Central Asia and Africa entered Azerbaijan for a short period of time with visa but did not return to their countries and continue to live illegally in Azerbaijan;

- There are serious shortcomings in the visa system of the country. As a result of imperfect state of the visa system many aliens and stateless persons loose their immigrant status and obtain illegal status because do not leave the country. As a result these persons are not taken into account in statistics;

- Majority of aliens and stateless persons who registered according to

the place of residence stay in the country after expiry of 90 days period, but they do not register again. The main reason for that is bureaucracy and corruption. These persons also are not taken into account in statistics in the future.

Not all aliens and stateless persons are really hired for implementation of labour activity. In accordance with legislation of the country only those aliens and stateless persons who perform hired disbursed labour activities are considered migrant workers.

The statistics are kept only regarding the migrant workers who perform their labour activity with personal permit and working in the official labour sector. These statistics are not so accurate. Thus, transnational and a range on national and foreign companies functioning in the country do not provide information to the appropriate state bodies.

Up to January 1, 2008, 1700 migrant workers from 65 countries of the world have been registered. As a result of amendments made to the legislation high fines have been determined for employers who employ aliens and stateless persons without personal permit. Thus, some employers had to legalize a part of their migrant workers. That is why the statistics have changed in November 2008. According to the information provided by the Migration Department of the Ministry of Labour and Social Protection of Population number of migrant workers who perform

disbursed labour activity with personal permit has reached 4200. At the same time 996 of them are occupied at foreign oil companies. But as we mentioned above, the information about foreign companies is not exact. These companies infringe the law and do not provide statistic information.

According to the researches made by the official state bodies, in fact, number of migrant workers in the country is 40 000. But according to the alternative statistics only the number of ethnic Azerbaijani's coming for labour activity to Azerbaijan from Georgia is more than 100 000.

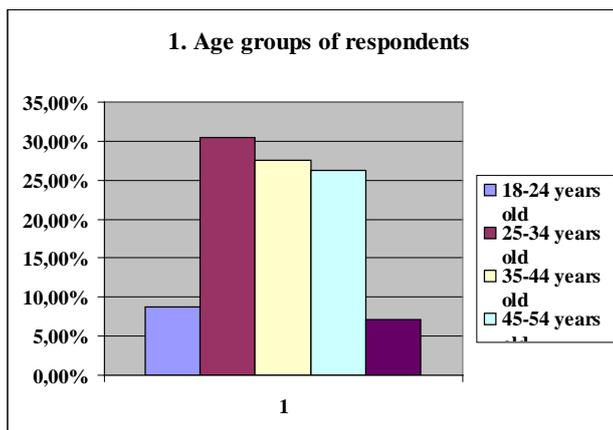
Thus, both official and unofficial statistics regarding migrant workers do not fully reflect the reality. And this on its turn creates problems for formation of the state policy regarding migrant workers, determination quotas, analysis of information regarding employees at the labour market.

Presently, government of Azerbaijan establishes **automated migration information centre** with the purpose to determine quantitative indicators of aliens and stateless persons and their real status in the country. Information of this centre will be open for all related state bodies. Establishment of this centre and single database will serve the improvement of coordination of activity among state bodies and elimination of shortages in statistics.

At the same time, these measures taken in the country will not be enough for determining real statistics regarding migrant workers in the country.

OUTCOMES OF THE SURVEY

The survey conducted within the monitoring covered 100 experts. These experts are lawyers having



important position in the public life of the country, including advocates, practicing lawyers, lawyers working at non-governmental organizations, trade unions and employment agencies.

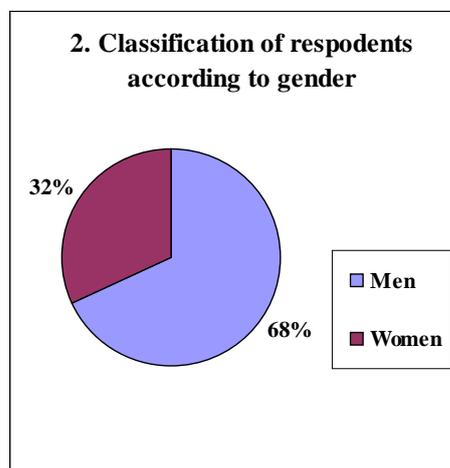
The survey has been conducted in the capital Baku, in Ganja – the second large city situated at the north west of the country and the industrial city Sumgayit.

Among respondents 8,7 % are from 18-24 age group, 30,4% are from 25-34 age group, 27,5% are from 35-44 age group, 26,2% are from 45-54 age group, 7,2 % are 55 and older persons. 68 % of respondents are men, 32 % are women.

