

POLICY PAPER on the analysis of legislation and practical situation related to employment of persons with disabilities



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¹ <https://www.on5yirmi5.com/haber/saglik/yetiskin-sagligi/161812/is-hayatindaki-engelli-sayisi-artti.html>

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1. Summary

Employment of persons with disabilities in Azerbaijan is one of the serious problems. In this regard, taking into account the relevance of the topic, we decided to conduct monitoring.

The format of monitoring is categorized as: introduction, monitoring methodology, analysis of the problems of persons with disabilities (problems in legislation), solutions to the problems of persons with disabilities, projects to provide enlightenment in this field, their results, programs for employment of persons with disabilities in Turkey, study of Turkey's experience, drawing conclusions from the information obtained, and developing proposals for eliminating errors in legislation and its practical application.

The main objective of monitoring is to identify problems of persons with disabilities and to support them by developing proposals for solving these problems. Monitoring is focused on employment of persons with disabilities. The fact that only 5% of persons with disabilities of about 620,000 is working is an indication of how much this group is dependent on others.

Both online surveys and information surveys, and interviews with experts were used to collect the data.

The main document adopted in relation to persons with disabilities is the Convention "On the Rights of Persons with Disabilities" adopted by the Republic of Azerbaijan too. The purpose of this Convention is to promote the understanding persons with disabilities in the society, ethical behavior towards them, and the protection of their dignity.

Mentioning the problems of persons with disabilities, they include their difficulties in realizing their own project and ideas, as well as the lack of appropriate conditions for rest.

The rules specified in the legislation and the problems related to the implementation of these rules were analyzed. Proposals have been prepared depending on the outcome.

As a final process of monitoring, policy paper was translated into English and sent to various institutions and social organizations.

2. Introduction

A person with a disability is a person whose life activity is limited as a result of a physical or illness defect and who needs social support and protection.

The number of persons with disabilities in Azerbaijan is about 620,000.²

Only 5% of people with disabilities work.³

In the Regulations “On the Criteria for Determining Disability”⁴ in Azerbaijan, the disability is divided into 3 groups for its severity:

The most severe group among the groups of disability is group 1. The 1st group includes disabilities which are the limitations of education, communication, adaptation, behavior control, self-service, movement, and labor activity in a way that a person with a disability needs the help and support of other people.

² <http://femida.az/az/news/95831/azerbaycanda-dovletdan-yardim-alan-620-min-elil-var>

³ <https://report.az/sosial-mudafie/azerbaycanda-elillerin-is-problemi-qanunvericiliyin-telebi-ve-realliq-lar-arasdirma/>

⁴ <http://www.e-qanun.az/framework/31771>

Persons with disabilities identified by this group may work in different jobs either in specific working conditions or at home.

Persons with disabilities of the 2nd group, unlike persons with disabilities of the 1st group, do not need help or service of other people.

The 3rd group consists of disabilities which are the limitations of social adaptation, communication, movement, and labor activity. The concept of limitation of labor activity envisages the amount of work to be done and the complication of the professional work of the individual.

Article 24 of the Law of the Republic of Azerbaijan “On the Social Protection of Persons with Disabilities”⁵ states that the rights of persons with disabilities are guaranteed for their working in enterprises with normal working conditions, in offices and organizations, in specialized institutions employing persons with disabilities, in shops and industries by taking into account creativity, productivity, and individual recovery programs, as well as are guaranteed for their engaging in entrepreneurial activity and other activities not prohibited by law.

Article 27 of the Convention “On the Rights of Persons with Disabilities”⁶ states that State Parties recognize the rights of persons with disabilities on an equal basis with others; this right includes the right to self-sufficiency by choice or consent of the person with a disability in the open, inclusive and favorable conditions of the labor market and production environment.

The rules for applying quotas for citizens with special needs for social protection and who have difficulty to find a job were established in 2001.

