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**REPORT BY**  
**THE COMMISSIONER FOR HUMAN RIGHTS**  
**MR THOMAS HAMMARBERG**  
**ON HIS VISIT TO AZERBAIJAN**  
**3 - 7 September 2007**

For the attention of the Committee of Ministers  
and the Parliamentary Assembly

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## INTRODUCTION

1. The Commissioner for human rights of the Council of Europe, Mr. Thomas Hammarberg carried out an assessment visit to the Republic of Azerbaijan from 3 to 7 September 2007. The visit was part of a continuous process of regular country missions by the Commissioner to all member states of the Council of Europe to assess their effective respect for human rights<sup>1</sup>. He was accompanied by the Director of his Office, Mr. Marc Scheuer, Mr. Alexandre Guessel, Deputy to the Director and by Miss Anne-Laure Duval.
2. During the course of his visit, the Commissioner met with the President of the Republic of Azerbaijan, Mr. Ilham Aliyev, the Minister of Justice, Mr. F. Mammadov, the Deputy Prime-Minister and Chairman of the State Committee on Refugees and Internally Displaced People (hereafter IDPs), Mr. A. Hasanov, the Minister of National Security and Chairman of the State Committee of Prisoners of War and Missing Persons, Mr. E. Mahmudov, the Minister of Health, Mr. O. Shiraliyev. He also met with the Mayor of Baku, Mr. H. Abutalibov and the Mayor of Ganja, Mr. E. Aziziv. He held discussions with parliamentarians, members of the judiciary, the Ombudsperson as well as civil society representatives. The Commissioner also visited institutions and sites of human rights relevance, such as: detention centres, orphanages, a psychiatric hospital, accommodations provided for internally displaced people.
3. The Commissioner expresses his great appreciation to the Ministry of Foreign Affairs for its generous cooperation and for the organisation of his visit. He extends his gratitude to all people he met during the visit for their open and constructive attitude and exchange of views. The Commissioner appreciated the constant support of the Ombudsperson, Ms. E. Suleymanova. He thanks the many civil society representatives who came to meet him and kindly shared their expertise and valuable information on the human rights challenges they have encountered.
4. The main purpose of the visit was to take stock of the current human rights situation, identify difficulties and their root causes as well as opportunities for improving the protection and promotion of human rights in Azerbaijan. Following on from the open dialogue with all stakeholders during the Commissioner's visit, the report contains both an analysis and recommendations upon which the country can build in the future. The report should serve as a framework and a tool for future cooperation and follow-up. The Commissioner calls upon all authorities and institutions concerned to contribute their collective expertise for further progress in that spirit.
5. This report is based on information acquired during the visit as well as written statements and reports provided by authorities and civil society organisations. Relevant reports prepared by monitoring mechanisms of the Council of Europe and other international organisations are also referred to. This first assessment report of the Commissioner in relation to Azerbaijan does not provide an exhaustive analysis of human rights challenges in the country but rather reflects what the Commissioner considers to be the priorities for improving the protection of human rights at the national level. These priorities include *inter alia*: the situation of IDPs and their right to return, freedom of expression, (the defamation law), the issue of life sentences, the general conditions in prisons and minority rights.

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<sup>1</sup> See the Commissioner's mandate – Article 3 (e) of the Committee of Ministers Resolution (99) 50 on the Council of Europe Commissioner for Human Rights.

6. The report begins with a brief assessment of the national system for human rights protection in Azerbaijan, followed by chapters dealing with specific themes and concerns the Commissioner wishes to highlight.
7. No effort is made in the report to elaborate on the general political, economic and social situation of Azerbaijan today. A few key features are however useful to bear in mind at the outset: the strong comparative weight of the executive power; the new margins for public action linked to the revenue of the energy sector; the lasting impact on society of the unresolved Nagorno-Karabakh conflict; the geo-political environment of the country; the tensions, unbalances and opportunities for corruption in a fast-transforming economy.

## CHAPTER 1: NATIONAL SYSTEM FOR HUMAN RIGHTS PROTECTION

8. The European Convention on Human Rights (ECHR) was ratified by Azerbaijan in 2002. It is directly enforceable by domestic courts, before which its status is superior to the domestic law, but not to the Constitution. Azerbaijan has ratified most of the Council of Europe and other key human right treaties. The few exceptions include Protocol n°12 to the European Convention for the ECHR on the general prohibition of discrimination, the European Charter for Regional and Minority Languages, the European Convention on Anti-trafficking of 2005, and the Optional Protocol to the United-Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT). The country has neither signed nor ratified Protocol n°13 to the ECHR on the abolition of the death penalty in all circumstances.
9. In particular, the Commissioner encouraged the authorities to continue work on the future ratification of Protocol 12 to the ECHR as this would improve the enforcement of the right not to be discriminated against, which is mentioned in the Constitution but is not otherwise secured by the law. The signature of the United Nations Convention on the Rights of Persons with Disabilities should also be considered as it would represent an important step forward for the improvement of human rights of a particular vulnerable stratum of society.
10. Against this solid background of international instruments, Azerbaijan adopted a *National Action Plan on the Protection of human rights in the Republic of Azerbaijan* in December 2006. The Plan provides a comprehensive overview of the problems to be addressed as well as clarification of the bodies entrusted with the responsibility for the implementation of the measures envisaged. It represents the main thread to weave a better human rights record. The concept of such plan originates in a recommendation of the World Conference on Human Rights held in Vienna in 1993 that each state should “consider the desirability of drawing up an action plan identifying steps whereby the State would improve the promotion and protection of human rights” (Part II para.71).
11. The baseline human rights study underlying the plan appears to be a thorough review of the national human rights needs and it represents a genuine commitment to action. It is indeed action-oriented because following each measure, the body in charge of implementation is clearly defined. The Commissioner particularly welcomes the strong commitment made by the Minister of Justice towards the implementation of key aspects of the Plan that fall under his responsibility. His ministry defined the manner in which it will implement the areas under its authority. During his visit, the Commissioner repeatedly voiced his support for the putting together of the plan and called for a steady and serious implementation. Indeed, the implementation of the Plan should be one of the essential elements in the ongoing dialogue that the Commissioner intends to maintain with the authorities of Azerbaijan.
12. Another important factor in the overall strengthening of human right protection is the existence of an active Ombudsperson’s office. Its establishment, more than five years ago followed discussions between the Azerbaijani authorities and the Council of Europe. The Ombudsperson, Ms. E. Suleymanova stressed that the cooperation with authorities was improving on a regular basis and that the government seemed to accept the existence and understand the usefulness of the institution. In recent months the Ombudsperson’s Office has made proposals concerning a wide scope of areas, including pension rates, the increase of policemen’s salaries as well as the deinstitutionalisation of children. The Office is well known at this stage and has so far received over 30 000 complaints. Ms. Suleymanova accompanied the Commissioner on several institutional visits during which it was obvious that she had established constructive relationships with both the inmates and staff.

13. To further promote human rights and monitor occasional or systemic abuses, another vital component has to exist: a vibrant civil society. Several NGOs in Azerbaijan appear to comprise experts capable to generate change and raise awareness. The Commissioner noticed that despite the alleged spanners put in the works for civil society, many NGOs are seriously involved in the promotion and protection of human rights in Azerbaijan. Their representatives expressed different opinions as to the actual influence of their activity on the authorities' conduct. One opinion was that the NGO impact was greater on specific social issues than on basic rights and freedoms. A positive example, however, is the possibility for members of a civil society platform to visit penitentiary institutions at a random.
14. On 27 July 2007, the President signed a decree to promote state aid to NGOs. The main purpose is to facilitate the development of the civil society by establishing a better cooperation between NGOs and the administration. A final decision detailing the technicalities of the cooperation was reached on 13 December 2007. Indeed, the President issued a Decree on the establishment of the Council for State Support to NGOs. The Council shall comprise 11 members, all appointed by the President. 8 shall be proposed by the NGOs and 3 by the public agencies. While this constitutes an interesting development, the power vested in the President to appoint all the members renders the independence of the institution questionable. For this initiative to have constructive impact, it is important that subsidies are allocated through fair and transparent procedures and according to agreed, objective criteria. Financial aid should not be used as a way of exercising influence with regard to the line taken by each organisation.
15. The international human rights standards, the national legislation, the action plan and the existence of national human rights structures, provide tools and benchmarks to ensure respect for human rights. Full and effective implementation now is the key challenge.

## CHAPTER 2: THE RULE OF LAW

### I. The judicial system

#### A. The independence of judges and the administration of the judiciary

16. During the Commissioner's visit, meetings were held with the Minister of Justice, the Presidents of the Supreme and Constitutional courts. The Commissioner also visited a district court in Ganja and had a discussion with the President of the court. These meetings enabled the Commissioner to acquire greater knowledge with regard to the Azerbaijani judicial system, a three-tier court system made of the Supreme Court, six regional Courts of Appeal and district courts. Over the last two years, there have been a number of reforms to address crucial shortcomings of the judiciary, partly due to the Soviet legacy. Efforts have been made towards a better judicial organisation, a greater number of positions for judges, improved selection, new appointment procedures and further training. The authorities worked closely with the Council of Europe experts to ensure the independence of judges.
17. The independence and professional competence of judges are crucial to a proper application of the law. The procedure followed for their recruitment is particularly important in this regard.
18. The independence of judges is enshrined in Art. 127 of the Constitution. Judges are appointed until the time of their retirement at the age of 65 and can only be removed by a decision of the Parliament. The recruitment of judges is evaluated by a judge selection committee established by the Judicial Legal Council and comprising judges and legal experts. This Council then proposes candidates to the President for appointment. The judges of the Supreme Court and of the appellate jurisdictions are appointed by the Parliament. The Judicial Legal Council is entrusted with the organisation and the operational aspects of the court system. It is composed of members from the judiciary, lawyers, prosecutorial agents and members from the Ministry of Justice<sup>2</sup>. A self-governed public body, it can institute disciplinary procedures against judges, based on complaints by individuals or legal entities, decisions of superior judges or allegations of corruption. Only judge members are involved in the disciplinary process. The role of the Council is crucial to the independence of the judiciary. Its first task is to screen potentially ill-suited candidates for the profession and to react upon malpractices by acting judges. From the description above, it would appear that the legislative framework to secure the independence of judges is in place. Efforts must be strengthened to ensure its application.
19. Shortly before the Commissioner's visit, 55 new judges had been appointed, following a professional examination as well as training in cooperation with the Council of Europe. The selection had been based on theoretical as well as practical review. These recruitment efforts will improve the *ratio* of judges per inhabitant that however remains quite low. The Commissioner was informed during his meeting with the Minister of Justice that salaries have been multiplied by 25 since 2000. This is intended to reflect the important task that judges have and to prevent corruption and to encourage a higher better degree of fairness and impartiality.
20. Furthermore, a large-scale effort has been made by both the Ministry of Justice and the Supreme Court for the continuous education and information of judges, in particular in relation to the developing case-law of the European Court for Human

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<sup>2</sup> 15 members: the Minister of Justice, the President of the Supreme Court, a person appointed by the President, a person appointed by Parliament, a person appointed by the Minister of Justice, a lawyer appointed by the bar association, a person appointed by the Prosecutor General's Office and 8 judges from different courts.

rights (hereafter ECtHR). There are mandatory trainings for judges of the Supreme and Constitutional courts. For lower court judges the training is optional. Periodical reviews are circulated to tribunals across the country to keep judges in tune with the European case-law concerning human rights. Finally, the Commissioner was informed about plans to establish an Academy of Justice, which will provide refresher courses for members of the different professions related to the administration of Justice. The Commissioner commends the efforts made in the merit-based selection of judges and the continuous training provided and encourages a speedy establishment of the Academy.

21. The law of 6 December 2005 on the administration of justice provides for the establishment of new courts, including: five new regional appellate courts. According to the parliamentary assembly of the Council of Europe (hereafter PACE), a Joint World Bank and the Ministry of Justice project envisages the construction of 18 new court buildings repair of 4 buildings, equipping them with modern information technologies<sup>3</sup>. The President of the Supreme Court informed the Commissioner about the plans to build new premises to accommodate the needs of the Supreme Court. While these are positive measures, the budget allocated to the judiciary represents merely 0.8% of the entire national budget<sup>4</sup>. Considering the recent economic growth in Azerbaijan, there should be financial possibilities to improve the court system.
22. In spite of all these recent improvements – more judges, better selected and qualified, more aware of international human rights standards – the actual independence of the judiciary unfortunately still appears as far from being secured, in minds and deeds, as will be further discussed in the next sections on corruption and freedom of expression. Allegations of dubiously motivated criminal prosecutions and/or disproportionate sentences exist. They do not exclusively relate to the past, and in particular to any cases denounced by human rights NGOs and referred to a special Task Force in June 2005, which would not have been settled in the meantime by retrial or pardon. A number of new cases have been brought to the fore by lawyers and professional NGOs in respect of charges against journalists, political rivals or opponents and street demonstrators. They deserve a timely and thorough review, with a view to preventing any violation of the rights secured under Article 6 of the ECHR. The Commissioner intends to keep this issue high up on the agenda of his ongoing dialogue with the authorities of Azerbaijan. He did already raise with the latter the situations of a few persons he had met in prison, whose claims of being prisoners of conscience cannot be dismissed outright and whose situation deserve priority attention in view of their health condition.
23. Attention should also be given to the execution of judgments, which is a pivotal element for a proper administration of justice. A Chamber judgment of the ECtHR was just handed down on 25 October 2007 condemning Azerbaijan for the non-execution of a domestic judgment (*Efendiyeva v. Azerbaijan*). The Commissioner urges the Ministry of Justice to ensure that the execution of judgments is carried out in a timely manner.

## **B. Auxiliaries of justice and legal aid**

24. Another issue that deserves sustained action is that of access to lawyers, in particular in criminal matters. PACE stated in 2005 that Azerbaijan had the lowest number of lawyers per inhabitant in the world<sup>5</sup>, 0.6 per 10 000 inhabitants. To fully ensure the basic principle enshrined under Art. 6 of the ECHR, fair access to justice, one of the prerequisites is to have access to a lawyer. There appears to

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<sup>3</sup> PACE: Honouring of obligations and Commitments by Azerbaijan, of 30 March 2007 (Doc. 11226)

<sup>4</sup> Transparency International, Azerbaijan's yawning gap between reform on paper and in practice.

<sup>5</sup> PACE (Doc. 10569) June 2005. According to the Government, the percentage climbed to 0.96 to 10.000 in 2007, with a total number of 780 lawyers.

be a pressing need not only to expand the quantity of lawyers but also enhance the quality of the practitioners.

