

Committee on the Application of Standards

Date: 16 May 2022

Governments appearing on the list of individual cases have the opportunity, if they so wish, to supply, written information to the Committee.

▶ Information on the application of ratified Conventions supplied by governments on the list of individual cases

Azerbaijan (ratification: 2000)

Abolition of Forced Labour Convention, 1957 (No. 105)

1. Regarding the comment on “broad wording” of Articles 147, 169.1, 233 and 283.1 of the Criminal Code

It should be noted that this wording is based on general norm-setting techniques and principles and is commonly used in Azerbaijan for drafting various laws. It is in line with the Constitution and other laws of the country guaranteeing human rights and freedoms.

Article 147 (defamation)

In accordance with article 57 of the Constitution, the citizens have the right to criticize the activity or activities of state bodies. Under the legislation, the prosecution for criticism is prohibited, while insult and defamation cannot be considered criticism.

Article 147 of the Criminal Code does not diverge from similar articles of the Criminal Codes of some ILO Member States, such as Canada (article 298), Germany (article 187), Slovenia (article 160), Sweden (Chapter 5, section 1).

Article 169.1 (violation of the assembly rules)

The purpose of this article is to establish criminal liability for organizing or participating in assemblies, which cause significant violation of civil rights. It should be noted that violation of the rules on holding assemblies is also recognized as a crime in other countries (for example, in Canada).

According to article 49 of the Constitution everyone, together with others, has the right to assemble peacefully with prior notice to the relevant government authorities, provided that public order is not disturbed. However, a gross violation of public order shall invoke criminal liability.

Article 283.1 (incitement of national, racial, social or religious hatred and hostility)

The criminal elements of the acts under this article are similar to the corresponding articles in the criminal laws of other countries, and the sanctions provided for these acts include fines, community service, restriction of freedom and imprisonment.

The incitement of national, racial, social or religious hatred and hostility is a criminal offense in Germany (article 130), Kazakhstan (article 174), Republic of Moldova (article 346) and others.

Application of Articles 147, 169.1, 233 and 283.1 of the Criminal Code

Articles 147, 169.1, 233 and 283.1 of the Criminal Code are not widely used in practice (*according to the statistics of the Supreme Court of Azerbaijan*):

- under article 169.1: in 2018–21 there were no cases;
- under article 147: in 2018 – 41; in 2019 – 37; in 2020–21 – approximately 32 court cases. Penalty in the form of correctional work applied in 5 cases out 110 (only in 4.5 per cent of cases);
- under article 233: in 2018 – 8; in 2019 – 4; in 2020 – 2; in 2021 – 2 cases. Correctional work applied – in 0 cases out 16;
- under article 283.1: in 2018 – 5; in 2019 – 3; and in 2020–21 – 2 cases. Correctional work applied – in 0 cases out 10.

The information on the acts that gave rise to criminal prosecutions and court decisions will be provided at next stage.

Legislative regulation of correctional work and its application in practice

It should be noted that correctional work provided for as a punishment under a number of articles of the Criminal Code is not contradictory to Article I of the Convention due to the following reasons.

Under criminal law, correctional work is carried out at the place of work. It is defined as a deduction of 5 to 20 per cent of the convicted person's earnings in favour of the State.

Obviously, correctional work is not provided for as bringing a person to forced or compulsory labour, but as a transfer of money from his earnings in favour of the State while he participates in socially useful works at his workplace.

Fines under articles 169.1, 233 and 283.1, as a rule, are quite high and not paid by convicts within the time period established by law.

Therefore, pursuant to article 44.3 of the Criminal Code in case of wilful evasion from fine payment, the punishment is replaced with penalties such as community service, correctional work, restriction of freedom or imprisonment.

Given that, correctional work is applied in some articles of the Criminal Code as an alternative to the sanctions, without isolation from society. Some criminal law experts argue that "correctional work" is a lighter punishment than a fine or imprisonment.

In accordance with Article 1.1 of the UN Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules), these rules provide a set of basic principles to promote the use of non-custodial measures and alternatives to imprisonment.

Also, the acts under article 169.1 of the Criminal Code presume significant damage to public interests, gross violation of public order and other criminal elements reflecting the gravity of the violation.

If these acts do not result in substantial harm to the rights and legitimate interests of citizens, they are not considered crime and lead to penalty under article 513 of the Code of Administrative Offences.

Given the above, restricting to only fines of punishments imposed under certain articles of the Criminal Code for public danger, serious harm to the public interest, gross violation of coexistence rules, etc. is not considered acceptable based on the principles of justice, humanity, the Constitution, criminal and criminal procedural legislation.