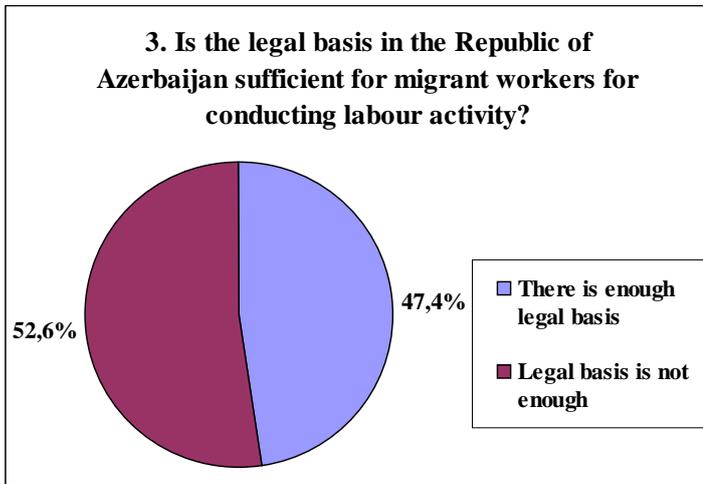
Respondents have been offered to answer a questionnaire consisting of 9 questions.

The main purpose of the survey was to learn about the impact of migrant workers on labour market and the economy of the country and the real situation of migrant workers in the Republic of Azerbaijan. From this point of view, survey consisted of two parts. The first part was related to the legal situation of migrant workers and their

impact on labour market and the economy of the country. The second



part was related to the real situation of migrant workers and their family members and situation with provision of human rights.

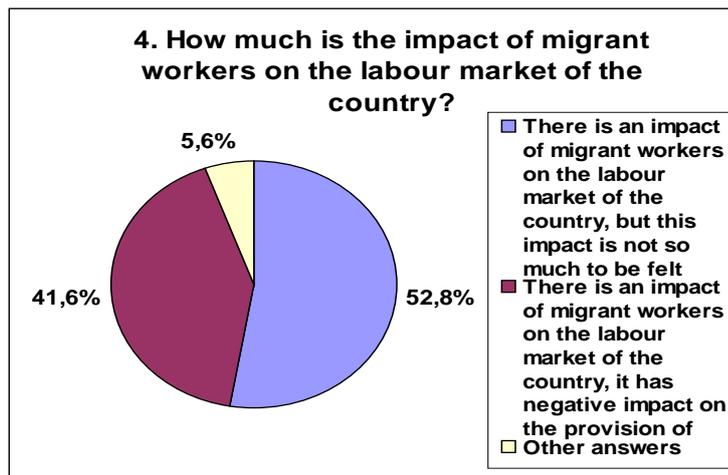


The first question was whether the legal basis in the Republic of Azerbaijan is sufficient for migrant workers for conducting labour activity.

47,4 % of respondents noticed that the legal basis in the country is sufficient for migrant workers for conducting labour activity, 52,6 % stated that legal basis is not sufficient. There were no other answers.

How much is the impact of migrant workers on the labour market of the country?

52,8 % of respondents mentioned that there is an impact of migrant workers on the labour market of the country, but this impact is not so much to be felt. 41,6% of respondents answered that there is



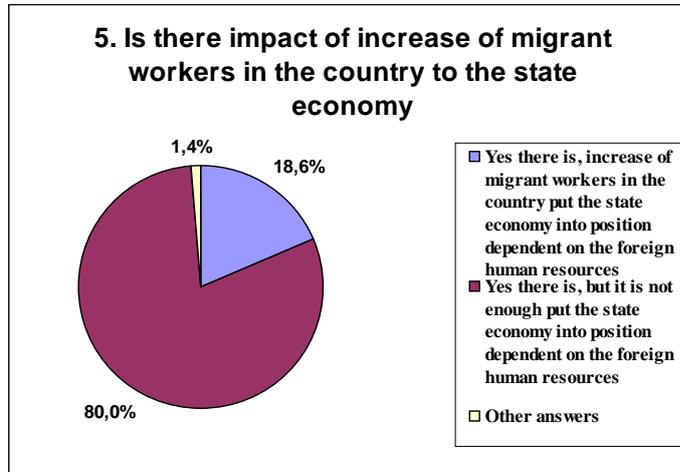
professionals from employment in this sector. 5,6 % of respondents gave other answers, which are that it is impossible to answer this question because the government has no clear statistics, forecasts, regulation mechanisms (or they are very weak).

To the question about Impact of increase of migrant workers in the country to the state economy

an impact of migrant workers on the labour market of the country, it has negative impact on the provision of employment for citizens. Some experts showed the energy sector as a sample. It was mentioned that the transnational companies attract aliens and stateless persons to the oil and gas industry, and this hinders

respondents answered as follows: 18,6% of respondents gave affirmative answer and mentioned that increase of migrant workers in the country put the state economy into position dependent on the foreign human resources.