25. The situation is of particular concern in criminal matters, where the law limits representation to members of a Collegium of Advocates that operates under cooptation rules of selection. The selection process is described by civil society as partial and does not reflect the professionalism of the advocates. The majority of jurists in Azerbaijan do not belong to the Collegium, and the preference for economically more rewarding activities does not appear to be the only explanation. A presidential decree of January 2006 pledged to increase the number of lawyers and to organise bar exams at the regional level, where the situation is even more dire. Few young jurists presented themselves to the examination and the increase in the number of lawyers after the exam did not suffice to fulfil the national needs. The Administrative Code in Art. 199.1 punishes those who not possess the lawyer's status and are not members of the Collegium for illegal use of their title thus dissuading advocates to defend those most in need. The Collegium follows the obligation of providing legal aid but the Commissioner was told with some insistence that it was systematically selecting the same lawyers to defend people, who cannot in effect choose their own lawyer. The salary for these advocates remains very low creating an inequality between the members of the Collegium. The authorities challenge that claim, which may warrant further scrutiny.
26. Whatever the case may be, the offer remains inadequate. The system has severe consequences for persons in need of a defence, who sometimes are as a result denied access to a lawyer. It is the state's responsibility to ensure that legal aid is systematically provided to those, who cannot provide for themselves. It was reported by the European Commission on the Efficiency of Justice (CEPEJ), that merely 28 500 euros had been allocated to legal aid in 2004. Such an allocation of funds is clearly insufficient and a substantial increase should be decided on as a matter of priority. The state should encourage young law postgraduates to take the bar examination. The Commissioner recommends a selection similar to the one followed for judges. There should be an examination administered by the state and supervised by professionals. The examination should be anonymous to ensure fairness and the selection of qualified lawyers.

### **C. The Prosecutor General's Office**

27. Like many other countries, Azerbaijan inherited the legacy of the Soviet *prokuratura*. One cannot analyse the institution of the Prosecutor General without replacing it in its original historical context, with a tradition of unchecked powers and of performance too often measured against the obtaining of confessions. The Constitution of Azerbaijan defines the role of the Prosecutor General's Office. According to Art. 133, the main function of the Prosecutor's Office is to "exercise control over the execution and application of laws". Though reduced in recent years through constitutional revision and specific laws, this supervisory function still bears some of the marks of the general oversight function enjoyed by the Prosecutor General in Soviet times. The Commissioner calls upon Azerbaijani authorities to further reform the mandate of the Prosecutor General's Office. The task of prosecutors should be limited to the prosecution of criminal offences and the representation of the public and State interest.
28. Moreover, the Prosecutor's Office combines contradicting functions of pre-trial investigation and criminal prosecution on behalf of the State. The combination of these functions renders the Public Prosecutor's Office extremely powerful and sometimes even threatening. The Commissioner thus recommends a structural separation of functions, going beyond the personal separation of Art. 84.4 of the CPC, in order to avoid conflict of interests and ensure the principle of equality of arms. The Commissioner deems that the functions of the Prosecutor General's

Office still require considerable attention in order to respond adequately to the needs of the Azerbaijani justice.

## II. The problems linked to corruption

29. There is a general perception in Azerbaijan that corruption infiltrates most strata of society. This perception is confirmed by studies carried out by leading international organisations and specialised mechanisms, including the OECD (Organisation for Economic Cooperation and Development) and the GRECO (Group of States against Corruption of the Council of Europe). Collecting precise data regarding corruption practices is a difficult exercise. In the GRECO 2006 Evaluation Report, it is stated that Azerbaijan ranked in the Transparency International Index 2005 on corruption perceptions as 137 out of 159 countries and with a score of 2.2 out of 10. These represent alarming figures. The Anti-Corruption Network for Eastern Europe and Central Asia of the OECD in its 2006 report concluded that Azerbaijan is merely partially compliant with the recommendations concerning transparency of civil society and anti-corruption policies<sup>6</sup>. These official sources of information were corroborated by a large number of testimonies related to the Commissioner during his visit. They touched upon a great variety of dealings between citizen and authorities.
30. The judiciary appears to be particularly exposed to and affected by corruption. Despite the efforts to reform the judiciary described in the previous section, much of the administration of justice seems to be influenced by pecuniary interests. As in many countries in fast transition from the former Soviet system, problems of corruption and dependence on the executive mar the Azerbaijani justice. The Commissioner deems that the corruption of the judiciary is highly problematic and constitutes a danger for society at large.
31. The authorities generally recognise the existence, if not always the scope of the problem. A number of measures were adopted to combat corruption. Initiatives such as the adoption of a law on combating corruption on 13 January 2004, the adoption of a presidential decree on 3 September 2004 setting up a state programme on combating corruption or the ratification of the Council of Europe Criminal and Civil law Conventions on Corruption must be commended. A special department with the Prosecutor General's Office is in charge of combating corruption. A special inspectorate for the penitentiary service is entrusted with the investigation of corruption crimes. On 28 July 2007 a presidential decree was adopted on transparency and the development of strategies for anti-corruption. These documents contain dissuasive sanctions and stronger prosecutorial measures. However, the effect of these measures is still unclear. The Minister of Justice assured the Commissioner that every case is investigated in great detail and that more than 200 people working in the administration of justice and the penitentiary have been found guilty and punished. The latest GRECO report mentions that between May 2005 and December 2007, the Department on Combating Corruption under the Prosecutor's office sent 82 criminal cases out of 172 accused of corruption to courts (of them 12 cases of 35 persons were prosecuted in 2005, 39 cases of 79 persons in 2006, and 31 cases of 58 persons in 2007). Currently, the department is dealing with 33 more investigations into corruption. According to the minister, a major obstacle to the full eradication of corruption is the lack of inter-agency cooperation. The Commissioner thus encourages the authorities to foster such cooperation and strengthen the possible auditing mechanisms to detect corruption "upstream" to prevent its occurrence.
32. Whilst welcoming these indications of a more resolute public action against corruption and economic crime, the Commissioner would like to guard against the risk of partisan politics in the bringing of charges, the timing of charges or the

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<sup>6</sup> 5<sup>th</sup> Monitoring Meeting of Istanbul Anti-Corruption Action Plan on 13 June 2006 at OECD Headquarters in Paris.  
[www.anticorruptionnet.org](http://www.anticorruptionnet.org)

severity of sentences. Investigation into corruption must be balanced and carefully avoid the traps of arbitrariness.

### **III. Law enforcement agencies**

#### **A. Law enforcement agencies and conditions of detention**

33. Law enforcement agents fall essentially under two ministries: the Ministry of Internal Affairs and the Ministry for National Security. The agents working under the former are in charge of public security and prevention and exposure of criminal offences. Agents subordinated to the latter are essentially in charge of crimes against the state, participation in illegal armed groups, serious organised and economic crimes and violations of the border regulations. Prison staff under the authority of the Ministry of Justice are dealt with in a separate section on the penitentiary system below.
34. The Commissioner was pleased to note that the Ministry of Internal Affairs had made efforts to improve the training of its agents. Laws on the police and a code of ethics were adopted and distributed under the form of a brochure to police officers. A system of internal investigations was set up in cases of complaints against the police. A 24 hour per day hotline was set up so that individuals can lodge complaints against the police by telephone without having to physically go to police premises. The Deputy Minister for Internal Affairs explained that the main difficulty lied in the need to change attitudes that date back to previous times, where the police did not include human rights considerations into their work. The investigations based on the complaints against the police in 2005-2007 have revealed the breaches of law by 634 staff members. 202 of them were fired, 96 were demoted in rank or position, and others received various kinds of disciplinary sanctions, while 33 criminal cases were opened. In an attempt to reduce these alarming figures, over 1000 staff members have been sent abroad for training and workshops. A new recruitment examination was introduced, that is prepared jointly by the Ministry and human rights defenders. Furthermore, the curriculum at the Police Academy now contains a human rights dimension. Salaries are yearly on the increase since 2004 and complaints about cases of corruption on the decrease. Finally, the Deputy Minister for Internal Affairs informed the Commissioner of the close cooperation with the Ombudsperson, who can visit the detention centres at any time without prior notice or permission.

#### **B. The Procedural Rules in case of arrest, the guaranties under the common law**

35. The Criminal Procedure Code provides the procedure to be followed by the police upon arrest. Within the first 24 hours of detention in a police station a decree on the instigation of a criminal case must be transmitted to the Prosecutor. Within the following 24 hours, an investigator must decide whether criminal charges should be brought against the person arrested. After 48 hours, any individual against whom charges have been brought should appear before a judge to either be remanded in custody or released. A person who has been remanded has to be sent from the police station to a pre-trial detention centre, pre-trial detention centres for the investigative period within 24 hours of the judge's decision. The procedural provisions of the procedural code are reasonable.
36. According to a significant amount of testimonies, the limits are often not respected, meaning that the planned maximum 72 hours in custody are regularly exceeded. A reason given frequently for the delays is the problem of transportation from the police station to a pre-trial detention centres, which constitutes a safer place. In some cases, it was suggested that people felt compelled to bribe officials in order to be transferred to a pre-trial detention centres without delay. The Commissioner strongly urges the authorities to allocate the proper funds for transportation to ensure that time limits are respected.

37. A major concern is the impossibility for the detained to warn relatives of their arrest and the lack of access to a lawyer at the time of their arrest. Art. 90 of the Criminal Procedure Code guarantees the right to notify one's relatives at the outset of the arrest. It was however reported to the Commissioner that the possibility to contact family members is often not given at the initial time of arrest as requested by the law. Furthermore, as mentioned above, there is a serious need to address the problem of the shortage of lawyers. The failure to access a lawyer before trial is not necessarily linked to a deliberate violation by officials of procedural rules but can simply be due to the fact that there are not enough lawyers for the criminal population. This is especially true in remote areas. The Commissioner recommends the authorities to take speedy steps to ensure that all persons detained have immediate access to lawyer.
38. Allegations of torture during the investigative period persist. Although the authorities assured the Commissioner of the proper punishment of perpetrators of torture, it is reported by civil society organisations that impunity still remains in certain cases. They allege that too often perpetrators of torture are merely reprimanded or dealt with administratively. The Commissioner recommends the strengthening of efforts in training members of the police force and of investigators in order to avoid the occurrence of torture. While taking note of one instance of prosecution of members of the Mingachevir police who had tortured a man who died as a result, the Commissioner calls for systematic prosecution of all perpetrators of torture.
39. Last but not least, the Commissioner's attention was drawn to what seems to be a practice of arbitrary arrests, which would for instance target members of opposition rallies during electoral periods or members of the LGBT community at any given time. The Deputy Minister of Interior expressed his intention to take measures to address this situation. He however stressed that for these kinds of practices to come to an end, changes in attitude need to be brought about. The Commissioner recommends that special measures be taken to raise awareness in society as well as in the police about the LGBT community. Awareness raising is a means to do away with unfounded prejudice.

### **C. The interrogation centres for organised crime and irregular migrants**

40. The Commissioner visited the interrogation facilities of the General Department for Combating Organised Crime of the Ministry of Internal Affairs, where the material conditions of detention appeared to be satisfactory and could serve as a reference for other detention centres. At the time of the visit, there were 11 people in the Isolator, the capacity being of 30. Although the Commissioner was told that a lawyer is provided within two hours of the transfer, he was informed by those in custody that the submission of a list of lawyers and the presence of the lawyer often do not take place. The Commissioner urges the authorities to systematically provide a lawyer. In addition, he was informed that the interrogations are taped, though only on a random basis. The systematic taping is necessary to ensure that irregularities do not take place during interrogations and also provides those under investigation with proof if they have any allegations against the investigators.
41. The Commissioner also visited a detention centre for irregular migrants awaiting a decision on their possible *refoulement*. He was informed that the length of detention does not exceed two to three months, the time necessary for the authorities to gather information concerning the cases and the status of the migrants. The Commissioner concluded that the conditions of the facility were of satisfactory quality.

### **IV. The penitentiary system (including pre-trial detention centres and colonies)**

42. The Ministry of Justice appeared committed to the improvement of the training of staff working in prisons and the Commissioner was informed that staff members under the Ministry's authority benefit from comparatively good salaries, which should be an incentive to carry out their task with more diligence and attention to the prisoners.
43. It is worth noting that the penitentiary system is under the control of the Ministry of Justice. Azerbaijan was one of the first post-Soviet states to transfer the control of the penitentiary system from the Ministry of Internal Affairs to the Ministry of Justice. The Code of Execution of Sentences was adopted on 14 July 2000 to regulate conditions of detentions and consequently medical care has considerably improved. The Commissioner also wishes to underline the transparency shown during his visits to the different institutions and the cooperation manifested to the International Committee of the Red Cross and to the Committee for the Prevention of Torture of the Council of Europe (hereafter CPT). All requests made on the spot by the Commissioner to visit specific persons and places were immediately met.

#### **A. General Conditions**

##### *Pre-trial detention centres*

44. It is generally acknowledged that, in recent years, significant improvements have been brought in the general conditions of pre-trial detention centres. The pre-trial detention centres visited by the Commissioner both in Ganja and Baku were in a reasonably good state of maintenance and repair. The Commissioner was impressed by the level of sophistication of the medical checks in the pre-trial detention centre in Ganja, which included a system of initial detection of infectious diseases, including tuberculosis and a regular psychological follow-up of every person within the institution. Health questions in detention seem to be dealt with and taken seriously. A special department in the ministry of Health deals with the health of detained people and the Minister of Health affirmed that there was a positive cooperation between the two ministries. In addition, the Commissioner did not see any overcrowding of cells and there were no complaints voiced by those detained. In Ganja, detention centre n°2 has a capacity of 700 but only held 354 people at the time of the Commissioner's visit. This is a positive development following the recommendation of the CPT in the 2004, that had recommended the decrease in the number of people detained in this facility. Minors are kept separately and can exercise two hours a day as opposed to one for adults. Finally, another recent improvement is a 2.5 increase in the salaries of staff members.
45. The main problem in detention centres is the general isolation approach to detention. Any visit must be sanctioned by the Prosecutor. This may constitute a tool to exert pressure and extract confessions from people under investigation. Isolation from the outside world should be used as a last resort. The need to prohibit contacts only applies in complex cases, where evidence could be destroyed. It is not necessary in cases of petty offences. In addition, the population in pre-trial detention centres is not provided with activities to keep them occupied. They merely have access to a library. Considering that the population in detention centres is most often young in Azerbaijan, the Commissioner strongly recommends the possibility of educational and purposeful activities.
46. Despite improvements in the penitentiary infrastructure for long-term sentences in the past few years, problems concerning general conditions remain. The facilities accommodating the prisoners are very old. They lack proper ventilation and satisfactory sanitary conditions, which facilitates the spread of infectious diseases. There is also a slight problem of overcrowding, which hopefully will be remedied with planned constructions of new facilities. This was confirmed by the

visit of the Commissioner to *Gobustan*, a high security prison, where the capacity is 650 inmates, but currently holding 667 incarcerated. The majority of international monitoring bodies underline the limited possibilities of having visits from the inmates' families in the high-security prisons. In addition, disciplinary confinement seems to be a method resorted to on a regular basis.