⁵ http://e-qanun.az/alpdata/framework/data/7/f_7652.htm

⁶ <http://www.e-qanun.az/framework/39591>

According to this law, the quota is set at no more than 5% of the average annual number of employees in enterprises:

- at enterprises with number of employees from 25 to 50, in the amount of 3% of the average annual number of employees (with at least one job); in this case, one of those jobs is for persons with disabilities or persons with limited health opportunities under the age of 18;
- at enterprises with number of employees from 50 to 100, in the amount of 4% of the average annual number of employees (2% of the average annual number of employees is for persons with disabilities or persons with limited health opportunities under the age of 18);
- at enterprises with more than 100 employees, in the amount of 5% of the average annual number of employees (2.5% of the average annual number of employees is for persons with disabilities or persons with limited health opportunities under the age of 18).

At the same time, the government also provides a number of benefits and privileges to enterprises for persons with disabilities to be employed.

Enterprises, offices and organizations, of which at least 30% of the total number of employees are persons with disabilities, are entitled to preferential financing and logistical support. Discount in the amount of 50% of the income tax is provided for such enterprises, offices and organizations.

Enterprises, offices and organizations, of which at least 50% of the total number of employees are persons with disabilities (excluding substitute employees) are exempt from the income tax.

The Ministry of Labor and Social Protection of the Population of the Republic of Azerbaijan is responsible for supporting persons with disabilities in the labor market and ensuring their employment. In this regard, the ministry is

implementing various projects in cooperation with other international and local authorities.

Jointly with the United Nations Development Programme (UNDP), “Creating Inclusive and Decent Workplaces for Socially Vulnerable Groups,” with BP and British Council, “Promoting Employment Opportunities for Persons with Disabilities”⁷, “National Action Programme on Protecting the Rights of Persons with Disabilities for 2014-2018”, “Innovation and Employment Development in Azerbaijan”, “Reduction of the Risk of Poverty by Addressing the Issues of Employment of Persons with Disabilities”, “Development of Social Protection” projects has been implemented of which main purposes were to help persons with disabilities to gain professional skills and support the creation of an inclusive society.

These projects on employment of persons with disabilities are few in number and have no impact on the solution of their problems. The case that persons with disabilities are not provided with a job complicates their financial situation even more.

The people with the 1st disability group will be paid 300 AZN in total including social benefit (150 AZN) and pension (100+50 AZN). The amount of social benefit for the 2nd disability group is 130 AZN, while for the 3rd group of disability is 110 AZN.⁸

The amount of benefit allocated to a person with a disability is even below the minimum living wage (180 AZN) for the country in 2019.

To ensure employment of persons with disabilities, the Rule “For Applying Quotas for Citizens with Special Needs for Social Protection and Those Who

⁷https://www.bp.com/az_az/caspian/press/pressreleases/employability_skills_for_people_with_disabilities1.html

⁸<https://report.az/sosial-mudafie/birinci-grup-elillerin-alacagi-muavinetin-meblegi-aciqlandi/>

Have Difficulty to Find a Job”⁹ is established. However, there are deficiencies in the application of these rules.

The main purpose of the research is to increase awareness about the employment of persons with disabilities, to identify alternatives for enterprises to follow the quota rules, to submit proposals to government agencies.

3. Methodology

An online survey was conducted to study the problems of persons with disabilities and, most importantly, employment issues, and the data were analyzed. Existing legislation in this area has been examined. Reports made by state and non-state bodies as a result of their work in this area have been obtained, and the results of the implemented projects were reviewed. Information requests were sent to the MLSPP and the Ministry of Taxes to collect information on compliance with the quota rules regarding the employment of people with special needs. Unfortunately, no negative or positive response was received. At the same time, a study on Turkey’s social protection system has been conducted to familiarize with foreign experience.

Interviews were held with persons with disabilities and their families to understand the importance of employment of persons with disabilities. The experts talked about problems in this area and lack of resources. Opinions and proposals of the heads of the organizations operating in this field were received. Based on this, a policy paper was prepared.