But 80 % of respondents gave negative answer to this question and mentioned that increase of migrant workers in the country may not put the state economy into position dependent on the foreign human resources. 1,4%

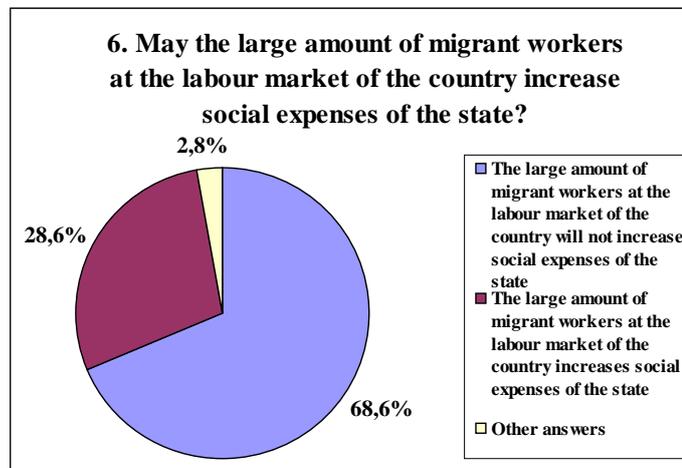


respondents answered that “the large amount of migrant workers at the labour market of the country will not increase social expenses of the state”.

28,6 % experts answered that “the large amount of migrant workers at the labour market of the country

increases social expenses of the state”. Just 2,8 % of respondents gave other answers.

Other answers were that “the social expenses of the state will increase with increase in legalization of migrant workers”,

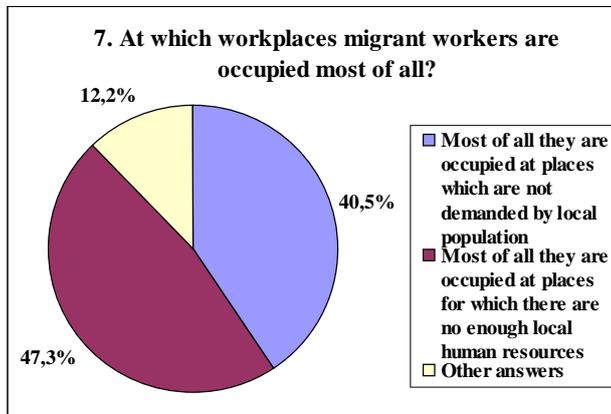


of respondents noticed that it is difficult to answer this question because there is no correct statistics on state labour market.

“in all cases the social expenses of the state will increase. That is why state shall have special program related to this issue”

May the large amount of migrant workers at the labour market of the country increase social expenses of the state? 68,6% of

The following questions in the questionnaire were about rights of migrant workers and their family members.



in the country and they are registered as unemployed.

12,2 % of respondents gave different answers to the question, such as “aliens and stateless persons are mainly focused in the trading sector”, “both cases are possible”, “they work mainly at foreign

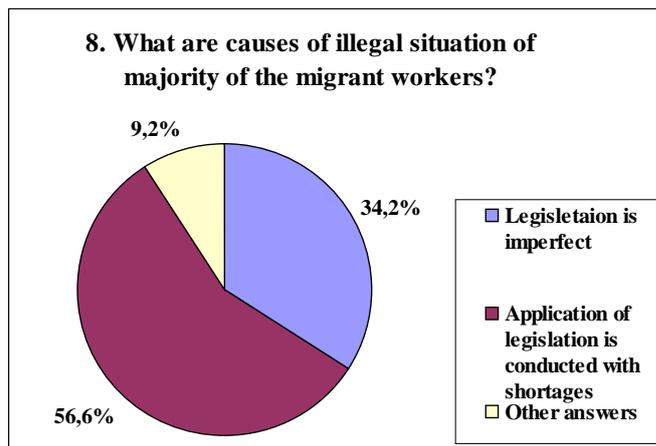
According to your opinion at which workplaces migrant workers are occupied most of all?