## **B. Long term confinement: a greater risk of inhumane treatment**

### *Gobustan*

47. When preparing his visit to Azerbaijan, the Commissioner was informed about the difficult situation faced by prisoners in *Gobustan* (the high security prison for long term sentences) and he decided to have a closer look at their conditions of detention.
48. Long sentences are justified in some cases by the need to assure public safety, which is indeed a compelling concern. While in custody, the prisoners must however enjoy humane treatment. The Committee for the Prevention of Torture (CPT), in its general standards, particularly emphasises the fact that long-term sentences call for special attention to the well-being of prisoners: deprivation of liberty entails a duty of care. Due to the length of the sentences, inmates risk an impairment of their social skills and psychological imbalances.
49. Individuals who have been sentenced for serious crimes are often incarcerated separately from others. One reason is lies that they are considered to be more dangerous than other criminals. Human rights experts generally have a different view and promote non-segregation and the idea of progression or redemption while in custody. The Commissioner advises Azerbaijani authorities to avoid segregation and isolation of certain categories of prisoners. Indeed, punitive justice's main goal is to try to reintegrate a criminal into society after having purged his sentence. The authorities should carefully review the existing regime against the backdrop of Recommendation (2003) 23 of the Committee of Ministers on "the management by prison administration of life sentence and other long-term prisoners", which sets out a number of important guiding principles: individualisation, normalisation, responsibility, security and safety, non-segregation. It should be noted here that, according to Art. 82 of the Azerbaijani Criminal Code, after ten years of confinement, a prisoner can apply for a change in the "régime" of the sentence, e.g. he or she can ask to be transferred to another prison. This article as well as Art. 70 of the Code of Execution of Sentences provide for the issuance of pardons.
50. The possibility of receiving visits deserves particular attention. In *Gobustan*, prisoners are only allowed short-term visits four times a year and a long-term visit, once a year. The CPT had already recommended an increase in the number of visits in the 2004 report. The Commissioner was told that all the prisoners have visitors but due to the remoteness of the facility, the authorities should provide a mode of transport to ensure that the families are able to pay their periodic visits. These visits represent the only social contact with the outside world. The number of visits can increase upon good behaviour but the visits are still quite infrequent.
51. One of the problems with long-term incapacitation is that a person becomes "institutionalised". He or she may lose the capacity to manage time and responsibilities. Organised activities, which could liberate the prisoners from this monotonous cycle such as, purposeful work or education are not provided, leaving the inmates with very little to do. In addition, they are only able to exercise one hour per day. Due to the length of the sentences, the Commissioner calls upon the Ministry of Justice to ensure that each prison organises activities. Not only is an occupation important for the self-worth and dignity of a prisoner, but it also has rehabilitation benefits. Activity can help prepare an individual to reintegrate society upon release. Lack of activity hampers constructive

relationships between inmates. This was already requested in the CPT 2004 report in para. 102.

52. In *Gobustan*, there are doctors and one part-time psychiatrist for each ward but the governor expressed a need for more doctors. Despite the improvement of medical treatment, some lacunas remain. The Commissioner recommends the institution of regular psychological follow-ups of the prisoners. Counselling is a means to improve rehabilitation and to improve the psychological well-being of prisoners. Some kind of psychological support should also be provided for staff-members.

#### *Colonies and the Penitentiary Hospital*

53. A member of the Commissioner's delegation visited colonies n°1, n°3 and n°9 and the central penitentiary hospital where he met with some prisoners. During these visits, it was reported that the most alarming situation seemed to be in Colony n°14, where prisoners indicated that they seem treated with neither respect nor dignity. They told about violent abuses from the staff in charge of them. The Commissioner raised this issue with the Minister of Justice and expects him to deal with this problem as a matter of urgency. This situation emphasises the need to carry out systematic training of prison staff in order to avoid these types of occurrences. NGOs also informed the Commissioner of the fact that the heating is operational in Colony n°12 whereas it is lacking in the adjoining Colony n°13. Heating should be provided in all detention facilities.
54. In the Colony n°3, specialised for inmates infected with tuberculosis, the member of the Commissioners' delegation appreciated the quality of the equipment and the efforts clearly accomplished to ensure better treatment for the inmates. The main complaint emanating from the staff in charge was the failure of the authorities to provide doctors to carry out regular psychological follow-up of the inmates. Such a measure is essential for prisoners, who are punished by their very imprisonment but have the added psychological burden of knowing that they are suffering from a severe disease. Some prisoners complained about the lack of motivation of the decisions to place them in this special colony and feared that they would depart it having contracted tuberculosis. Thorough investigations into these allegations need to be carried out.
55. In the central penitentiary hospital, the member of the Commissioner's office noted that there seemed to be a true willingness to improve the quality of the treatments. At the same time, he observed precarious sanitary conditions. The staff in charge voiced its complaints about the inadequate funding allocated to the institution. The authorities should pay particular attention to the lack of resources this institution is faced with and should ensure that the proper funds are allocated to it.

#### **C. The question of life sentences**

56. At the time of the Commissioner's visit to *Gobustan*, there were 220 "lifers" incarcerated out of which 84, had initially been sentenced to death but are now "lifers" as a result of the commutation. After the abolition of the death penalty in 1998, the death sentences were automatically commuted to life imprisonment. The others had been sentenced under one or another provision of the criminal code, which contains an unusually long list of offences punishable with life imprisonment, some of them being very vague (Terrorism, under Art. 214; State Betrayal, under Art. 274), and therefore hardly compatible with the general principle of legality, which requires not only that the offence should be prescribed by law but also that the law should be sufficiently predictable (Art. 7 ECHR). A segment of the prison population sentenced to life imprisonment has been on hunger strikes. The tension caused by bitterness and frustration among those prisoners was obvious during the visit by the Commissioner. They were becoming

increasingly aware of the fact that, as the law stood, they could not seek any form of conditional release in the first 25 years. Many seemed to have expected a release after 15 years in consideration of the fact that, until 1998, the year of abolition of the death penalty, the maximum amount of time one could face in jail was fifteen years. Relatives of the prisoners who contacted the Commissioner were also desperate. Furthermore, the pressure on penitentiary staff was obvious, as they had to deal with inmates who had no incentive to demonstrate good behaviour and were repeatedly going on protests and hunger strikes.

57. As a matter of principle, the Commissioner firmly believes that sentencing to a non-reducible life imprisonment is wrong. There should at least be a review within a reasonable time, with possibilities for either release or conditional release entailing post-release conditions, control measures and assistance carefully adapted to the prisoners' needs and risks. It is unfair and cruel to take away any hope from an individual. There should be an individual risk assessment of each inmate<sup>7</sup>. Trained staff should carry out at regular intervals a 360° appraisal of each prisoner as recommended by the Council of Europe Committee of Ministers. The risk assessment is not an exact science and can therefore leave room for error. Thus it should be supplemented by other forms of assessment. It is also crucial that the minimum period of sentence or the minimum period before any review should not be so long that the purpose of any conditional release could no more be achieved<sup>8</sup>.
58. Life imprisonment without the fair and serious possibility of release does raise human rights concerns. Especially in combination with "maximum security" conditions, they could amount to *inhuman or degrading* treatment and thereby violate Art. 3 of the ECHR.
59. Under Art. 57 of the Azerbaijani Criminal Code, courts may review the term of a "lifer" who has already served 25 years and commute to a maximum of fifteen years, provided the prisoner has not committed any deliberate crimes during those 25 years. That provision has apparently not yet been applied in any single case because it was only enacted 10 years ago and no lifer has been detained for more than 15 years since Azerbaijan's independence. Art. 82.3 of the Code provides that a life sentence can be commuted by pardon to a maximum of twenty five years imprisonment. The Regulations of Pardoning imply that a prisoner can apply for pardon after having served 10 years.
60. Some reviewing mechanism is thus in place but the Commissioner strongly believes that it should be re-visited when it comes to the number of years before which a review can be requested. Due regard should also be given to the additional grounds for a re-consideration of the law resulting from the unquestioned fact that the Judiciary is still engaged in a slow and difficult process of building professionalism and independence, a situation that should encourage rather earlier than later opportunities for reviews of the ongoing *raison d'être* of detentions, prescribed under Art 5§1 a) and 5§4 of the ECHR<sup>9</sup>.
61. Pending a change in the legislation, Azerbaijan must strengthen efforts to improve the living conditions of lifers. By no means, should a life sentence become a slow, painful death. The prisoners should be given possibilities to participate in purposeful activities and education. They should not be more isolated from the outside world than necessary. Prison represents a punishment in itself, there is no need for further suffering to be imposed.

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<sup>7</sup> Following the Recommendation of the Committee of Ministers of the Council of Europe 2003(23) of 9 October 2003

<sup>8</sup> Guidance on these issues can be found in Recommendation (2003) 22 of the Committee of Ministers of the Council of Europe of 24 September 2003 on conditional release.

<sup>9</sup> Guidance on the question of continued lawfulness of the detention can be found in the Judgements of the EctHR on *Stafford v United Kingdom* of 28 May 2002 and *Leger v France* of 11 April 2006

## CHAPTER 3: FUNDAMENTAL FREEDOMS

62. The Commissioner deliberately chose not to address freedom of election as it has been widely discussed in international reports, especially by the Council of Europe and its Venice Commission. He feels that sufficient analysis and recommendations have been provided in this area to guide all concerned through the preparation of the next presidential and other elections in the future.

### I. Freedom of Expression

63. Freedom of expression is a key component and a test of any sound democratic society. It is a problematic area in Azerbaijan, where instances of violence against journalists, closures of newspapers, lack of diversity in the electronic media and imprisonments of journalists on account of their writings had been widely reported before the Commissioner's visit. The general issue of freedom of expression was raised in many meetings at all levels, including with the President. A lot remains to be achieved in that respect, as will be discussed below, but the bottom line is that nobody should be deprived of his or her liberty on account of opinions expressed. Urgent action is needed here.

#### A. Access to information: a structural problem

64. Freedom of information is a pivotal element of the broader freedom of expression. It is often described as freedom of communication because it implies a relationship between the one, who delivers the message and the one, who receives it. It is a freedom to seek, receive and impart information.
65. Open access to information detained by public authorities is a first important element. Whilst a Law on the Right to Obtain Information has been in force for more than a year, its implementation was described by civil society interlocutors as being far from satisfactory. The head of the body entrusted with the handling of complaints against a refusal to grant access to public data was not appointed yet. Only about 20 percent of the requests made pursuant to the law had been responded to, half of those responses being negative. Ensuring a better implementation of the law is an urgent task and a condition for transparency and trust by the population in their authorities.
66. Electronic media are naturally the key providers of information and opinion to the citizen. There are 7 national and about 14 regional TV channels as well as 10 radio channels. Five of the TV channels are private, and only one TV channel is generally considered as independent, which raises the issue of access to frequencies and licenses. In Azerbaijan, there is a National Television and Radio Council (hereafter NTRC), in charge of allocating frequencies. Though the institution is meant to be independent, it is not perceived as such. The NTRC is often portrayed as impeding rather than favouring the development of a free media market, failing to rely on objective criteria for the choice among bidders and for delaying processes of genuine competition by means of all sort of administrative hindrances. The long procedure about the granting of license to the ANS channel, months ago, was a sad example. Another obstacle stems from the law, which requires that founders of television and radio broadcasters be citizens of Azerbaijan. As a result, foreign radio outlets were exceptionally issued with licenses, and then only for a short duration. In talks with the Commissioner, the chair of the Council dismissed many of the complaints and insisted that the main problems were the lack of good media professionals and the little respect paid by some bidders towards procedures. Nevertheless, the Commissioner strongly feels that major improvements are needed here in order to strengthen both the legal guarantee of independence, a state of mind of actual independence, and a better representation of society at large.

67. The Commissioner also wants to recall the recommendation of the Committee of Ministers of the Council of Europe concerning regulatory bodies<sup>10</sup>. In essence, the general legislative framework should clearly define the appointment of the members. It should ensure a democratic and transparent appointment. The members should not receive mandate or instructions from anyone. Their dismissal should only occur in exceptional circumstance clearly defined by the law. The granting of licences should be decided in line with specific criteria. Finally, the monitoring of programmes should take place *a posteriori*. Proportionate sanctions taken against media outlets should be used as a last measure after the issue of a warning.
68. Reference should also be made here to the Press Council, a public institution established in 2003 as a self-regulatory body for the Press. The chair of the Council described the membership as composed of an equal number of civil society and media representatives, the latter representing a balanced sample of media rather close to the majority or the opposition and a few independent media. The Council handles complaints against journalists. The sanctions imposed by its complaints commission are published in the media. A possibility of appeals to the courts exists. Since its creation, there have been 500 complaints lodged, out of which 80 were admissible and 50% of the 80 were found to be accurate and justified. The Press Council also promoted the adoption by the Congress of Azerbaijani journalists of an ethical code for journalists on 15 March 2003. According to the chairman, it is used as a benchmark in cases of complaints. The general independence and relevance of the Council were questioned by a number of interlocutors of the Commissioner, who did not get the impression that in the current difficult situation of the freedom of the media, the Council could contribute significantly to the promotion of an independent and professional press.

#### **B. A matter of urgency: the decriminalisation of defamation**

69. At the time of the Commissioner's visit, it was reported that there were seven journalists in prison, out of whom four were for libel or defamation under Articles 147 and 148 of the Criminal Code. Both international monitoring bodies and local NGOs claimed that charging individuals for defamation was used as a means to avoid the dissemination of news that could be detrimental to high-ranking officials or to other influential people. According to the parliamentary assembly of the Council of Europe rapporteurs, the number of charges has grown in the last few years. Out of fear of imprisonment journalists are compelled to resort to self-censorship. In 2005, the President, Mr. Ilham Alyiev had called for abandoning the use of criminal provisions in matters of defamation, but this was not respected. Some cases, which the Commissioner was informed about point to abusive or unfair imprisonment of journalists.
70. A striking example of this abusive practice is the case of Mr. Faramaz Allahverdiyev who was detained in the penitentiary hospital at the time of the Commissioner's visit. He was met by one member of the Commissioner's delegation and was in a poor state of health. The Commissioner pleaded for his early release. It was with satisfaction that the Commissioner noted his release along with five other prisoners on 29 December 2007 thanks to a presidential pardon. The Commissioner however regrets the partial and limited scope of the pardon. Indeed, many journalists remain incarcerated. Mr. Eynulla Fatullayev, who was held at the pre-trial detention centres on the premises of the Ministry for National Security is still incarcerated. This journalist had criticised the authorities' and armed forces' conduct during the siege of Khojaly. His critical analysis of the handling of the crisis cost him a two and half year sentence for libel. Furthermore, in a concerning stacking of incriminations, he was sentenced on 30 October 2007 to an additional eight and a half years, this time on charges of terrorism and

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<sup>10</sup> Recommendation (2000) 23, The independence and functions of regulatory authorities for the broadcasting sector.

incitement to racial hatred. When this journalist met the Commissioner, he said that the fact that he had been jailed was evidence of political pressure on him as a journalist. After the decision on this second sentence, he reiterated this comment. The Commissioner mentioned his imprisonment for libel to the authorities and called for his immediate release. The Commissioner once again urges the authorities to release Mr. Eynulla Fatullayev.