⁹ http://e-qanun.az/alpidata/framework/data/11/f_11456.htm

4. Analysis of the problems of persons with disabilities

4.1. Analysis of compliance of the legislation of the Republic of Azerbaijan with international law

The problems of people with special needs cannot be solved despite the actualized social projects and measures undertaken by the state. Basically, society cannot accept persons with disabilities. When seeing them first time, pulling the ear and praying for healing can have a negative effect on their psychology. Even unethical names such as *“cripple”, “deaf”, and “blind”* can even destroy their self-confidence.

Adoption of the UNO Convention “On the Rights of Persons with Disabilities” is aimed at addressing these issues and protecting their dignity. According to the convention, there is a social and medical model of disability in the world. Traditionally, the medical model claims that dysfunctions, especially thanks to “defects”, “injuries”, and “disorders” that occur inside a person, are detected and those individuals are included in the “disability” group. Such people were described as “defective” and in need of medical corrections. However, in the social model, the disability is accepted as a situation where persons with disabilities face restrictions and barriers as a result of the influence of numerous environmental factors. In the social model, there is no need for “correction” of persons with disabilities, but rather the adaptation of the environment to their specific needs. The social model does not require compassion for persons with disabilities; it is intended that members of society feel empathy towards them, understand them and they are fully equal people as all citizens. The basis of this model is the application of the principles of accessibility and independent living. According to these principles, the facilities, services and needs of the

environment should be accessible to persons with disabilities, and in daily life, they should be able to govern themselves, make decisions independently and not depend on anyone. Under the provisions of the Convention, all forms of discrimination against persons with disabilities should be abolished, their rights and freedoms should be secured, and their dignity and values should be protected.

Regarding disability issues, Article 8 § 1.a of the Convention states that States Parties undertake to adopt immediate, effective and appropriate measures to raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities; and Article 8 § 2.a.ii of the Convention states that measures include initiating and maintaining effective public awareness campaigns designed to promote positive perceptions and greater social awareness towards persons with disabilities. According to these measures, the terms “typical”, “atypical” and “abnormality” should not be used concerning persons with disabilities.

The Republic of Azerbaijan, which adopted the convention, does not follow such rules even in the legislative system.

The name of the Law of the Republic of Azerbaijan “On the Social Protection of Persons with Disabilities” has not yet been conformed to the Convention.

4.2. Problems related to persons with disabilities in the legislation of the Republic of Azerbaijan

Article 13.1 of the Law of the Republic of Azerbaijan “On the Rights of Persons with Disabilities” states that during the design and construction of infrastructure

facilities throughout the territories and settlements in the Republic of Azerbaijan, in accordance with the Urban Planning and Construction Code of the Republic of Azerbaijan, reasonable adaptations on the basis of universal design are provided for persons with disabilities that these facilities are accessible for them they can freely use the infrastructure.

Sahib Mammadov, chairman of the Citizens' Labor Rights Protection League, believes that benefits provided to persons with disabilities do not meet their needs. According to Sahib Mammadov¹⁰, the allocation of funds from the budget does not mean pensions and social benefits. He says: "There are infrastructure works in the city today, but physically disabled people are not taken into account. In normal countries, the practice is different. For example, under US law, institutions which do not provide normal living conditions for persons with disabilities are deprived of budget assistance. Today in Azerbaijan, there are no conditions for the movement of persons with disabilities in government agencies, even in the building of the Ministry of Labor and Social Protection of the Population."

Although certain conditions are created, private institutions do not have these conditions too because it is not necessary for them. On the contrary, the state should be interested in ensuring the comfort of its citizens.