40,5 % of respondents answered that “most of all they are occupied

at places which are not demanded by local population”, 47,3 % answered that “most of all they are occupied at places for which there are no enough local human resources”. One part of those who gave the second answer mentioned in their additional note that they mean large

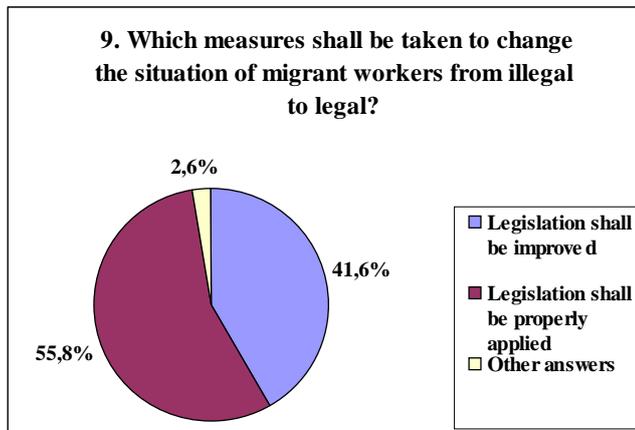
portion of foreigner occupied in the oil sector. And although there are enough local professionals, transnational companies continue to attract foreigners to their activities. Some experts show that foreign human resources are attracted as cheap labour force to the renovation of transport infrastructure, reconstruction works and state that there are enough human resources

companies”.

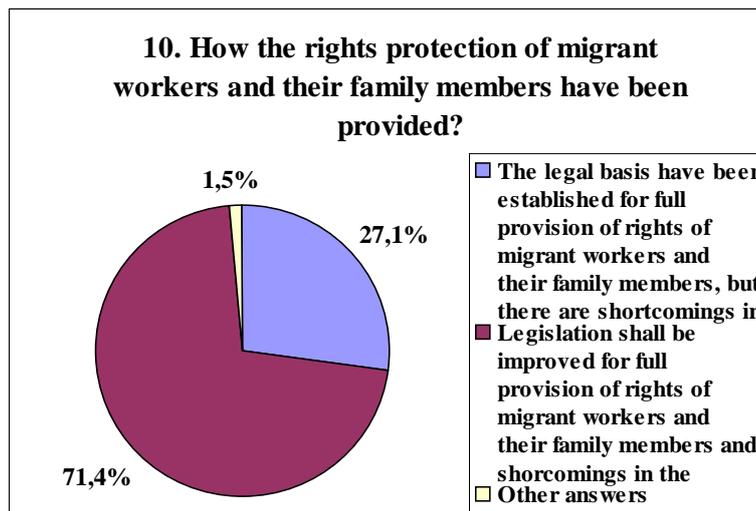


What are causes of illegal situation of majority of the migrant workers?

34,2 % of respondents answered that “legislation is imperfect”, 56,6 % answered that “application of legislation is conducted with shortages”. 9,2 % of respondents gave different answers to this question. Other answers included such as “imperfect legislation, absence of normal social-economic



policy programs, the social policy is implemented based on administrative methods instead of laws”, “employers do not want to ensure migrant workers and pay taxes for them”, “it is very difficult to obtain personal permit for aliens and stateless persons to conduct labour activity” and etc.



The answers to the question **“Which measures shall be taken to change the situation of migrant workers from illegal to legal?”** were as follows: 41,6 % of respondents answered that “legislation shall be improved”, 55,8 % answered that “legislation shall be properly applied”. 2,6% experts gave different answers. There were those who

mentioned both variant in their answers.

How the rights protection of migrant workers and their family members have been provided? 27,1 % of respondent answered that “the legal basis have been established for full provision of

rights of migrant workers and their family members, but there are shortcomings in the application

practice of the norms”, 71,4 % answered that “legislation shall be improved for full provision of rights of migrant workers and their family members and shortcomings in the application practice of the norms shall be eliminated. 1,5% of respondents gave different answers to this question. Among answers given there were “Majority of migrant workers are in illegal situation and that is why their and

their family members' rights are violated", "their rights are violated the same way as the rights or majority of the citizen workers".

The last question given to the expert was different. They were asked to answer the following question: "On which level protection of the migrant workers' rights is more effective?"

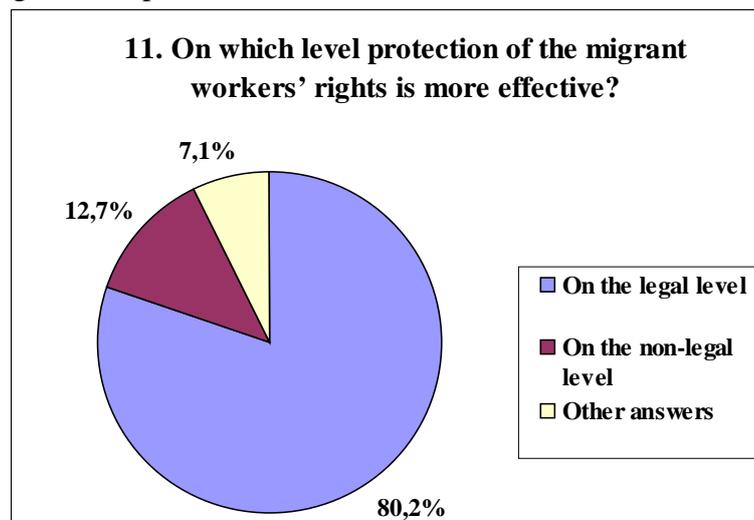
Three variants have been offered. Majority of the respondents - 80,2% think that protection of the migrant workers' rights shall be conducted only on the legal level, i.e. within the norms and regulations provided in the existing regulations.