71. The authorities' response to questions regarding this issue is that actions against journalists are caused by their lack of professionalism, which leads them to writing in a non-responsible manner and ignoring their legal and ethical duties. There should indeed be proper training and education of journalists, who have a responsibility in the exercise of their profession and should follow a code of ethics in line with European standards. At the same time, officials should allow easy access to information and accept criticism inherent to their position of accountability in society.
72. Nevertheless, the fundamental issue here is whether people, in particular but not only journalists, should be deprived of liberty and other criminal law consequences on account of views expressed. The supplementary issue, as already dealt with, is whether, where it still exists as an offence under criminal law, as it is the case in Azerbaijan, the prosecution of defamation does not in fact lead to instances of abusive prosecution and/or excessive sentences. There is clearly a general trend to move towards a decriminalisation of defamation in Europe today. International standards allow the penalisation of defamation through criminal law but only in cases of hate speech directly intended at inciting violence. To corroborate the requirement of intention, there has to be a direct link between the intention and the likeliness of the violence. The ECtHR has clearly ruled that imprisonment should only occur "in exceptional circumstances, notably where other fundamental rights have been seriously impaired"<sup>11</sup>. The criminal route for defamation is only tolerated if particular attention is given to the proportionality test. The ECtHR recently handed down a judgement, in which it affirms that in most cases the means available under civil law should suffice to settle matters of defamation<sup>12</sup>. The PACE just published a report<sup>13</sup> clearly in favour of decriminalisation. In most countries, the criminal route is not used: there is a moratorium on such laws. The criminalisation of defamation has a chilling effect on freedom of expression. The legal framework in Azerbaijan provides for a wide range of possibilities for criminalisation, notably for "damage to honour and reputation". Work on a draft law on defamation has been going on for more than a year, involving a working group of parliamentarians and media experts, with the support of the OSCE. Emphasis would be shifted from criminal law to civil law.
73. The Commissioner was encouraged by talks he had on this issue with the Minister of Justice. He recommends the launching of an open public debate that would help define a rights-based approach, that would remove defamation from the criminal books and offer alternative protection to other rights and interests. Council of Europe experts could provide assistance in that respect. In order to support the holding of that debate, the President could reiterate his 2005 declaration on a moratorium on the use of the criminal provision. The Commissioner recommends, as a first step, the release of all those, who have been criminally prosecuted under the relevant provisions of the criminal code.

<sup>11</sup> *Cumpana and Mazare v. Romania*, 2004 para. 115

<sup>12</sup> *Kanellopoulo v. Greece*, Chamber judgment 11 October 2007

<sup>13</sup> PACE Doc. 11305, 25 June 2007 [Towards Decriminalisation of Defamation](#)

## II. Freedom of association and Peaceful Assembly

### A. Freedom of association

74. Under the 2003 Law on State Registration and State Register of Legal Entities, any organisation must register under the Ministry of Justice in order to be set up as a legal entity. In cases of denial, the authorities contend that there are procedural shortcomings. The authorities should answer within thirty days of the application but the procedure is most often delayed. The ECtHR recently handed down a judgement condemning Azerbaijan, which ruled that delaying registration outside the time prescribed by law constitutes a *de facto* refusal to register the association. These kind of significant delays interfere with the right to freely associate<sup>14</sup>. This was confirmed in a ECtHR judgment on 17 January 2008<sup>15</sup>. The Commissioner urges the Ministry of Justice to deliver its replies in the time prescribed by law.
75. The NGO community informed the Commissioner that international pressure speeds up the process of registration. According to them, without international pressure or without onerous registration, NGOs are crippled by the complex bureaucratic procedure, which requires a significant amount of documents. Without legal personality an NGO cannot properly function and cannot fulfil its objectives. Facilitating NGO registration is an essential part of promoting the democratisation process. Whilst noting that the number of registered NGOs has significantly increased in recent years, the Commissioner joins the OSCE's recommendations dating back to 2004 to simplify the procedure, by making the provision of documents less cumbersome.

### B. Freedom of peaceful assembly

76. Although freedom of assembly is protected under a 1998 law, the legislation has been criticised by the PACE<sup>16</sup>. The criticism is based on the fact that the discretionary powers left to the authorities are excessive. The Venice Commission concurred with the PACE and provided assistance with the draft of amendments to the law. On 14-15 December 2007, the Venice Commission commended the efforts made to amend the law on freedom of assembly. The amendments are deemed to be in line with European standards and constitute a significant improvement. The Commissioner strongly urges the adoption of these amendments. In addition, the Commissioner wishes to remind the Azerbaijani authorities that Art. 11 of the ECHR narrowly defines the circumstances in which freedom of assembly can be limited.
77. The Commissioner heard and read many complaints from the NGO community. Authorities often do not allow the organisation of rallies of opposition groups in fairly central and easily accessible parts of the capital or of large agglomerations. The Commissioner discussed this issue with the mayor of Baku. Allowing rallies in principle but denying access to central venues undermines the very right to peacefully assembly. Only serious reasons of public safety should be accepted as criteria for denying permissions to demonstrate. There were also allegations that authorities enable pro-government factions to assemble with no restrictions in fairly central venues. The authorities should consider each application fairly without taking into account the political colour of the applicant.
78. The Commissioner stresses that there should be no discrimination in the enjoyment of rights and freedoms secured under the ECHR. The NGO community complained about the difficulty for the LGBT community to have

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<sup>14</sup> Nasibova v. Azerbaijan 18 October 2007

<sup>15</sup> Ismayilov v. Azerbaijan 17 January 2008

<sup>16</sup> PACE resolution 1505 of June 2006

places for meeting. They described meeting places known of the police, where law enforcement agents had come and randomly arrested and beat up people. The Commissioner wishes to stress that such practices are clearly unacceptable and urges the authorities to ensure that prejudice does not influence their better judgment when carrying out their duties.

### **III. Freedom of conscience and religion**

79. Whilst there is a state registration procedure for religious communities, freedom of religion appears well secured in Azerbaijan. Religious diversity is respected and promoted. Inter-religious marriages, joint initiatives and rites among different religions testify to a well-established climate of tolerance. There are occasional difficulties, in particular concerning Baptist pastors, but they remain isolated instances in a generally positive situation. During his visit, the Commissioner met with the head of the State Committee on Work with Religious Associations (hereafter SCWRA) and with the heads of the three traditional religious groups (Muslim, Jewish and Orthodox).

#### **A. The legislative framework**

80. The Constitution<sup>17</sup> protects freedom of conscience and religion. According to the law, any group of ten people who wants to establish itself as a religious community must follow a seven step registration procedure in order to become a legal entity. Once registered, the group can rent property or hold a bank account, in other words, it is then operational. The head of the SCWRA informed the Commissioner that the procedure is not cumbersome and that 48 new groups had been registered between June 2006 and June 2007. For Muslim groups, which represent 96% of religious affiliation in Azerbaijan a letter of approval from the Caucasian Muslim Board (CMB) is necessary prior to registration. The law formally prohibits religious proselytising by foreigners. This prohibition is firmly enforced by the government. In addition, the dissemination of religious literature requires prior approval of the SCWRA. Through the rules mentioned above there is a leeway for the government to curb religious freedom. There is definitely a fear of the arising of religious extremism with a political agenda. While this concern is understandable and legitimate, it should not hinder a fair and thorough consideration of each group applying to register at the SCWRA.

#### **B. Conscientious objection to military service**

81. One of the commitments of Azerbaijan upon accession to the Council of Europe in 2001 was to establish an alternative to military service by 2004. To this day, such a legislative framework has not yet been shaped up. A draft law concerning an alternative to the military service was sent for review to the Council of Europe and was sent back to the authorities more than a year ago on 23 October 2006. Obviously, the general atmosphere in the wider region, a recent past of wars and atrocities and ongoing tensions with some neighbours have had the consequence that the issue has not received the treatment it deserves. The Commissioner urges a speedy adoption of a law establishing an alternative civilian service.

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<sup>17</sup>Art. 48: " Every Person shall have the right to freedom of Consciousness and Religion. Everybody shall have the right to independently define his/her attitude towards Religion, to profess Religion alone or together with other, or to profess no Religion at all, to express and spread convictions. Free conduct of religious rites if it doesn't violate public order or public morality shall be authorized. Violation of the freedom of Religion and self-expression shall not be justified."

## **CHAPTER 4: MINORITIES**

82. According to the last census from 1999, 9.4% of the Azerbaijani population is constituted by minorities. These minorities essentially comprise the following: the Lezgins, the Talysh, the Russians and the Armenians. It would appear that there is no formal prohibition to exercise minority rights but rather a lack of encouragement to put forward their rights.
83. The European Commission against Racism and Intolerance (hereafter ECRI) recently made public a report on Azerbaijan (24 May 2007). In addition, a delegation from the Framework Convention on National Minorities carried out a visit the week following the Commissioner's visit. The findings emanating from the visit are complemented by the work of the different departments of the Council of Europe for the basis of the Commissioner's analysis and for the formulation of his recommendations.

### **I. Lack of a legislative framework**

84. There is no domestic law prohibiting discriminatory behaviour in Azerbaijan. There are certain specific provisions but no law encompassing all kinds of discrimination. The legislative lacuna needs to be addressed urgently. Secondly, upon accession to the Council of Europe on 25 January 2001 Azerbaijan committed itself to the adoption of legislation specific to minorities in order to replace the meagre 1992 presidential decree on the Protection of the Rights and Freedoms and State support for the Promotion of the Languages and Cultures of National Minorities. This decree restricts itself to the promotion of folk elements of minorities' culture. This kind of promotion is positive but requires supplementary protection of minority rights. Due to the insufficiency of the national legal framework, it must be ensured that international documents concerning minorities, ratified by Azerbaijan are translated and are accessible to people at the local level.
85. In the same vein, the shaping of an institutional framework for minorities is necessary. In the past decade, there has not been a body in charge of minority issues. A body called the Council for National Minorities used to address minority issues but it no longer exists. The constitution of a new body, including minority representatives could allow minorities to express their concerns and adopt a participatory approach to the decision-making process with regard to them. The Commissioner strongly encourages the setting up of such an institutional mechanism.
86. In addition to this legislative gap the 2006 National Plan of Action does not sufficiently emphasise minorities. It became apparent throughout the visit that the authorities do not deem minorities to be problematic in Azerbaijan but from discussions with interlocutors from civil society emerged a certain number of concerns. Furthermore, there have been no complaints lodged at the Constitutional Court regarding minority problems. This indicates that there is no forum in place to voice complaints.

### **II. Problems related to education and languages**

87. A major problem faced by minorities in Azerbaijan is education. Minority languages are in danger of disappearing as they are only taught in regions where minorities live compactly. For the Talysh, in such regions the language is only taught from the first to the fourth grade. Minority representatives complained about the fact that the training of teachers is poor, indeed even sometimes non-existent, that the textbooks are not up to date. Authorities should allocate the necessary funds to ensure that education of minority languages is ensured. The

Commissioner strongly encourages the creation of a chair dedicated to the Talysh language at the University of Lenkoran.

88. There is an obligation to communicate with local authorities in Azerbaijani thus rendering exchanges for minorities more difficult. In the light of what has been said above, the Commissioner strongly urges the authorities to strengthen its efforts for the promotion of minority languages and encourages the ratification of the Charter for Regional and Minority languages.

### **III. Problems related to the Media**

89. The media has an impact on the promotion and protection of minority culture. Indeed, radio and television programmes can reach minorities and enable them to stay connected with their origins and culture at the regional level. Moreover, a public broadcaster must represent the multicultural composition of society. Airspace and slots not necessarily in the minority language but including representatives of a minority enable participation of minorities in society. Interactive programmes are a means to expose different perspectives and to promote integration. The Commissioner received complaints related to the fact that there are very few media outlets for minorities. There is a 70% requirement for programmes to be in Azerbaijani thus leaving little room for minority programmes. The authorities should secure sufficient grants of frequencies to minority programmes.

### **IV. Armenians and Russian citizens from Chechnya**

90. International monitoring bodies have underlined the fact that the refugee determination procedure has only been set up recently. It however does not seem to function properly. This hampers the possibility for Russian citizens from Chechnya to exercise their social and political rights. Without registration, they cannot access housing or enter the labour market. This legal no-man's-land does not allow access to medical care. Not only are many of these Russian citizens in bad physical medical conditions but they have also suffered psychological trauma because of the armed conflict. The authorities allow their presence on Azerbaijani territory but do not facilitate or encourage their integration. The Commissioner was also informed that they are often harassed by law enforcement agents. The Commissioner recommends the speedy delivery of documents enabling them to exercise their social and economic rights. He also urges the authorities to raise awareness campaigns to avoid social stigma from being attached to this category of people living on Azerbaijani soil.
91. The Armenians find themselves in a similar situation in the sense that they sometimes encounter difficulties when trying to access public services such as health care and education. As noted by ECRI there is a general sentiment among them that they are treated like "second-class citizens"<sup>18</sup>. There are also specific complaints with regard to the way law enforcement agents treat Armenians. Examples were mentioned of harassment and extortion. Armenians should not have to live in an atmosphere of fear. The authorities should raise awareness campaigns to avoid social prejudice against Armenians. They should provide proper training for law enforcement agents to avoid any tendency towards discriminatory conduct.

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<sup>18</sup> Second report on Azerbaijan, adopted on 15 December 2006 and made public on 24 May 2007, page 19.

## **CHAPTER 5: DISCRIMINATION / VULNERABLE GROUPS**

92. Regarding women and children the Commissioner wishes to commend the efforts made by the State Committee on Family, Women and Children. The Chairmen of the institution has gone to great lengths to initiate change in the general approach to gender equality. She has introduced a recommendation to the Parliament to render the age for marriage the same for both boys and girls. She has also proposed legislation to be amended to the family Code on violence against women. In addition, she has stressed the point, that in Azerbaijan, IDP women and children should be provided with special attention because they are placed in a situation of extreme difficulty with regard to education and basic medical care. The Commissioner urges the authorities to pay particular attention to all these proposals.