- As shown below, the use of correctional labour is minimal and has been declining in recent years (according to the statistics of the Attorney General's Office):
 - In 2019, 876 (7.6 per cent) of the 11,484 people convicted by the courts were sentenced to correctional work and 157 (1.4 per cent) – to community service;
 - In 2020, 572 (6.2 per cent) of 9,282 individuals were punished with correctional work and 3 (0.2 per cent) individuals – with community service;
 - In 2021, 512 (3.5 per cent) of 14,751 individuals were sentenced to correctional work and 73 (0.5 per cent) individuals – to community service.

2. Regarding the comment on the use of articles 148, 179, 192, 213, 274, 308, 323 of the Criminal Code for prosecuting journalists, bloggers, human rights defenders and other individuals who express critical views

It should be noted that the Criminal Code does not provide for prosecution and punishment for political views, convictions or other circumstances, but for the cases when a person is found guilty of a committed socially dangerous act.

Under article 25 of the Constitution, the State guarantees equality of rights and freedoms to everyone, regardless of race, ethnicity, religion, language, gender, origin, property status, occupation, etc.

Under article 71 of the Constitution, the legislative, executive and judicial branches of government are obliged to observe and protect human and civil rights and freedoms.

Since these articles of the Criminal Code are applied without prejudice to the profession or status of the accused, no relevant statistics on professions are compiled and, thus, cannot be provided.

The following statistics show that the use of the above articles of the Criminal Code is minimal and has decreased in recent years (*according to the Supreme Court's statistics*):

Articles of the Criminal Code	Number of cases over the years		
	2018	2019	2020
Article 323 * (Defamation or humiliation of the honour and dignity of the President of Azerbaijan)	0	0	0
Article 308 (Abusing official powers)	81	84	56
Article 274 (High treason)	8	11	6
Article 213 (Evasion from payment of taxes)	65	57	53
Article 192 (Illegal business)	15	17	12
Article 179 (Misappropriation)	69	65	42
Article 148 (Insult)	25	22	25
Article 323 * (Defamation or humiliation of the honour and dignity of the President of Azerbaijan)	0	0	0

* Note: according to the "Note" part of article 323, this article does not apply to public statements about the activities of the President of the Republic of Azerbaijan, as well as to critical remarks about the policies pursued under his leadership.

In addition, in order to ensure transparency and public access to court decisions, a link can be accessed to obtain information on the application of the above-mentioned articles of the Criminal Code (<https://sc.supremecourt.gov.az/decision/>).

3. Legislative guarantees of non-prosecution for political and ideological views

According to the Constitution, the State guarantees the equality of rights and freedoms to all, irrespective of their occupation, beliefs, affiliation with political parties, trade unions and other public associations.

The law also prohibits the restriction of human and civil rights and freedoms on the basis of beliefs or political or social affiliation. No one may be harmed or denied privileges or advantages on the grounds listed above (article 25).

Also pursuant to the law:

- everyone has freedom of thought and speech;
- agitation and propaganda inciting hatred and enmity on racial, national, religious, social or other grounds shall not be permitted;
- everyone shall have the freedom to seek, receive, transmit, prepare and disseminate information lawfully;
- freedom of the media is guaranteed.

Under the Law on the Freedom of Assembly, the State ensures the exercise of freedom of assembly and takes appropriate measures to hold peaceful and unarmed assemblies.

Under article 6.1 of the Criminal Code, offenders are equal before the law and are prosecuted regardless of their beliefs, membership in political parties, trade unions or other public associations or other circumstances.

Article 154 of the Criminal Code establishes liability for violation of the right to equality.

4. Measures to improve the legislation

In order to humanize the sanctions provided under the Criminal Code and limit their scope, the following reforms and measures to improve the legislation were implemented.

4.1. Law No. 816-VCD of October 20,2017 “On Amendments to the Criminal Code” was adopted.

As a result of the introduction of about 300 amendments to the Criminal Code, a number of criminal offenses were decriminalized, some acts were transferred from the category of criminal offences to administrative ones.

The amendments also improved the institute of exemption from criminal liability through reconciliation with the victim, established new norms providing for exemption from criminal liability for crimes against property and those related to economic activity.

In addition, in order to reduce cases of imposing a prison sentence:

- a new type of punishment was introduced which is not related to deprivation of liberty – restriction of freedom (articles 147.2, 192.1, 192.2, 221.2, 233,314 of the Criminal Code),
- and the term of imprisonment for certain crimes was reduced (articles 308.2, 221.2 of the Criminal Code).