Even though 12,7 % of respondents mentioned that rights of migrant workers shall be mainly protected on the "non-legal level".

In fact, the existing practice has been taken into account in this question. Thus it is very difficult to protect on the legal level rights of the alien or stateless person who illegally entered the country and therefore illegally conducts labour activity. In relation to these people

existing legislation is not in favour of migrant workers. At the same time the majority of migrant workers in the country are in such situation. In such cases protection of migrant workers is conducted with all possible means. Just because of it they considered acceptable the second variant.

7,1 % of respondents gave different answers to this question. Among them such answers like "there shall be comprehensive approach to the problem. Presently government shall make concessions to the aliens and stateless persons illegally



conducting labour activity on the territory of the state and they shall be legalized with preferential terms, but the legislation shall be seriously applied to migrant workers later on coming to the country", "protection is impossible at any level, both methods are inefficient" were given.

Survey outcomes

The survey conducted among lawyers professionally involved in the human rights protection and playing important role in the public life of the country did not provide unique opinion about the state policy related to the migrant workers, presence of migrant workers and their family members in the country and about their labour activity at the labour market of the republic.

According to the great part of the lawyers, legislative basis for regulation of the status of migrant workers and generally immigrants, their legal situation, labour activity, use of human rights and fundamental freedoms, access to health care, education is sufficiently perfect. But more experts were against this opinion. They based upon the fact that shortcomings of the country's immigration policy, lack of full control over exit from and entry to the country, non-issuance of labour visas are results of imperfect legislative basis.

From this, we may conclude that, notwithstanding the existence of the appropriate legislative basis, there is a need for taking a range of measures.

Both opinions have been proved in the answer to the 7th question of the question nary. The opinion of those answering to this question who told that there is a need for improvement of the existing legislation was not unfounded. But at the same time, in the 7th question great part of the lawyers concluded that the legislation is incorrectly applied.

The survey also refutes the recent opinion among governing bodies. Some state officials without reference to any statistics (as it was mentioned before, there is no such statistics), social-economic research or outcomes of any monitoring express such opinion that inflow of migrant workers has a serious impact over the labour market of the country, there is a threat of being dependent on foreign human resources and that large amount of immigrants increases social expenses of the state. But, professional expert lawyers participating in the survey refute this opinion and state that the influence is minor and there is neither threat of foreign labour expansion for labour market nor for economy of the country. The government just has to take certain regulatory measures.

The main part of experts concluded that the rights of migrant workers and their family members are not totally provided and they think that shortages shall be eliminated both in legislation and practice.

One more conclusion of the experts revealed existence of one serious problem. Although majority of experts emphasized that they prefer to protect rights of migrant workers on the legal level, in their special opinion they noted that it is not so easy. It is not always possible to help migrant worker who is deported from the country, illegally dismissed, may not provide access to health care and education for the family members on the legal level.

FINAL OUTCOMES AND RECOMMENDATIONS REGARDING THE MONITORING

Particular measures for protection of citizens leaving the country for conducting paid labour activity and migrant workers entering the country are necessary to be taken by the governments. There are necessary international norms for establishment of legal basis in this field. These norms are both universal and regional. International Labour Organization, UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, European Convention on the Legal Status of Migrant Workers, appropriate documents adopted by the Commonwealth of Independent States, bilateral and multilateral interstate agreements create opportunities for State-parties to these agreements to establish national norms meeting international standards and appropriate bodies for implementation and control over implementation of these norms.

Both international norms and national legislation impose obligations on the states and the governments for provision of adequate living conditions for migrant workers, payment of deserved salary and provision of other rights. For this purpose states shall conduct regulatory measures or establish appropriate service bodies for regulation of issues

in the sphere of labour migration. Unfortunately, it shall be mentioned that in none of the countries the ideal conditions have been created for meeting needs of migrant workers and their family members and provision of their rights. At the same time, in many of the receiving countries appropriate services have been formed for conducting regulatory activity and dealing with migrants workers' issues. Although appropriate measures are conducted in the Republic of Azerbaijan, it is impossible to add this country to the list of countries solving problems related to migrant workers. One of the reasons is that the Republic of Azerbaijan till recent years was human resource exporting country. But even in this period, ten thousands ethnic Azerbaijanis came to Azerbaijan from neighbouring Georgia with various purposes and mainly with the purpose to work. Presently, dynamic development of the state economy, increase of foreign capital in the country made this country attractive for people living in other countries. And this on its turn posed new tasks before the government and, generally, before the society of Azerbaijan. These tasks first of all include proper allocation of foreign human resources, stimulation development of state economy by efficient use of their labour and