### **I. Women**

#### **A. Domestic Violence**

93. Domestic violence is problematic in Azerbaijani society, which remains patriarchal. The Deputy Minister of Interior provided the Commissioner with figures with regard to violence against women of a worrying nature. Indeed, 70% of serious crimes are related to domestic violence. There has been an increase since 2006. There were 214 deliberate murders in 2006 out of which 37, i.e. 15% were related to domestic violence. Gender-based awareness and training are envisaged in order to prevent the occurrence of domestic violence. Police patrols in Baku in neighbourhoods, where domestic violence has been reported have been established. They comprise one chief accompanied by two assistants in order to keep problematic families under constant supervision. There is a special Commission in Parliament conducting educational events at the regional level. There should be a gender-focused approach to all forms of institutions. Solving the problem of domestic violence implies interference with private life; therefore, all members of society have to be involved. To this end, one of the strongest tools is preventive education, i.e. making society as a whole aware of and responsible for the fact that domestic violence should not be permitted. If there is a general consensus to that effect, it would be a first substantial leap forward to ending this kind of abuse. The Commissioner commends the efforts that are being made to prevent this type of violence. He however recommends the authorities to strengthen the measures already taken to strive to prevent the occurrence of such violence.
94. Another problematic issue with regard to domestic violence is that legislation does not specifically sanction spousal rape. The government should fill this legislative void. The lack of specific legal sanction against that kind of deviant behaviour is an unfortunate signal, even it could be argued in theory that Art 149 of the Criminal Code covers all kinds of rape. The Commissioner urges the government to adopt and implement adequate repressive measures to combat domestic violence. It should also sponsor centres for victims of domestic violence. Indeed, women who have suffered such abuse often do not report out of fear of repercussions. This occurs mostly in rural areas.

#### **B. Participation in public and economic life**

95. Women enjoy the same rights as men according to Azerbaijani law. However, in everyday life there is a definite inequality between women and men, an inequality that the Employment Strategy could help reduce in the long term. Thus, in the economic sector women suffer from high unemployment rates and do not hold top-managerial positions due to the traditional social norms that still prevail in Azerbaijan. The specific case of IDP women is worsened by the lack of

opportunities linked to the remoteness of the settlements that have been allocated to them. The government should encourage recruitment of women in the market and not exclude them from true participation in the economy. Women do however enjoy a slightly better situation in the public sector. There are a number of women members of Parliament and the Ombudsperson is a woman.

96. The legal age for marriage for girls in Azerbaijan is 17 as opposed to 18 for boys. As mentioned above, the State Committee on Family, Women and Children is trying to change the legislation to impose the age of 18 requirement to both boys and girls. The legislative change would represent a step forward for the emancipation of women. The legislative framework is problematic but the practice is even worse. Early marriages, at the young age of 13 or 14 are not an uncommon practice for young girls, most especially in rural areas. Such early imposition of wedlock does not allow young women to benefit from the same kind of opportunities as young men.
97. Prostitution is also a problem in Azerbaijan. Both poverty linked to being sidelined from mainstream economic society and demand lead women to prostitution as a means to earn a living. Prostitution constitutes an administrative offence punishable by 100 USD. Pimps and brothel owners are criminally punished by a maximum of three years imprisonment, the minimum penalty being 200 hours of public works. The sentence appears to be rather light for that kind of criminal offence.

### **C. Trafficking in human beings**

98. Human Trafficking is an alarming issue for Azerbaijan's society today. It can mostly be explained by: the growing destitution of the poor and discrimination against women in the recruiting process. Azerbaijan should rapidly ratify the Convention on anti-trafficking of the Council of Europe. Its domestic Law on the Fight Against Trafficking in Persons (2005) prohibits both sexual exploitation and forced labour. The imprisonment can be for five to fifteen years. This type of punishment appears to be sufficiently draconian for such a crime. The Deputy Minister for Internal Affairs explained that there is since 2006 a separate unit devoted to the combat against human trafficking. He also reported that in 2006, 164 traffickers were prosecuted and 155 convicted. These figures are encouraging and appear to illustrate the political will to address the issue.
99. Part of the rehabilitation process and follow up work for Human Trafficking victims is carried out by NGOs and funded by the international community. The state should continue to take measures to dynamically reinforce its fight against trafficking. Adequate protection and services are still not available to the victims. Robust measures should be put in place to correct this situation. Educational awareness campaigns should be strengthened to inform the population of the threat and further trainings should be provided for the personnel to supervise the psychological assistance to victims of trafficking. Shelters for the victims of trafficking should be built.
100. Another problem seems to be corruption both in the judiciary and the police. This continues to hamper the Government's ability to combat trafficking. NGOs asserted that local police and border guards received bribes in return for ignoring trafficking.

## **II. Children**

### **A. The Absence of Juvenile Justice System**

101. Children in Azerbaijan represent, according to government statistics 37% of the entire population. The criminality rates are rather low but 2.4 per 1000 crimes are committed by children.

102. There are no specific measures to ensure the protection of juveniles in the law enforcement and justice systems. There are no special rules for the treatment of juveniles while in detention. Police custody seems to be used as a first resort rather than a last and according to the testimonies heard by the Commissioner the juveniles almost never have access to a lawyer before the actual hearing, contrary to Art.92.3.5 of the Criminal Procedure Code. This is not only contrary to international law but also to Art.434.2 of the Criminal Procedure Code that provides that the arrest of a minor should be used as an exceptional measure and for the shortest amount of time. There is no separation from adults during the pre-trial detention period, no special methodological training of investigators to sensitise them with youth issues. In the pre-trial detention centres, no educational activities are provided leaving the youths with very little to do during, what is usually, a long period of pre-trial detention. Finally, no rules govern the use of force against children while in custody. There are no special rules for rehabilitation or conditional releases.
103. The only institutional framework in charge of assisting juveniles through the juvenile process are the District Commissions on Minors under the authority of the district executive committee, which does not list children's rights as one of its financial priorities. An efficient institutional framework should be shaped in order to guide and assist children throughout the judicial process.
104. The Commissioner sees the administration of juvenile justice as a major area of concern. He urges the authorities to bring the juvenile justice system in line with international standards they have ratified by adopting urgently rules and regulations to secure a written framework for the protection of juveniles in conflict with the law. The Commissioner recommends training programmes for policemen, judges and security personnel. In addition, there should be psychological and legal assistance provided to children, who are in contact with law enforcement agencies.

## **B. The Institutionalisation**

105. There are still a great number of orphanages in the country. The institutionalisation of children is on the decrease but remains relatively significant. 20 000 of the currently institutionalised children fall under the category of "social orphans" meaning that at least one of the biological parents is alive but does not have sufficient means to care for the child. The main problem of the orphanages is that they are run in such a way that they tend to isolate children from the outside world until they are no longer minors. This form of institutionalisation is not beneficial to their future integration into society. The Commissioner was informed that family type establishments are starting to be created and encourages the government to increase its efforts to achieve this.
106. The evolution of society and the increase in security has no doubt significantly reduced the necessity for the public sector to take responsibility for orphan children. The Commissioner visited an orphanage for small infants in Ganja. The head of the institution informed the Commissioner of the planned closing-down of the establishment as the demand was no longer great enough to justify its existence. In a neighbouring orphanage for older children, the Commissioner appreciated the homelike atmosphere and the level of education, which appeared to be quite high from the conversations he held with some of the children.

## **C. Violence against children**

107. There is a legislative framework that prohibits violence against children in Azerbaijan. Under Art.47 of the 1992 Law on Education states that any violence against children in the family or in other places is banned. The problem is

however widespread and difficult to contain because access to any setting a child is in, would be necessary to monitor the occurrence of violence and to strive to put an end to it. Measures to hold parents or teachers accountable for violence against children do not exist, thus leaving them in a situation of impunity. The authorities should raise awareness concerning this issue in order to eradicate the perception that violence against children is a common practice or a family matter. The authorities should also provide proper training to caregivers in institutions.

### **III. People with disabilities**

108. The Commissioner's introductory encourages Azerbaijan to sign and ratify the UN Convention on the Rights of Persons with Disabilities. The Commissioner strongly recommends the adoption of legislation mandating reasonable accommodation and access to public buildings. These two elements appear to be the bear minimum that the government can do to enhance the daily lives of people with physical disabilities.
109. Concerning mental disabilities the Commissioner was able to visit a psychiatric institution in Ganja. He wishes to highlight the positive cooperation between the institution and a British NGO called CARD. Indeed, the head of the establishment greatly facilitates the work of the members of this NGO, who mainly focused on the educational aspect of care given to psychiatric patients. They informed the Commissioner that this type of work is allowed depending on the person in charge of the institution. They also explained that to be recognised under Azerbaijani law is a cumbersome and lengthy procedure. It would therefore seem that the quality of the caregivers varies from one institution to the next. The Commissioner hopes that what he witnessed in this case is replicated in other institutions. He also urges the authorities to continue their collaboration with NGOs but should share the burden of responsibility in providing adequate service for those placed in such institutions. Merely providing drugs for mental patients does not suffice.

## CHAPTER 6: THE SITUATION STEMMING FROM THE NAGORNO-KARABAKH CONFLICT

### I. Refugees and IDPs

#### A. Causes for Displacement

110. During the escalation and in the aftermath of the Nagorno-Karabakh conflict (1991-1993), a considerable amount of inhabitants of the region were displaced. Since 1994, the Minsk Group of the OSCE has strived to find a solution to the conflict but its mediation attempts have not managed to bring about a settlement. The direct consequence of this stalled peace process is the continuing plight of the internally displaced people. According to governmental statistics, there are currently 600 000 displaced people. It is not within the mandate of the Commissioner to comment upon the political dimension of the territorial dispute. His concerns relate to the human rights aspects, including the situation of IDPs.
111. It is axiomatic to state that IDPs' rights will be violated until the conflict is resolved. People in Azerbaijan, have been displaced for over a decade and the authorities have only just recently succeeded in replacing almost all the tent camps and wagons with proper housing. Three tent camps remain and should disappear by the end of 2007. The improvement in the aid policies has most definitely been facilitated by the economic boom since 2004. In any case, to securing suitable accommodation has obviously become a top priority for the government. Earlier, the failure to prioritise this issue is one of the reasons why a significant amount of the displaced population has not resettled in a permanent fashion.

#### B. The legislative framework

112. International documents ratified by Azerbaijan enshrine the principle of progressive realisation of economic rights for all individuals. In addition, certain constitutional provisions and national legislation corroborate this principle. Indeed, Art. 25.3 of the Constitution provides that there is equality of rights and freedoms irrespective of "race, nationality, religion, gender, property status, social position, convictions or political, trade union or social affiliation". There is a 'Law on the Status of Forcibly Displaced Persons 21 May 1999'. The different provisions of this law explicitly affirm the obligation of the state to render assistance to IDPs by providing housing, employment, land, health and education. Furthermore, there is a presidential decree 1 July 2004 that secures the right to occupy permanently the temporary settlement.
113. The legislative framework is fairly comprehensive and the government has put a lot of efforts in improving the conditions of the IDPs. Both the President and the deputy Prime Minister Mr. A. Hasanov, informed the Commissioner about the progress achieved in the past few years. The Commissioner noted that the three remaining tent camps were relocated on 24 December 2007. In the past three years (2004-2006), 75 000 people have been relocated. In 2007, another 20 000 IDPs were relocated and the process is ongoing. The President informed the Commissioner that in a next phase starting in January 2008, families currently placed in schools and military baraquas will be relocated. There has been an increase of the money given to each individual on a monthly basis, 6 to 12\$ US. Relocation of families is systematic. The Commissioner visited a newly built settlement close to *Agdam*, where the houses, the school were of good quality. The Commissioner will closely follow the continuing process.
114. In *Goranboy*, however the IDPs are still living in dire conditions. They were initially displaced from a mountainous region to a zone with swamps. The removal from their natural habitat exposed them to an unfamiliar environment and led them to contract diseases. They have no roofs, the children are ill because of

the lack of hygiene. They are infested with insects and snakes. The government should urgently improve the situation of such camps and actually implement the legislation in place. Upon the Commissioner's visit, he was informed that the *Goranboy* camp should not longer exist by the end of 2007. The Commissioner will follow this matter closely.

### **C. The main human rights concerns**

115. Protocol n°4 to the ECHR ensures freedom of movement to IDPs. The problem in Azerbaijan is a structural one. The registration system also known as the *propiska* dates back to the Soviet era, whereby each individual has to register his or her place of residence. This systematic registration limits freedom of movement. Firstly, IDPs did not initially choose the location of their settlement. Secondly, they cannot move because they are obligated to reside where they have been registered in order to benefit from assistance. In addition, the settlements are often located in remote areas, where the economy is far from the prosperous. Opportunities for economic and social development are limited because there are no jobs and very little farmable land. Families are obliged to split up. Often one parent moves to an urban area where he or she engages in work to be able to provide additional means for the family, rendering his/her lieu of residence illegal. The resulting separation due to the difficult circumstances violates the right to family life protected under Art.16 of the Social Charter. The restriction of freedom of movement thus hinders the realisation of other rights. The Commissioner recommends a simplification of the registration procedure. With more flexibility the IDPs could improve their standards of living. They need to be integrated into society and should benefit from the same employment opportunities as other citizens of Azerbaijan.
116. In principle, IDPs should benefit from free medical care. In practice, they often have to pay and can only access elementary health care. In addition, due to the conflict, a great number of the people have suffered psychological trauma. The authorities should bring greater financial support to the medical system and help overcome these psychological troubles, the Commissioner invites the authorities to allocate more funds for the provision of doctors.

### **D. The right to permanently settle and the right to return**

117. The main complaint voiced to the Commissioner during his visit was the impossibility of the IDPs to return to their homeland either permanently or for regular visits. Indeed, the right to return constitutes a human rights. IDPs the Commissioner met felt that they were at least entitled to stay connected to their heritage and able to visit the graves of their ancestors. Steps to ensure those rights should be a major consideration also in the conflict resolution efforts. Return should of course remain an individual choice and all IDPs should be entitled to permanently settle where they initially had been placed as a result of the conflict.

## **II. Missing persons and prisoners of war**

118. The question of missing persons seems to have generated much attention in this particular conflict situation. Efforts to collect evidence, draw up lists, enter into discussion with the other Party were presented to the Commissioner as well under way. According to the Azerbaijani authorities, as of 10 December 2007, 4 354 of their nationals were still registered as missing. They further reported that between 1988 and 2007, 1 393 Azerbaijani citizens had been released from captivity, while 414 persons of Armenian origin were still declared missing. There should be no awaiting for a global settlement before actively addressing the

issue. Customary international law, humanitarian law and several articles under the ECHR (ART. 3, 5, 8, 10) protect the right to know what has happened to one's relatives and this right is not conditioned by the resolution of the conflict.