Furthermore, even the distresses of persons with disabilities do not end with these. While the cost of social benefits is less than the minimum living wage across the country, these people cannot live only with the benefits. Gulnara Salimova, chairman of the "Gulsam" Rehabilitation Centre of Disabled People, says:¹¹

¹⁰ <https://www.xural.com/%E2%80%9Cisl%C9%99m%C9%99k-ist%C9%99yir%C9%99m%E2%80%9D/>

¹¹ <https://www.udpo.az/read.php?lang=1&content=1148>

“Considering that the amount of social benefits for persons with disabilities has increased in recent months, even it does not help meeting the needs of a person with a disability because he/she has needs such as daily food, clothing, public utilities, and medication. The purchase of wheelchairs is a separate issue. The wheelchairs given here are of poor quality. That is why we charge people, who visit to Georgia, to buy them. These also require additional costs. If we were provided with a job at least, we would be able to meet our own needs.”

Article 29 of the Law of the Republic of Azerbaijan “On the Social Protection of Persons with Disabilities” (related to working conditions of the disabled people) states that persons with disabilities are allowed to work overtime, work weekends and night hours only with their consent that such work is not prohibited in medical advice. Also, when it comes to the right of persons with disabilities (regardless of disability groups and reasons), annual leave is granted at least two times the minimum vacation time established by existing legislation. Also, when it comes to the right of persons with disabilities (regardless of disability groups and reasons), annual leave is granted at least two times the minimum vacation time established by existing legislation.

Persons with disabilities (regardless of disability groups and reasons) are granted unpaid leave for at least one calendar month.

For persons with disabilities of the 1st and 2nd groups, the shorter working hours is determined and it shall not exceed 36 hours per week.

According to the lawyer Sahib Mammadov, the reasons for not hiring persons with disabilities are these privileges: “Healthy people are given 21 days leave but disabled persons are given 41 days leave. It does not serve the employers’ purpose. In foreign countries, this issue is solved not by employers, but by relevant agencies and funds. The cost of extra money provided to them is paid

by those funds. Therefore, our employers do not like to hire persons with disabilities. They just say ‘no job’ and send them out.”¹²

According to the expert, the reasons why executives fail to comply with this rule are the lack of knowledge and, most importantly, an atmosphere of impunity. He answers his own question: “Has any organization ever been prosecuted for failing to meet the quota for persons with disabilities? No!”

Although information request has been sent to the State Employment Service to get information on the number of companies that do and do not comply with the quota and the result of punitive measures taken related to these companies, they responded that the issue was not in their responsibility, and that, at the same time, they could not share data because it was confidential.

According to Shahbaz Khalafov¹³, the Deputy Chief of former Head Employment Office, the main problem with the employment of persons with disabilities was the presence of a “no ability to work” record in their certificates. This complicates their employment. He says: “Employers adhere to quotas regulated by legislation. They can't do otherwise because any company which does not comply with these quotas is fined accordingly. The only problem is that all persons with disabilities from the previous periods, all persons with disabilities of the 1st and 2nd groups, their inability for work are recorded in their certificates. In this case, we cannot say to an employer or a state institution why they were not hiring those people because the Labor Code states that when a disabled person is employed, any responsibility falls on the enterprise. Therefore, employers do not provide employment for such people because they fear the law.”

¹² <https://nezermedia.az/manset/52926-qanuna-deyishiklik-evezine-beyinlere-deyishiklik-edilmelidir-elillerin-ish-problemi.html>

¹³ <https://news.milli.az/society/182225.html>

5. Projects related to persons with disabilities

“Enhancing Employability Skills of People with Disabilities”¹⁴ project got started for job seekers and unemployed people registered with employment service agencies by BP and its partners in February 2018.

The programme aims at increasing employability prospects and the social, computer and English language skills of 86 disabled people. At the end of the project with a total cost of over 400,000 AZN, 22 participants were employed in various organizations or through self-employment programs (also including persons who had a job before the program). 8 participants participated in internship programs at various hotels in Baku, and up to 10 participants received initial proposals for short-term distant work and employment.

Together with the fact that the number of projects adopted and implemented in this area is few, detailed information on the results of implemented projects is not even included in the MLSPP's annual reports.