conduction of comprehensive measures in direction of providing human rights and freedoms of the migrant workers and their family members coming to the Republic of Azerbaijan. Conduction of these measures does not consist only from creation of the appropriate normative legal basis and formation of the appropriate bodies. To achieve something in this field the potential of various state foundations shall be concentrated and coordinated.

Regulation of the attraction of human resources from other countries for conducting labour activity, to guarantee conclusion of employment agreements reflecting minimum standards for migrant workers, distribution of necessary information among migrant workers, provision of support to them and their family members in the destination country and broadening relations and bilateral and multilateral cooperation between country of origin and receiving country also in the field of social maintenance and social insurance and formalization of these cooperation by appropriate agreements is necessary.

During the monitoring we determined that one of the serious causes of inability to resolve problems of migrant workers in the Republic of Azerbaijan is poor coordination between institutes. As a result of lack of coordination and agreed actions between various state bodies, presently, majority of migrant workers arriving to the country are in illegal situation, although initially they entered the country legally.

As usual, labour ministries of the countries deal with the issues of migrant workers, although there is also different practice. But together with this ministry, ministries of Internal and Foreign Affairs also play important role in settlement of issues related to migrant workers. In the Republic of Azerbaijan special department has been established within the Ministry of Labour and Social Protection of Population to deal with issues related to the migrant workers.

At the same time specialized state body dealing with Migration issues is also functioning in the country.

In fact, efforts of all state bodies shall be joined for regulation of the migration issues. But, presently in Azerbaijan close mutual activities of the Ministry of Labour and Social Protection of Population, Ministry of Internal Affairs, Ministry of Foreign Affairs, State Committee on Refugees and IDPs and effective coordination of these activities is required to settle the migration issues and particularly the problems of migrant workers. Otherwise, continuation of the existing situation will damage the national interests of the state and continue to create conditions for violation of the rights of migrant workers and their family members. Here it is important to mention that, together with above mentioned state bodies, the role of the ministries of Health and Education and the Social Protection Fund is grate. In Azerbaijan, lack of close mutual activity between these bodies restricts access of migrant workers and their family members to the education, medical services and social

maintenance. It is not occasional that the UN Committee on Economic, Social and Cultural Rights in the Concluding observations of the Committee on Economic, Social and Cultural Rights adopted at the 33rd session of the UN Committee on Economic, Social and Cultural Rights on November 8-26, 2004, related to the periodic report regarding obligations of the Republic of Azerbaijan under the International Covenant on Economic, Social and Cultural Rights submitted to the UN Committee on Economic, Social and Cultural Rights mentioned that the Committee states with concern that, **“according to the article 19 of the Law on Legal Status of Aliens and Stateless Persons that compulsory education for children which are not Azerbaijani by birth is not provided”**

The access of family members of migrant workers, living without registration and performing illegal labour activity, to the health care is also very restricted. Newly born children of illegal migrant workers can not be registered in the polyclinics according to the place of residence. The main reason for that is that in fact these migrant workers are not registered according to the place of residence. As a result, children may not get necessary vaccination and primary medical assistance.

As it was mentioned in the monitoring report absolute majority of aliens and stateless persons presently residing in Azerbaijan entered the country with common visa and those from the countries for which visa is not

required entered the country without providing any reasons and then are looking for job. However, both country of origin and destination country shall take measures in order persons who intend to perform labour activity would be prepared while entering.

Organization of the protection of the migrant workers and their family members must be in the centre of attention the country of origin and destination country. From this point of view for provision of the rights of migrant workers and their family members must be in the centre of attention the country of origin and destination country. Otherwise, attempts of only the host country will not be enough for protection of the rights of migrant workers and their family members. The migrant worker shall start preparing for the labour activity in the destination country, in the country of origin. Their provisions mostly depend on their preparedness at arrival to the host country. But, majority of migrant workers coming to Azerbaijan, particularly from Georgia are not prepared in any way and there is no procedure in that country for preparation to performance of the labour activity in the Republic of Azerbaijan. Also as it was mentioned above, although issuance of labour visa for migrant workers is provided in the appropriate norms of the Republic of Azerbaijan, in practice this procedure is not working. As a result, aliens and stateless persons arriving to the territory of the Republic of Azerbaijan with the purpose to perform labour