119. The Minister for National Security informed the Commissioner about efforts started in 1996 to identify and locate missing persons from the Republic of Azerbaijan. Commenting on the procedures used, he explained that upon their return people who had been missing were subject to an investigation in order to assess whether they were held captive with any other missing persons. According to the Ministry, who works hand in hand with the International Committee of the Red Cross, there is some evidence to suggest that several hundreds of the 4 354 people still missing were alive when taken into Armenian custody.
120. The Minister also gave some indications about efforts to respond to Armenian claims concerning a list of about 415 missing persons on their side. He claimed that only a very tiny number of those had disappeared in territories currently under the control of Azerbaijan and assured the Commissioner that efforts to locate them were still going on.
121. Whatever the exact figures and the validity of the claims, further efforts are obviously needed in order to clarify the tales of those disappeared on both sides. This is an important human rights issue and of fundamental importance to the relatives in all cases. The International Committee of the Red Cross is the competent body in this field and is carrying out admirable work. The Commissioner recommends both sides to continue their cooperation with ICRC in order to resolve the outstanding cases.

## SUMMARY OF RECOMMENDATIONS

Azerbaijan has experienced profound changes and improvements since its independence. The Commissioner wishes to pay tribute to the efforts made, while remaining concerned about a certain number of issues. Indeed, the reforms that have been undertaken, more particularly in the judicial domain and the efforts made for the IDPs must come to completion as quickly as possible. In addition, in the areas where legal reforms have taken place, the Commissioner underlines the necessity of bridging the gap between law and practice. The Commissioner is making the following recommendations keeping in line with the National Plan of Action:

### **The Judicial system, law enforcement agencies and penitentiary conditions**

1. As a matter of priority address the issue of corruption with particular focus on the judiciary and the police;
2. Complete the reform of the judiciary so as to ensure its full independence, impartiality and effectiveness in line with European standards by:
  - Continuing the efforts undertaken in the system of selection and appointment of judges, focusing on integrity of candidates, their practical abilities and knowledge of human rights standards;
  - proceeding to the establishment of a National Academy for Judges;
  - increasing funding of the judiciary and securing better conditions for proper administration of justice;
  - encouraging the evolution of the Collegium of advocates into a professional bar association independent from the State; ensure the application of codes of ethics for legal professions and take measures to prevent undue pressure on advocates
  - taking urgent measures to improve proper enforcement of judicial decisions;
  - introduce a system of juvenile justice in accordance with international standards.

#### *The Police*

3. Address police violence by reinforcing appropriate training and control measures, systematically investigate all cases of abuses and bring the perpetrators to justice, to avoid impunity;
4. Ensure that the recruitment and promotion of the staff members of the Ministry of Internal Affairs is transparent; ensure proper training of police personnel including in human rights standards, provide the police personnel, with adequate working equipment, increase salaries for police officers ;
5. Ensure an effective enforcement of the right to legal counsel;
6. Ensure that the relatives of detained people are timely informed about the places of detention;
7. Provide further improvements to medical and sanitary conditions in pre-trial detention facilities;

#### *The Penitentiary*

8. Renovate dilapidated housing facilities for prisoners, allocate the necessary funds for the improvement of living conditions in penitentiary facilities and follow through the building plans of new premises;
9. Improve conditions of detention for juveniles, ensure that they are kept in separate centres, provide them with schooling and appropriate food throughout the country;

10. Provide occupational activities and efficient measures of re-socialisation;
11. Further improve medical capacities for the penitentiary.

### **The case of those sentenced to life imprisonment**

12. Avoid the segregation and isolation of lifers from other categories of prisoners and carry out individual risk assessment of each inmate;
13. Organise purposeful activities and education, which allow the inmate to manage time and responsibilities;
14. Establish systematic training of all members of staff to ensure that they are fully prepared to deal with the specific cases of lifers and to handle the different incidents that might occur;
15. Establish a system of review of life sentences at an earlier stage and adopt legislation to that effect.

### **Fundamental freedoms**

#### *Freedom of expression*

16. Review the composition and function of the NTRC by clearly defining the general legislative framework regulating the appointment of the members, and by ensuring a democratic and transparent appointment and full independence;
17. Secure that the granting of licences is decided in line with impartial criteria and that the monitoring of programmes takes place *a posteriori*;
18. Organise an open public debate to determine the appropriate public response for defamation, if needed with the participation of the Council of Europe experts;
19. Release those who have been criminally prosecuted under the criminal law on defamation;
20. Further encourage the work on a draft law to modify the current legislation on defamation, to take away the possibility of depriving anyone of his or her liberty on accounts of opinion.

#### *Freedoms of association and peaceful assembly*

21. Simplify the procedure for the registration of NGOs and deliver replies within the time prescribed by law;
22. Adopt without delay the amendments to the 1998 law on freedom of assembly and consider each application for a demonstration following precise and objective criteria;

#### *Freedom of religion*

23. Consider the registration of religious groups fairly without prejudice with regard to non-traditional groups;
24. Adopt a legislative framework for the establishment of an alternative civilian service.

**Minorities**

25. Develop the protection of minority rights by re-establishing an institutional framework in charge of minority issues, which would give minority representatives a voice in the decision-making process and draw greater attention to minority issues in the National Plan of Action;
26. In order to secure the Talysh education presently and in the future, allocate the necessary funds for the teaching of minority languages. Seriously consider the creation of a Talysh chair at the University of Lenkoran. Ratify the Charter for Regional and Minority Languages;
27. Allocate airspace and slots in the media to minority representatives and for the use of minority languages, in particular where minorities live compactly;
28. Deliver documents enabling Russian citizens of Chechen origin to exercise their social and economic right;
29. Raise awareness campaigns to avoid social stigma from being attached to Armenians living on Azerbaijani soil.

**Discrimination and Vulnerable groups**

30. Strengthen the measures already taken to prevent the occurrence of violence against women, raise awareness through campaigns and provide shelters for those victim of such violence;
31. Adopt legislation rendering 18 years of age the minimum age for marriage for both boys and girls;
32. Adopt robust measures to counter trafficking in human beings, establish educational awareness campaigns to inform the population of the threat, build shelters for the victims of trafficking and train personnel to supervise the psychological assistance to victims of human trafficking;
33. Encourage the deinstitutionalization of children living in orphanages and establish a family-based approach to their care;

**IDPs and Prisoners of war**

34. Ensure that there no longer remain tent camps and that the refugees living in *Goranboy* and the three tent camps are re-settled by the end of 2007;
35. Establish a registration mechanism that allows more flexibility than the current *propiska*, IDPs should have equal access to education and job opportunities; sufficient funds should be allocated for the provision of medical care in IDP settlements;
36. While confirming the right of IDPs to return or to voluntary permanent resettlement, initiatives should be taken to allow them to stay in touch with their cultural heritage in a regular basis;
37. Continue cooperation with the International Committee of the Red Cross to clarify the fate of those disappeared.

## A P P E N D I X

### Comments of the Azerbaijani authorities

#### *As to the issues touched upon in Chapter 1*

1. It could be mentioned in paragraph 8 that the Republic of Azerbaijan is the first Muslim country to abolish the death penalty in 1998. It is also noteworthy that Azerbaijan acceded to the Second Optional Protocol on Abolition of Death Penalty of the UN Convention on Civil and Political Rights in 1998. As it concerns Protocol No12 to the European Convention on Human Rights, the Azerbaijani authorities have started domestic procedures for its ratification.
2. Regarding the National Action Plan on Protection of Human Rights (paragraphs 10 and 11), it should be mentioned that the Chief of the President's Office issued an order on 25 May 2007 on setting up of a Task Force comprising all relevant public institutions and NGOs in order to effectively implement the NAP. The Ombudswoman was proposed to be its chair. At the first meeting it was decided that the Task Force would consist of five working groups of experts in accordance with directions of activity enshrined in the NAP. The civil society is also involved on a regular basis in the activity of these working groups.
3. Regarding the involvement of NGOs (paragraphs 13), the Ministry of Justice has established effective relations with the civil society in order for them to have access to penitentiary institutions and to monitor their conditions and functioning. A memorandum of understanding was signed between the Ministry and NGOs to work out the rules of monitoring of the penitentiary system by the civil society. The Regulations on Public Participation in Correction of Prisoners and Public Supervision over the Penitentiary were adopted on 25 April 2006. In accordance with the Rules, the Designation Commission comprising parliamentarians, well-known public figures, scientists and religious figures was set up to propose the Public Committee which would conduct public monitoring of the penitentiary system and would be involved in correction of prisoners. The Designation Commission set up the 9 men Public Committee on 22 September 2006. Its members were provided by the Ministry with special passes, which grants them free and regular access to all penitentiary institutions. Since the establishment the Committee members have made 75 visits to 19 penitentiary institutions chosen randomly and made relevant suggestions on improvement of detention conditions, opening of working places therein, perfection of the working condition of prison staff etc. The Ministry takes such suggestions into account in the penitentiary reform.
4. The following amendments should be made to paragraph 14 after the words "public agencies". "...**The Council will be responsible for the implementation of the Concept of State Support to NGOs in a properly manner.**" The Azerbaijani authorities maintain that the independence of the Council can not be questioned due to the fact that its members are appointed by the President. It should be noted that 8 members of the Council are nominated by NGOs themselves and the President of Azerbaijan only appoints them to the membership. As regards the last sentence of paragraph 14, it should be noted that, the NGOs are independent in choosing whether they should participate in projects funded by the state or not. Furthermore, by participating in state-funded projects the NGOs are in no way required to reject funds from other sources. The Regulations of the Council for State Support to NGOs provide for fair, objective and transparent procedures of allocation of funds.

*As to the independence of judges and the administration of the judiciary (paragraphs 16-23)*

5. The grounds for the Judicial Legal Council to institute disciplinary procedures against judges include complaints by individuals and legal entities, information in media, breaches of law found out while examining a case in higher instance courts and special decisions of those courts on judges in question, as well as non-abidance of judges by the requirements of the Law on Combating Corruption. Any individual or legal entity may refer alleged cases of corruption directly to the Council. The disciplinary procedures can start within a year of finding a violation and within three years of its commitment. Disciplinary sanctions include reproach, reprimand, demotion and replacement. While instituting disciplinary measures judge members of the Council play an exceptional role which was imposed on them in order to avoid their dependence on other authorities and to ensure objectiveness and impartiality. Thus, the investigation of the case in disciplinary procedure is charged to one of the judge members of the Council. Moreover, only judge members have the right to vote on bringing any judge to disciplinary responsibility. Any judge against whom disciplinary procedures are instituted can have access to a lawyer or any other judge of his own choice for his defence.
6. In accordance with the new legislation, in order to prevent corruption, judges are prohibited to receive individuals before, during and after trials. This task lies with court registries. The organizational issues relating to a trial is charged to a registrar. All decisions of higher instance courts are published.
7. 102 persons were successful in the selection process of candidates to judge positions which started last year and was observed by a number of international and local NGOs. The candidates have been involved in the training course which is going on. Experts from both Azerbaijan and abroad deliver lectures to them in particular on such issues as human rights and corruption.
8. In order to strengthen the independence of judges the associations of judges have been reorganized. Today there are public associations of general and specialized courts' judges. It goes without saying that these associations contribute to the judicial reforms and make suggestions on addressing the challenges in this sphere. Moreover, the term of office of judges was reconsidered and now they occupy the position for an indefinite period (until the maximum age). The judges of the Supreme Court are appointed by the Parliament as are the judges of the appellate courts.
9. As a result of discussions held within the CoE-Azerbaijan Joint Working Group on training of judges and prosecutors, it was decided to charge an independent specialized institution to conduct such training. Thus, a special training unit was set up and started functioning under the Judicial Legal Council. The unit has developed programmes of preliminary training for candidates to judge positions and sustainable training for judges. Now these programmes are carried out. As regards the Academy of Justice, it will provide refresher courses for the justice personnel, court officers, notaries, registration officers, penitentiary personnel, judicial machinery members, lawyers etc.
10. As regards the construction of new court buildings (paragraph 21), a joint project of the World Bank and the Ministry of Justice **envisages** construction of 18 new court buildings, repair of 4 buildings, equipping of a number of courts with modern information technologies. The project is to be completed in 3-4 years in accordance with allocation of funds.

11. Regarding the execution of judgements (paragraph 23), the ongoing judicial reform covers this issue as well. Taking into account that in past few years the number of judgements has increased three times the staff of the service was increased by 100 men (25 percent). Moreover, in order to improve their performance close cooperation was established with the European Union of Judicial Officers and European Public Law Centre. As regards the case of *Efendiyeva v. Azerbaijan* mentioned in the report, the judgement of the ECtHR was executed on 11 July 2007, and the person who was found guilty for non-execution and thus violation of Efendiyeva's rights was brought to justice.

*As to the issues relating to lawyers (paragraphs 24-26)*

12. Advocacy in Azerbaijan is regulated by the law of 1999 which was amended in 2001-2005. The Law on Lawyers and Advocacy was adopted taking full account of the comments of the Council of Europe experts. According to Article 1 of the Law, the Collegium of Advocates is an independent professional institution and everyone has right to obtain a lawyer status according to Article 8 of the Law. Only those persons who obtain this status in accordance with the Law have the right to practice as lawyers in criminal proceedings. This requirement is secured also by the Criminal Code of Azerbaijan. Thus, all legitimate lawyers are the members of the Collegium. Today in Azerbaijan many individuals present themselves as lawyers without obtaining a lawyer status in a way prescribed by the Law. Indeed, such violation of the Law paves the way for negative circumstances. According to Article 61 of the Constitution everyone has the right to a qualified legal advice. The quality of service of those persons who practice as lawyers without being members of the Collegium can not be guaranteed, as they have never passed any speciality exam. Namely for this reason Article 199.1 mentioned in the report has been added to the Code of Administrative Offences.
13. The Collegium does not systematically select the same lawyers to defend people as alleged in paragraph 25. When applied for legal assistance the designated lawyers are those who are free at that very time. No doubt, a limited number of lawyers in certain regions also causes restraint while designating lawyers to defend people. This problem is kept in the focus and significant improvement has been made since 2004. In 2004 there were only 370 lawyers in the country. In 2005, 119 persons out of 541 successfully passed all stages of competition and obtained a lawyer status. In 2007, 241 out of 441 persons, who took part in the competition, were successful. Thus, today the number of lawyers is 780. In other words, the proportion of lawyers to 10 000 population is 0.96. The number of lawyers in the country will be further increased. Moreover, it should be noted that there are more than 100 legal firms in Azerbaijan each consisting of 5 to 20 jurists who provide legal assistance people. It means that the total number of jurists providing legal services in Azerbaijan is more than that mentioned in the last report of CEPEJ. As regards the administration of examinations by the state, it was the Council of Europe experts who suggested that the examinations should be conducted by the Collegium itself. Nevertheless, the recommendation of the Commissioner on a selection of lawyers similar to the one followed for judges can be considered.