6. Foreign experience in support of employment of persons with disabilities

In Turkey, measures have been taken to ensure employment of persons with disabilities, such as their working in private workplaces, working in co-operative workplaces, working at home, their individual activities, job creations only for persons with disabilities, employment by quota system, forcing managers to hire persons with disabilities.

The Regulation “On Protected Workplaces”, adopted in Turkey on May 30, 2006, protected jobs are defined as “jobs created specifically for the work

¹⁴ <https://anews.az/az/elilliyi-olan-sekslerin-mesulluq-imkanlarinin-artirilmasina-destek/>

environment, which are financially supported by the state to bring persons with disabilities into the labor market, to provide vocational rehabilitation to persons with disabilities.” According to the Regulation, the main prerequisites are at least 40% of having limited mental development, being mentally disabled and physically restricted, having more than 60% of disability of other types, registering on the TEA (Turkish Employment Agency) platform, and being 15 years old.¹⁵

Number of working persons with disabilities (2011-2015)

		2011	2012	2013	2014	2015
Engelli Çalıştırmakla Yükümlü 50+ İşyeri Sayısı	Kamu	1.004	979	890	809	844
	Özel	15.118	16.980	17.596	17.773	17.144
	Toplam	16.122	17.959	18.486	18.582	17.988
Çalıştırmakla Yükümlü Olduğu Engelli Sayısı	Kamu	10.496	10.246	9.514	8.417	8.432
	Özel	86.607	97.322	97.689	101.823	99.262
	Toplam	97.103	107.568	107.203	110.240	107.694
Engelli Çalışan Sayısı	Kamu	12.347	12.358	11.804	10.422	10.696
	Özel	71.088	77.547	80.434	84.706	84.370
	Toplam	83.435	89.905	92.238	95.128	95.066
Engelli Açık Kontenjan Sayısı	Kamu	1.164	931	700	712	472
	Özel	20.789	25.250	23.075	23.637	22.037
	Toplam	21.953	26.181	23.775	24.349	22.509
Engelli Kontenjan Fazlası Sayısı	Kamu	3.015	3.043	2.990	2.717	2.736
	Özel	5.270	5.475	5.820	6.520	7.145
	Toplam	8.285	8.518	8.810	9.237	9.881

Kaynak: İŞKUR, (Çevrimiçi) <http://www.iskur.gov.tr/tr-tr/kurumsalbilgi/istatistikler>, 25.02.2016

One of the most common ways for persons with disabilities to enter the labor market is the quota system. This is compulsory employment of a large number of persons with disabilities in the companies by government pressure. In this system, how many persons with disabilities work is determined according to the number of employees of the company and this norms are different for each country.

¹⁵ Employment Policies for Disabled People in Turkey: Problems and Suggestions, 2018

The quota system was first introduced in Germany in 1919, followed by Austria in 1920, Italy in 1921, and France in 1923.

Different quotas are applied in the practice of various foreign countries. In Germany, persons with disabilities, in the number of 5% of their employees for companies with at least 20 employees, have to be hired compulsorily. In France, persons with disabilities, in the number of 6% of their employees for companies with at least 20 employees, have to be hired. In Italy, one person with disability for companies with 15-35 employees, two persons with disabilities for companies with 36-50 employees, persons with disabilities, in the number of 7% of their employees for companies with more than 50 employees, have to be hired. In the Czech Republic, persons with disabilities, in the number of 4% of their employees for companies with at least 25 employees, have to be hired. In Spain, persons with disabilities, in the number of 2% of their employees for companies with at least 50 employees, have to be hired. In South Korea, persons with disabilities, in the number of 2% of their employees for companies with more than 300 employees, have to be hired.

7. Result

According to the data, one of the main problems is the imposing only fines on the enterprises which do not comply with the quota. Thus, the benefits related to the leave of persons with disabilities, working hours and other issues, the idea that persons with disabilities work less efficiently than others prevent the company owners from hiring them. In return, they pay a certain fine. As a result, persons with disabilities are still not being employed and are dependent on benefits. According to experts, one of the best ways to eliminate this is to increase the fine.