activity are not prepared and thus even if they pass legal procedures while entering the country, starting labour activity puts them into illegal situation. Majority of migrant workers arrive to the Republic of Azerbaijan with other reasons, although their primary purpose is to look for job and perform labour activity. For example, ten thousands of ethnic Azerbaijani's arrive to Azerbaijan from Georgian Republic, obtain a document which lets them reside in the Republic of Azerbaijan and then start performing appropriate labour activity. Of course, in majority of cases these persons who perform illegal labour activity later try to obtain citizenship of the Republic of Azerbaijan. But in recent years it is very difficult to obtain citizenship. The conducted monitoring ones more showed that the migrant labour in the Republic of Azerbaijan is mainly based in the informal sector and this brings them to more unprotected situation, decreases their social protection and increases social exclusion. Both researches made within this monitoring and researches of international organizations make it possible to conclude that 9/10 of the migrant workers in the country are in the informal sector. As a result it brings to the extreme exploitation, marginalization of migrants and their family members, application of forced labour, non-protection of labour and health, which brings to the increase of occupational diseases and injuries. The fact that more than the half of the labour market is related to the

informal sector, the legislation in the field of labour migration is imperfect, the state policy in this field is not fully formed, the border passage and visa system has shortcomings create conditions for prosperity of the illegal sector in the country. Informal monopolies attract more and more cheap labour force to the country and exploit them without any formalization of the employment relations.

In general, informal relations between employees and employers became accepted as rule, and this rule most of all is related to the migrant workers. They informally receive their salary and thus evade from payment of taxes and employer does not ensure them. And this eliminates their social maintenance.

Conclusions obtained as a result of the monitoring require that the whole immigration system in the country including the policy regarding migrant workers shall be fully changed.

At the same time, it shall be mentioned that there are also positive circumstances related to the migrant workers and immigrants in general in the Republic of Azerbaijan. These are mainly the following:

- There are no restrictions both in legislation and practice for migrant workers to join their family members
- There is no xenophobia against them
- No criminal actions committed based on nationality (racial discrimination).

RECOMMENDATIONS

- The procedures provided for entry of migrant workers to the territory of the state and their labour activity shall be simplified and concretized. At the same time simplification of the procedures shall not bring to the uncontrolled inflow of migrant workers. That is why simultaneously the control system shall also be improved;

- The appropriate executive authority shall conduct initial seminars for migrant workers and their family members entering the country. These seminars shall be dedicated to the legal system of the country, its history, geography, traditions, regulations for labour activity, learning of the state language. As it is stated in the legislation, this measure shall be taken based on principle of voluntariness;

- The following measures shall be take to provide access of migrant workers and their family members to the legal assistance and information:

- Provision of access for migrant workers to the free legal assistance (at the expense of the government) in he necessary cases;

- for provision of the rights of migrant workers the public reception rooms shall be established in regions where they compactly

work. Organization of such reception rooms shall be mainly conducted by non-governmental organizations;

- Regular monitoring shall be conducted by the appropriate state body with the purpose to learn the situation with labour activity of migrant workers, their and their family members' access to health care, education and legal assistance, situation with provision of their labour rights in the field of employment. The monitoring shall also cover activity of the intermediary structures which attract, send or bring migrant workers to the country and the attitude of employers to the migrant workers;

- The simplified procedures shall be provided for legalisation of the labour activity of migrant workers presently working in the country and no duties shall be imposed on them for obtaining personal permit. In fact, majority of aliens and stateless persons conducting labour activity shall obtain personal permit, the other requirements of the law shall be applied only to those entering the country later on (related with obtaining an personal permit);

- Measures shall be taken for vocational training of migrant

workers to increase chances of migrant workers for employment. Conduction of such training in the country of origin for those leaving the country would also be appropriate. Existence of appropriate cooperation between country of origin and the country receiving the migrant workers is necessary to reach this target;

- Taking into account that migrant workers are less protected and employers have more opportunities to infringe the laws against them, conclusion of employment agreements in accordance with requirements of the law with such persons shall be particularly controlled. In case of unilateral termination of the employment agreement by the employer migrant worker shall have opportunity to stay in the country for a certain period of time to have chance to use domestic mechanisms (Court, Human Rights Commissioner, etc) to restore his/her rights. Migrant worker shall have right to stay in the country till he/she will exhaust all domestic remedies;

- Organization of funds based on voluntary payments for migrants who want to leave the country but have no means for that, would be expedient. Existence of such fund might play a positive role in

prevention of criminal actions of unoccupied migrants;

- Taking into account that the number of women among migrant workers increased in recent years, appropriate measures shall be taken in order prevent these women from becoming victims of any violence or human trafficking;

- No serious measures have been taken for raising awareness of aliens and stateless persons who want to come to the Republic of Azerbaijan for labour activity about the labour market of the country. The necessary information base for those who want to come to the Republic of Azerbaijan for labour activity, including appropriate legislative norms in various languages, information about work places in the country, requirements (education, specialization, etc.) for these vacations, information about documents necessary for entry to and exit from the country and other information shall be placed at the official webpage of the appropriate executive authority organ or at the official webpage of the Ministry of Foreign Affairs.