*As to the issues relating to Prosecutor's Office (paragraphs 27 and 28)*

14. The functions of the Prosecutor's Office are governed by Article 133 of the Constitution and the provisions of the Law on the Office of Public Prosecutor of 7 December 1999 which defines the role and place of the Prosecutor's Office in the judiciary. It should be noted that the Law was developed taking due account of the suggestions and expertise of international organizations, in particular the Council of Europe. As a result, as distinct from the Law on Soviet Prosecutor's Office of 30 November 1979, under the present Law the Prosecutor's Office forfeited a number of powers, including control over the execution of laws by public authorities, enterprises,

agencies, institutions, officials and ordinary citizens (general control), control over the execution of laws during court trials, control over the execution of laws in temporary detention centres, investigation isolators (pre-trial detention centres) and in all penitentiary institutions, as well as coordination of the work of law enforcement agencies. Moreover, under the Presidential Decrees on Regulation of the state control over the production, service and financial-credit activities and prohibition of groundless inspection dated 17 June 1996, on Improvement of the state control system and removal of artificial barriers to the development of entrepreneurship dated 7 January 1999, on Prevention of interference with the development of entrepreneurship dated 28 September 2002, as well as the Order by the Prosecutor General on Strengthening measures to prevent groundless inspection of the economic activity of 22 February 2001 the Prosecutor's Office should not interfere with the work of entrepreneurs and conduct groundless inspection of the economic activity.

15. As a result of the referendum held on 24 August 2002, Article 133 of the Constitution was amended and the words "uniform" and "accurate" were deleted from the text. Thus, this provision which previously implied general supervisory function peculiar to the Soviet times was improved. Consequently, the functions of the Prosecutor's Office were limited to preliminary investigation, inquest, search and operation activities.
16. Chapter LII of the Criminal Procedure Code (CPC) entered into force on 1 September 2000 establishes the institution of judicial control. Thus, on the basis of complaints lodged under the judicial control, the court controls the lawfulness and validity of all decisions of agencies and officials conducting criminal procedure, including those of the Prosecutor's Office and if it has a strong reason it can invalidate those decisions. One principal improvement is enshrined in Article 84.4 of the CPC which governs that the prosecutor who conducted procedural leadership of the preliminary criminal process can not act as a public prosecutor during a court trial.
17. Thus, the legal reforms conducted in Azerbaijan have ensured that the present status and powers of the Prosecutor's Office meet the requirements of protection of human rights and effective administration of justice. Against this background, further limitation of its powers seems to be inappropriate.

*As to the problems linked to corruption (Chapter 2, section II)*

18. The following amendment of a statistical nature should be made in paragraph 31: between May 2005 and December 2007, the Department on Combating Corruption under the Prosecutor General's Office sent to courts 82 criminal cases of 172 persons accused of corruption (of them 12 cases of 35 persons were prosecuted in 2005, 39 cases of 79 persons in 2006, and 31 cases of 58 persons in 2007). Currently, the Department conducts investigation of 33 more cases. Only one case has been dismissed so far. It should be noted that not only the Department on Combating Corruption but also some other units of the Prosecutor General's Office as well as the local Prosecutor's Offices can conduct investigation of corruption cases as part of the general criminal cases.
19. In three years past since the Judicial Legal Council started functioning 59 judges were sanctioned for law breaches mostly linked to corruption. 30 judges were not proposed by the Judicial Legal Council for re-appointment for such offences. As regards 200 people who have been found guilty and punished for offences linked to corruption as mentioned in paragraph 31, this includes only those persons who work in the justice and penitentiary systems. As to the statement "a major obstacle to the full eradication of corruption is the lack of inter-agency cooperation" referred to the Minister of Justice, it may be the result of misinterpretation. Indeed, a particular

attention is paid to inter-agency coordination on combating corruption. This is one of the basic tasks charged to the Anti-Corruption Commission which was established pursuant to Article 4.2 of the Law of the Republic of Azerbaijan on Combating Corruption. The Commission consists of 15 members who represent all three branches of power. The President of Azerbaijan, the Parliament and the Constitutional Court appoint 5 members each. The members are the highest representatives of relevant public agencies. Moreover, the National Strategy on Strengthening Transparency and Combating Corruption endorsed by the President of Azerbaijan on 28 July 2007 implies inter alia strengthening cooperation among the agencies conducting criminal process in the framework of combating corruption. The Presidential order endorsing the National Strategy provides for the involvement of local NGOs in the implementation of the Strategy.

20. Furthermore, the Azerbaijani authorities pay particular attention to international experience and cooperation in this area. To this end, the Project to support National Strategy on Combating Corruption was developed. In order to implement the project a Memorandum of Understanding was signed on 10 December 2007 with the USAID and the Council of Europe. Last but not least, the September 2007 report of the Organization of Economic Cooperation and Development shows that the policy of Azerbaijan on transparency in the civil society and combating corruption is in line with the Organization's recommendations.

*As to the issues relating to law-enforcement agencies (paragraphs 33 and 34)*

21. It should be noted that the law enforcement agents does not fall under only two ministries: the Ministry of Internal Affairs and the Ministry for National Security as mentioned in paragraph 33. In addition to these institutions, the Prosecutor's Office, the Ministries of Justice, Taxes and Emergency Situations, State Customs Committee as well as the State Border Service also constitute the law enforcement system of the country. All of them are independent within their competence.
22. It should be noted that not only recruitment is carried out through test exams. In order for the non-commissioned officers to get a commission they also should pass such exams. Furthermore, sending staff members abroad for training and workshops is not the only means of improvement of the police performance and respect to human rights. The Ministry of Internal Affairs has established close cooperation with the Council of Europe and the OSCE with whom it has organized in Azerbaijan more than 50 training courses and workshops on human rights, police ethics, international human rights instruments etc. This cooperation is ongoing. It is noteworthy that the civil society is involved in this process. (see also comments on recommendation 4). The salaries of the staff members have been increased repeatedly since 2004. The last increase in salaries (approximately 25 percent) was made on 29 December 2007.

*As to the procedural rules in case of arrest (paragraphs 35-39)*

23. On 9 March 2001 the Office of the Prosecutor General issued an order on Further strengthening control over the administration of process of preliminary investigation and inquest. The order implies inter alia daily control over the execution and application of laws while detaining persons in detention cells in police stations. In particular, the abidance by Article 157.3 of the Criminal Procedure Code, which obligates the arrested persons to be transferred to the investigation isolator (pre-trial detention centre) within 24 hours after the judge's decision, is controlled. If any case of violation of this obligation is found out, all necessary measures are taken to address the issue. In 2006-2007 no problem relating to transportation of convicts and prisoners was observed. In this period 9 new cars were purchased. No complaints were received by the Penitentiary Service regarding the transportation of arrested persons from temporary detention centres to the investigation isolators. Moreover, not a single complaint from any arrested person or his/her relatives that he or she was

compelled to bribe officials in order to be transferred to an investigation isolator without delay has been lodged with the Prosecutor's Office. Moreover, access to a lawyer and possibility to warn relatives at the time of arrest as well as access to medical care are comprehensively ensured by the Criminal Procedure Code. Moreover, requests made by arrested persons for the medical care as well as rejections of such care are registered in a special book. Taking into account the recommendations of the CPT, the Registration book of arrested persons was reformed to include the names, signatures and ID card numbers of their lawyers, the date and time of the meeting with a lawyer, as well as the relevant information on the doctor who examines arrested persons.

24. As regards the allegations of torture and ill-treatment and recommendation to provide training in order to avoid such cases (paragraph 38), it should be noted that the Prosecutor General issued an order on 14 February 2003 on approval of the Action Plan aimed at the fulfilment of provisions of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Action Plan envisages *inter alia* strengthening the combat against such cases and provision of trainings to this end. The allegation that perpetrators of torture are merely reprimanded or dealt with administratively does not represent the facts. For instance, the chief of the Criminal Investigation Division of the Mingachevir City Police Department, an investigator from the same division as well as two policemen of that department were held criminally liable and imprisoned for torturing and maltreating a person who died afterwards in the Police Department. The Ministry of Internal Affairs pays particular attention to such issues. In order to address its root causes training is conducted.
25. Regarding the arbitrary arrests of members of opposition rallies during electoral periods, it should be noted that they were arrested only for a short period for administrative offences. As to the arrest of LGBT community, the fact that they had been HIV-positive or had other kind of venereal disease and entered into sexual intercourse though they knew about their malady, thus intentionally transmitting diseases to other persons was a strong argument for their arrest. Some of them had transmitted diseases to two or more persons. On this fact they were imprisoned by the court decision. Consequently the court sentenced them to imprisonment.
26. Regarding the detention conditions, temporary detention cells in many police stations were refurbished or rebuilt to comply with relevant international standards. The interrogation facility of the Organized Crime Department of the Ministry of Internal Affairs is thus not a single example as mentioned in paragraph 40 of the report (also see the next paragraph of the comments). NGOs are involved in monitoring of such facilities. The International Committee of Red Cross can freely monitor temporary detention cells.

*As to the interrogation centres for organised crime and irregular migrants (paragraphs 40-41)*

27. The confidential and proper meetings with lawyers are ensured without any restraints as to timing and number. Interrogation of the suspects and the accused are held in the presence of lawyers. According to Article 51 of the Criminal Code of Azerbaijan which provides for the obligatory written recording of proceedings, the facts that lawyers take part in the process are confirmed by signatures of the suspects and the accused.

*As to the penitentiary system (paragraphs 42-61)*

28. The Criminal Procedure Code does not envisage that public bodies dealing with criminal procedure should sanction meetings with the suspects and the accused. This rule is neither applied in practice. Articles 90.7.8, 91.5.8 and 92.9.2 of the Criminal Procedure Code provide for unlimited number of confidential and tête-à-tête meetings between the suspects or the accused and their lawyers.
29. It should be noted that draft amendments to the national legislation are being developed in order to increase the number of visits (see paragraph 50). As regards the remoteness of Gobustan prison, shuttle busses from Baku city transport the personnel to the facility and back, and the relatives of the inmates incarcerated there can have a ride on those busses for free. It is also noteworthy that the new prison which is constructed in Umbaky is situated in close vicinity to a highway with heavy traffic of a public transportation. Along with that, by building new mixed regime penitentiary institutions in Lenkoran and Sheki cities and the Nakhchivan Autonomous Republic the transportation problem of inmates' relatives and other persons to those facilities will be addressed.
30. Regarding organized activities to be ensured for prisoners (paragraph 51), in the framework of the Council of Europe and European Commission Joint Programme on Supporting Penitentiary Reform in Azerbaijan the strict regime Penitentiary institution No1 was selected as a pilot institution and was provided with 30 sewing machines. In general, the State Programme for 2007-2010 on Implementation of the Employment Strategy of the Republic of Azerbaijan, which was endorsed by the President of Azerbaijan on 15 May 2007, implies inter alia organization of vocational training in the penitentiary institutions for the prisoners to be prepared for employment after release. The Programme also envisages certain measures to ensure vocational training for released prisoners and facilitate their employment. Moreover, Article 9.1 of the Law of Azerbaijan on Employment provides for additional safeguards to socially vulnerable categories of population, in particular former prisoners, who may face difficulties to find job, by creating specialized institutions, opening new jobs, and carrying out special trainings.
31. As regards the medical treatment in Gobustan prison (paragraph 52), there is a medical-sanitary unit for 40 patients. It includes an X-ray room, a dentist room, a surgery, a manipulation room, a drugstore, a laboratory which can independently conduct clinical and bacteriological examination, three doctor rooms, a medical attendant's room, and 11 therapy rooms. Moreover, in 2007 teams comprising doctors of various specialities visited the prison 4 times and examined the inmates. A psychologist position has also been instituted in the prison. It should be noted that psychologist positions have been established in all penitentiary institutions in order to conduct psychological examination of inmates and personnel. It is noteworthy that all civilian and special personnel pass conversation and psychological examination while being recruited by the Penitentiary Service. Furthermore, the issue of regular replacement of the Gobustan prison staff is always kept in focus. One more positive development is the increase in salary of prison staff by 25 percent in early December 2007.
32. As to the concerns raised in paragraph 53, immediately after the meeting with the Commissioner the situation in colony No14 was verified. Moreover, the Public Committee visited the colony in early December 2007. Although no serious shortcomings were found out during this monitoring, there were made suggestions for further improvement of the current situation which were taken into account. The prison staff is involved in preliminary and refresher training. Moreover, a new programme was developed for sustainable training of the prison staff.

33. Regarding the inmates infected with tuberculosis (paragraph 54), those inmates who are suspected to be infected with tuberculosis are placed in separate reception rooms in the specialised colony. They are replaced to common rooms for inmates with tuberculosis only in case they are tuberculosis-positive. Otherwise, they are sent back to their original prisons.
34. As regards the central penitentiary hospital (paragraph 55), in order to improve the sanitary conditions and the quality of medical treatment, 3 newly created diagnostic rooms were supplied with a modern digital ultrasonic sonography device, a 6 channelled fixed EKG device and a fiber-optic gastroscopy device. Moreover, a new X-ray room was supplied with modern "Siemens" roentgenoscopy and roentgenography machines. It is also envisaged that an anaesthesiology-reanimation room will be set up to treat seriously diseased persons. It is also noteworthy that 5 more doctors and 6 mid-level medical personnel were recruited by the hospital in 2006-2007.
35. Regarding the life sentence (paragraphs 56-61), it should be noted that the life sentence has been applied since 1998. It is not applied to women. According to Article 57 of the Criminal Code, courts may review the sentence of lifers who have already served 25 years in prison by commuting their term to maximum 15 years of imprisonment or by rendering conditional release. Pursuant to Article 82.3 of the Code, the life sentence can be commuted by pardon to maximum 25 years of imprisonment. The Regulations of Pardoning implies that a lifer who has already served 10 years in prison can apply for pardon. This rule does not exclude the possibility of a lifer or his relative to apply for pardon any time they want. It should be noted that the death penalty was abolished in Azerbaijan on 10 February 1998. It is obvious that 10 years have not elapsed since that time yet. Nevertheless, there were cases when the President of Azerbaijan pardoned lifers. In general, since 1995 28 lifers (12 percent of all prisoners of this category) have been pardoned by the President. 3 of them were released and the rest got their sentences commuted. Furthermore, draft amendments to the national legislation are being developed to secure more humane living conditions for lifers by ensuring more visits, possibility to watch TV etc.