The disability confirmation sheet shows whether a person with a disability is able to work. The employer refuses to hire a person with a disability according to this. In the Labor Code, the responsibility of companies for the protection of a disabled person directly affects their employment. However, in the definition of 1st group of disability, it is stated that these individuals are able to work at home and in different jobs under special conditions.¹⁶

Minister of Labor and Social Protection of Population, Sahil Babayev informed about the abolition of disability in groups according to severity and the development of a new conception related to this. He says: “A new conception regarding disabled people will be developed. There are 52 types of social benefits available today. They will be unified. At the same time, the criteria for disability will change because the concept of 1st, 2nd, 3rd groups of disability is coming from Soviet era. All over the world, disability is determined by the percentage of loss of ability to work or self-sufficiency. Therefore, these changes will be made to establish to whom the benefits will be paid. For example, today persons with disabilities of the 3rd group is paid 55 AZN. The working group will determine whether this benefit is paid. Research is now in line with world experience. This is a great job.”¹⁷

Although the idea of changing the criteria has been voiced, a draft law has not yet been developed. It is intended that changing criteria is to be determined by the differentiation of persons with disabilities depending on the cause of disability, not by the basis of severity.

In Turkey, disability is divided into 9 groups as mental disability, physical disability, vision disability, hearing disability, cognitive disability, spastic disability, attention deficit disorder, hyperactivity, and developmental disorder.

¹⁶ <http://e-qanun.az/framework/31771>

¹⁷ http://www.xezerxeber.az/%C9%99n%C3%A7ox_oxunan/226154.html

Such grouping enables a person with a disability to be hired to a job where working is not restricted by his/her disability.

Unemployed persons with disabilities receive unemployment benefits under special conditions. Benefits of employed persons with disability usually have salaries close to their unemployment benefits. At this point, persons with disabilities choose unemployment benefits rather than working and earning money. This leads to the formation of a passive crowd. However, if employed persons with disabilities are also provided with previous unemployment benefits, their motivation for employment is will be increased.

8. Suggestions for solving the problem

1. Establishing severer punishments, increasing fines against persons who violate the rights of persons with disabilities.

Positive discrimination set out in the Labor Code and employment laws for persons with disabilities discourages managers from hiring them. In return, they pay a small fine and slip through the net. One of the ways to be considered effective to eliminate this may be to increase the fine.

2. Not recording whether a person is able to work in a document confirming disability.

When defining the concept of disability, if it is shown that even persons with disabilities of the 1st group are able to work at home, or under special conditions, the record of disability on the disability confirmation sheet will

allow employers to evade their responsibilities. Not recording this section on the sheet will create more opportunity for employment of a person with a disability.

3. Speeding up the process of changing the criteria for disability.

Minister of Labor and Social Protection of Population, Sahil Babayev said in an interview on 14.11.2018 that a new conception for changing the criteria for disability would be developed. Accordingly, disability will not be divided into 1st, 2nd, 3rd groups, but divided into groups such as vision disability, hearing disability, and so on as seen in the world practice. Despite 8 months passed by the Minister's statement, a draft law has not yet been developed. Taking reasonable steps in this regard will accelerate the process of bringing the legislation of the Republic of Azerbaijan in line with international practice.

4. Maintenance of the unemployment benefits provided to persons with disabilities after they are employed.

Low income as a result of labor forces people to become dependent on someone. People prefer to make money with ease than to make it with difficulty. They find it easier to get unemployment benefit because it is almost the same as the salary they receive when they work. If they are provided with benefit alongside salary, they will be able to meet their needs more freely, as well as become more active individuals in the society.

9. Abbreviations

1. UNO - United Nations Organization

2. BP - British Petroleum

3. MLSPP - Ministry of Labor and Social Protection of Population

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