4.2. Law No. 68-VIQD of 1 May 2020 “On Amendments to the Criminal Code” was adopted.

The law introduced alternatives to deprivation of liberty (fines and restriction of freedom) in sanctions of several articles (articles 192.1, 221.2, 221.3, 308.1 of the Criminal Code) and also provided for reduction of fines or mitigation of imprisonment sentence for certain crimes.

In addition, the law decriminalized certain acts, including illegal entrepreneurship (article 192 of the Criminal Code), tax evasion (article 213), by increasing the threshold of liability from 20,000 to 50,000 manat.

4.3. The decision of the Milli Majlis of the Republic of Azerbaijan of 5 November 2021 “On declaring an amnesty on the occasion of 8 November - Victory Day” was adopted.

It was established that the Amnesty Act applied to 17,267 persons. This decision is the largest amnesty ever granted in terms of the number of persons covered. According to the Amnesty Act, all persons sentenced to correctional work and community service were discharged from punishment.

5. Steps taken and envisaged

Steps taken

The Ministry of Labour and Social Protection of Azerbaijan (the Ministry) as a leading state body responsible for the cooperation with the ILO has undertaken the following steps:

- Upon receipt of the ILO letter dated 7 February 2022, the Ministry urgently mobilized all relevant state bodies to thoroughly review the issues raised in the observation and direct request of the Committee of Experts.
- An interagency Working Group (national Task Force) comprised of respective state bodies and non-state institutions has been set up:
 1. Supreme Court.
 2. Ministry of Justice.
 3. Attorney General's Office.
 4. Ministry of Internal Affairs.
 5. Presidential Administration.
 6. Ministry of Foreign Affairs.
 7. Ministry of Labour and Social Protection of Population.
 8. Ministry of Economy.
 9. National Confederation of Employers' Organizations.
 10. Azerbaijani Trade Unions Confederation.
- The Minister of Labour and Social Protection of Population of Azerbaijan convened and chaired the first meeting of the Working Group on 23 February 2022.
- The Azerbaijani side has engaged in intensive consultations and discussions via its diplomatic mission in Geneva as well as the Ministry and Working Group in Azerbaijan.
- The Azerbaijani diplomatic mission in Geneva has held several meetings with ILO representatives in 2022, including:
 - Ms Corinne Vargha, Director of International Labour Standards Department;
 - Ms Deepa Rishikesh, Head of Unit;
 - Mr Horacio Guido, Chief of Branch; and
 - Mr Heinz Koller, Director, Regional Office for Europe and Central Asia.
- Deputy Minister of Labour and Social Protection addressed a letter to Ms Corinne Vargha, on 25 February 2022.
- The Azerbaijani side is currently working on ratification of Convention No. 155 in addition to 58 previously ratified ILO Conventions.
- The Azerbaijani side requested and received Technical Note on Article 1(a) of ILO Convention No. 105 and its application by Azerbaijan.
- The Working Group prepared a comprehensive Report in response to the 2022 report of the Committee of Experts on the Application of Conventions and Recommendations.
- The draft of this Report was discussed with the ILO Regional Office and National Coordinator. The Regional Office provided its valuable comments and recommendations on 25 April 2022.
- Deputy Minister of Labour and Social Protection held a zoom meeting with representatives of the International Labour Standards Department, ILO on 11 May 2022.

Steps envisaged:

- During the Report preparation process, the Working Group members have expressed diverging opinions and approaches on the criminal laws amendments. Hence, the ILO experts are required to be engaged for the purpose of formulating and discussing the common ground and framework on further criminal law reforms in Azerbaijan.
- The Ministry is preparing a formal request for ILO technical assistance to the ILO Moscow Office in order to engage ILO expertise and additional resources to address the matters raised in the observation and direct request.
- The technical assistance agreement and its scope will be discussed with the Working Group members in order to fully cover the extent of required resources.
- Initial assessment of the needs has identified that not only cases and penalties statistics should be presented to ILO but also the information on the acts that gave rise to the criminal prosecutions, the summary of the court deliberations and decisions delivered under these articles are to be presented to the ILO.
- Also, this assessment showed that in order to fully respond to the observation and direct request respective information is large in volume and should be translated into English. This submission requires more time and additional resources.
- Additional information collected from the Working Group members is being submitted to the ILO in addition to the response Report initially submitted in April 2022.

6. Conclusion

The fulfilment of all obligations under ILO Conventions ratified by the Republic of Azerbaijan is of particular importance. The Government will continue to make its best efforts to comply with the requirements of all ILO Conventions that it has ratified.