Annexe 1

The information of Migration Office of the Ministry of Labor and Social Protection of Population

The classification of foreigners working in Azerbaijan Republic according their quantity and the country of origin on the basis of employment permission defined by the legislation for the date of 01.01.2008

| № | The citizenship of the foreigner | Number of foreigners |
|----|----------------------------------|----------------------|
| 1 | USA | 17 |
| 2 | Germany | 24 |
| 3 | Angola | 1 |
| 4 | Argentine | 1 |
| 5 | Australia | 1 |
| 6 | Austria | 3 |
| 7 | Bangladesh | 23 |
| 8 | Belarus | 15 |
| 9 | Belgium | 2 |
| 10 | Bolivia | 2 |
| 11 | Bulgaria | 7 |
| 12 | Bosnia | 3 |
| 13 | Great Britain | 86 |
| 14 | SAR | 2 |
| 15 | South Korea | 6 |
| 16 | Montenegro | 1 |
| 17 | Check Republic | 2 |
| 18 | China | 28 |
| 19 | Afghanistan | 1 |
| 20 | Algeria | 9 |
| 21 | Philippine | 21 |
| 22 | France | 7 |
| 23 | Georgia | 258 |
| 24 | India | 63 |
| 25 | Netherlands | 4 |
| 26 | Indonesia | 4 |
| 27 | Iran | 13 |
| 28 | Iraq | 7 |

| | | |
|--------------|---------------------|-------------|
| 29 | Spain | 1 |
| 30 | Israel | 4 |
| 31 | Italy | 32 |
| 32 | Cameroon | 1 |
| 33 | Canada | 6 |
| 34 | Lebanon | 3 |
| 35 | Hungary | 1 |
| 36 | Malaysia | 59 |
| 37 | Egypt | 1 |
| 38 | Moldova | 6 |
| 39 | Myanmar | 2 |
| 40 | Nigeria | 5 |
| 41 | Norway | 1 |
| 42 | Uzbekistan | 5 |
| 43 | Pakistan | 20 |
| 44 | Paraguay | 1 |
| 45 | Poland | 1 |
| 46 | Portugal | 1 |
| 47 | Kazakhstan | 14 |
| 48 | Kirgizia | 1 |
| 49 | Romania | 6 |
| 50 | Russia | 45 |
| 51 | Serbia | 2 |
| 52 | Singapore | 8 |
| 53 | Slovakia | 2 |
| 54 | Sudan | 2 |
| 55 | Tajikistan | 4 |
| 56 | Thailand | 1 |
| 57 | Trinidad and Tobago | 5 |
| 58 | Turkey | 821 |
| 59 | Turkmenistan | 5 |
| 60 | Ukraine | 12 |
| 61 | Venezuela | 4 |
| 62 | Vietnam | 4 |
| 63 | Croatia | 1 |
| 64 | New Zealand | 1 |
| 65 | Zaire | 1 |
| Total | | 1700 |

Annexe 2

The information of Migration Office of the Ministry of Labor and Social Protection of Population

The classification of foreigners working in Azerbaijan Republic according their quantity and the country of origin on the basis of employment permission defined by the legislation for the date of 01.01.2009

| № | The citizenship of the foreigner | Number of foreigners |
|--------------|----------------------------------|----------------------|
| 1 | Turkey | 2069 |
| 2 | Georgia | 355 |
| 3 | Great Britain | 277 |
| 4 | India | 260 |
| 5 | Russia | 190 |
| 6 | Malaysia | 143 |
| 7 | China | 138 |
| 8 | Bangladesh | 94 |
| 9 | Iran | 88 |
| 10 | Turkmenistan | 82 |
| 11 | Germany | 63 |
| 12 | Philippine | 61 |
| 13 | USA | 55 |
| 14 | Pakistan | 48 |
| 15 | Italy | 43 |
| 16 | Ukraine | 37 |
| 17 | Kazakhstan | 36 |
| 18 | Others` | 328 |
| Total | | 4367 |

**SITUATION WITH PROVISION OF THE RIGHTS OF MIGRANT
WORKERS AND THEIR FAMILY MEMBERS IN AZERBAIJAN**

LEGISLATION AND PRACTICE

REPORT ON OUTCOMES OF THE MONITORING