*As to the freedom of expression (paragraphs 63-73)*

36. The Law on Obtaining Information of 30 September 2005 provides for the right of everyone to obtain information without any obstacles, on equal basis. Since the adoption of the law the public agencies have designated units and persons responsible for delivery of information and created web sites. All these measures, no doubt, improved people's access to official information. Currently, the Azerbaijani authorities and the OSCE Baku Office are working out the Unified Communication Strategy and Information Coordination Mechanisms for Public Institutions and Media. It is aimed at effective ensuring the right of citizens to obtain information; development of information pluralism in the society; efficient implementation of the relevant national legislation; strengthening of state-media relations; increase in transparency in the activity of public institutions; improvement of the performance of units and officials responsible for media relations in the public institutions; increase in the professionalism of media workers; ensuring if objective media flow to the society.
37. Paragraph 66 reads that National Television and Radio Council "clearly has not established itself as independent". The Azerbaijani authorities do not agree with such statement and maintain that the institution is independent and no interference with its work by other agencies is the case.
38. The same paragraph states that "the NTRC is often portrayed as impeding rather than favouring the development of a free media market, failing to rely on objective criteria for the choice among bidders and for delaying processes of genuine

competition by means of all sort of administrative hindrances". It should be noted that the NTRC has so far issued warnings against those broadcasters which violated the provisions of the legislation on television and radio broadcasting in particular relating to advertisements and sponsorship as well as to prevention of children's and minors' morals. Thus, it is apparent that the NTRC does not use administrative measures but rather persuasion. It should be noted that in competitions organized by the NTRC for frequencies of "Xaçmaz TV", "Şəki TV", "Yevlax TV", "Lənkəran TV", ANS TV television channels and ANS ÇM radio channel only one bidder took part thus making the choice limited. Only in the case of "Xəzər TV" there were three bidders and the NTRC being guided by Article 15.5 of the Law on television and radio broadcasting made a decision in favour of that bidder who had the best technical and professional capacity.

39. As regards the recommendations given in paragraph 67, the Regulations on the National Television and Radio Council ensure transparent appointment procedure of its members. Nobody has the right to dismiss them and the Regulations envisage exceptional circumstances under which the members can be dismissed before the end of the term of office. Nobody can instruct the members of the Council or in any way interfere in their work. Moreover, the issue of further strengthening of independence, including financial self-dependence of the Council is being reconsidered.
40. As regards the recommendation given in paragraph 67 to use proportionate sanctions against media outlets as a last measure after the issue of a warning, the NTRC always issues warning before imposition of any sanction. As it was mentioned in the case of the ANS channel, the NTRC preliminarily issued 8 warnings.
41. Regarding the Press Council, it is a non-governmental organization established by media outlets and associations to play a self-regulatory body for media. In 2007, it was provided with new premises and necessary funds to ensure refurbishment of the building and to acquire equipment. It cooperates with the authorities, the civil society, political parties in order to find solutions to media related problems. The members of the Council are elected by media outlets themselves and are quite well-known and independent persons.
42. As regards the decriminalization of defamation, it should be noted that in accordance with the national legislation the public institutions, as well as law enforcement agencies and the prosecutor's office do not participate in criminal proceedings related to defamation cases as such proceedings are instituted on the basis of private prosecution by the concerned persons. At the same time, if it is not proved that the information was disseminated to deliberately damage the reputation or the dignity of any person the legislation forbids the institution of criminal proceedings on defamation charges. The responsibility to prove such an intention lies with a defamed person. This requirement is based on the presumption of innocence as a basic principle of the Azerbaijani criminal legislation. Furthermore, the experts of the Council of Europe provided the expertise on the Criminal Code of Azerbaijan. In order to improve the Code a joint working group comprising the experts from the Azerbaijani authorities and the Council of Europe was established. Currently, the opinion of the experts of the Council of Europe is being examined. Nevertheless, under present conditions, lack of respect to professional ethics by journalists makes the decriminalization of defamation a premature step.
43. As regards the imprisonment of journalists, on 28 December 2007, the President of Azerbaijan issued a pardon decree releasing six journalists: Yashar Aghazade and Rovshan Mahmudov (Kabirli) from the newspaper "Müxalifət", Faramaz Allahverdiyev from "Nota-Bene", Rafiq Taghiyev and Samir Huseynov (Sadagatoglu) from "Sənət", as well as Shovqi Musayev from "Elçi". Sakit Zahidov has rejected the pardon. The

trial of Ganimat Zahidov, the editor in chief of the newspaper "Azadlıq", has not been started yet, thus there is not a judgment against him and at this stage pardon could not be applied to him.

44. The editor in chief and the owner of the newspaper "Realny Azerbaijan" Eynulla Fatullayev was previously held criminally liable by private charge for insulting the honour and dignity of Xojaly residents that suffered Armenian aggression and genocide. Afterwards, Eynulla Fatullayev was accused also of another crime. In April 2007, several foreign companies, organizations and individuals operating in Azerbaijan received information by e-mail stating that in case Azerbaijan supported the anti-Iranian coalition, Iran would instigate military strikes to Azerbaijan, and 16 strategic objects would be exploded by hundred kamikaze terrorists. On the basis of appeals by those organizations and individuals the Azerbaijani authorities conducted investigation of the case whereby it was found out that the source of that very information was the web page [www.realazer.com/2007/91/st8.htm](http://www.realazer.com/2007/91/st8.htm) of the newspaper "Realny Azerbaijan". Furthermore, the investigation revealed that E. Fatullayev had also instigated national hatred in regions where the Talysh minority live. Moreover, he used to provide false information about his revenues in tax declarations, thus evading taxes. Upon completion of the investigation all the files were sent to the Grave Crimes Court. The trial of the case was finished on 30 October. Eynulla Fatullayev was found guilty on three Articles of the Criminal Code: 214.1 (threat of terrorism), 283.2.2 (incitement of national hatred) and 213.2.2 (evasion from taxes). The court of first instance sentenced him to eight and half years of imprisonment. The Pardon was issued on 28 December 2007. At that time the case of Eynulla Fatullayev was being examined by the appellate court, and the investigation of Ganimat Zahidov's case had been just sent to the court. No final judgment had been rendered by that time on either of the cases. Therefore, the pardon could not be applied to them. As regards Sakit Zahidov, he renounced pardoning.
45. The Government of Azerbaijan regrets the physical harassment and imprisonment of some journalists. However, it should be noted that such cases are isolated instances and can not be described as a matter of Government-media relations. In past few years in some media outlets the number of articles aimed at insulting individuals' honour and dignity as well as of libelling and blackmailing character increased significantly. The Azerbaijani legislation ensures both the media freedom and the right of individuals to protect their honour and dignity. The authorities can not limit individuals' rights by administrative measures. The fact that citizens legally exercise their rights can not be construed as pressure on media.

*As to the freedoms of association and peaceful assembly (paragraphs 74-78)*

46. A number of legislative acts have been adopted and measures taken to simplify the registration procedure for NGOs. The case of *Nasibova v. Azerbaijan* mentioned in the report refers to the events occurred in 2001. Indeed, all shortcomings relating thereto have been addressed by the Law on State Registration of Legal Entities and the State Register adopted in 2003. In comparison with 2001, the number of registered NGOs in a year has increased by 24 (in 2001 it was 23, while in 2006 it was 548). This is a continuous tendency of increase. Today there are about 2500 registered NGOs. It should be emphasized that in accordance with the abovementioned law NGOs can function without registration. The state registration is necessary only for functioning as a legal entity. As regards the allegation that while in registration process "the list of founders is sent to the Ministry of National Security", the Law on state registration as well as the Law on Non-Governmental Organizations do not provide for such a requirement and this allegation does not represent the reality. There has not been any complaint concerning this issue. At the same time, UN Security Council Resolution 1373 and 9 special recommendations of FATF imply that the states should prevent non-commercial institutions from being used by terrorist organizations. Thus, so far 12 such organizations have been liquidated for links with terrorist organizations.

*As to the conscientious objection to military service (paragraph 81)*

47. The National Action Plan for the Protection of Human Rights envisages the development of the draft Law on Alternative Service by a task force comprising experts of the Azerbaijani authorities and the Council of Europe in 2007-2008.

*As to the issues relating to minorities (Chapter 4)*

48. As regards the legislative framework on non-discrimination, pursuant to Article 25 of the Constitution, the state guarantees equality of rights and liberties of everyone, irrespective of race, nationality, religion, language, sex, origin, financial position, occupation, political convictions, membership in political parties, trade unions and other public organizations. Rights and liberties of a person cannot be restricted due to race, nationality, religion, language, sex, origin, conviction, political and social belonging. Article 154 of the Criminal Code provides sanctions for discrimination on any ground by maximum two year imprisonment. Moreover, Azerbaijan have ratified a number of international instruments prohibiting discrimination, like the UN Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child, Convention against Discrimination in Education, Framework Convention for the Protection of National Minorities to mention a few. A whole 11th paragraph in the Azerbaijani National Action Plan for Protection of Human Rights is dedicated to national minorities. In evaluation of reports submitted by Azerbaijan to various committees of the UNO the situation in this field in Azerbaijan has been assessed as satisfactory.
49. State Programme on socio-economic development of regions for 2004-2008 endorsed by the President of Azerbaijan on 11 February 2004 envisages large-scale measures aimed at social, economic, educational, health, cultural and environmental development of regions including those where national minorities live.
50. National minorities are widely represented in all branches of power both at national and local levels. All national minorities living in Azerbaijan have their culture centres and other kind non-governmental organizations which help them to maintain and develop their national and cultural identity and languages. The state has regularly allocated funds to these organizations. The ombudswoman is also quite active in this field and systematically organizes seminars and takes awareness-raising measures in regions where national minorities reside.
51. Regarding minorities' problems related to education and languages, it should be noted that all citizens of the Republic of Azerbaijan have the right to education. Article 45 of the Constitution provides that "everyone has the right to use his/her mother tongue; everyone has the right to be educated, carry out creative activity in any language, as desired; nobody may be deprived of right to use his/her mother tongue". Furthermore, Article 6 of the Law on Education of 7 October 1992 and Article 3 of the Law on State Language of 18 May 1993 provide that education may be carried out in languages of national minorities. Article 3 of the Law on Education ensures for everyone the right to education irrespective of race, nationality and confession, language, sex, age, state of health, social and material status, field of activity, origin, place of residence, political views, and previous convictions. It further ensures that citizens are provided with a free choice of education form, institution and language of teaching.
52. The education in Azerbaijan is provided in three languages – Azerbaijani, Russian and Georgian. Of 1764 preschools operating in Azerbaijan 248 are in Russian (8347 children) and 7 are in Georgian (more than 300 children). There are 19 schools with education only in Russian and 6 only in Georgian. Moreover, there are 339 schools with education both in Azeri and Russian, 5 in Azeri and Georgian and 1 mixed

school with education in Azeri, Russian and Georgian. On the basis of requests made by minorities (Georgian, Talysh, Sakhur, Lezgin, Avar) living compactly in concrete regions their languages are taught as well. The teachers who teach those languages are the representatives of those very minorities. In general, in 405 secondary schools 44 365 children belonging to national minorities study their mother tongue as a separate topic. 18 893 Talysh pupils are attending 246 schools in Lenkoran, Astara, Masalli and Lerik districts, 21 747 Lezgin pupils are attending 109 schools in Guba, Gusar, Ismayilli, Khachmaz, Oguz and Gabala districts, 2283 pupils in 33 schools in Balakan and Zagatala are studying Avar, 723 pupils in 8 schools in Zagatala are studying Sakhur, 169 pupils in 2 schools in Guba and 120 pupils in one school in Baku are studying Hebrew. There are also schools where pupils are studying the Khynalig, Udi and Kurdish languages.

53. It should be noted that “We are learning our language” textbooks are provided to the first grades of schools teaching minority languages as are provided “Lezgin language”, “Avar language” and “Sakhur language” for the second grades, and “Talysh language” for the second, third and fourth grades. The first to third grades of the Georgian schools are provided also with translation textbooks. In general, in Azerbaijan 17 textbooks in minority languages are published and provided to minority schools. Textbooks for the Georgian schools are also imported from Georgia. Not a single negative feedback has been received on any of these textbooks.
54. It should be taken into account that the official language of the Republic of Azerbaijan is the Azerbaijani language as secured by Article 21 of the Constitution. This very language is used in public institutions. The need to communicate with public authorities in Azerbaijani is legitimate. In fact, it is difficult if not impossible to find any minority who can not speak Azerbaijani. At the same time the Constitution provides for the obligation of the State to ensure that any other language used in Azerbaijan is freely spoken and developed. The Azerbaijani authorities spare no effort to fulfil this obligation in the best manner possible. Examples are provided in the above paragraphs.
55. Regarding media issues, it is noteworthy that the State Radio Channel regularly broadcasts in the Kurdish, Lezgin, Talysh, Georgian, Russian and Armenian languages. The newspapers are being published in the Russian, Kurdish, Lezgin, Talysh and Ukrainian languages. Only in Russian, there are 20 newspapers published regularly. The local radio station in Balakan district broadcasts in the Avar language, while in Khachmaz district there is broadcasting in the Lezgin and Tat languages. In Gusar and Khachmaz districts local television broadcasts in Lezgin.
56. As regards Russian citizens from Chechnya (paragraph 90), the Azerbaijani authorities admit that there are certain difficulties and problems in determining the identity of those people due to the fact that they have come to Azerbaijan illegally. The issues relating to education of their children and to access to medical care are being addressed. As to Armenians (paragraph 91), regardless of the conflict between Armenia and Azerbaijan, peaceful co-existence of people of different origins in Azerbaijan established through centuries has not been lost. The Azerbaijani authorities are the most interested in maintaining this national and religious diversity and tolerance and do their best to this end. This fact is always emphasized by various international organizations. So far, not a single complaint has been submitted to the authorities on discrimination against Armenians living in Azerbaijan.

*As to the issues relating to women (Chapter 5, section I)*

57. In paragraph 92 it is stated that the Chairwoman has “proposed legislation to be amended to the family Code on violence against women”. Indeed, the State Committee on Issues of Family, Women and Children has developed and submitted to the Cabinet of Ministers and the Parliament a draft law on Prevention of Domestic

Violence. The draft law envisages prevention of violence by abuse of family relationship, wedlock or cohabitation; securing social and medical rehabilitation of victims of domestic violence; ensuring legal protection of victims; development and regulation of measures to be taken by the public agencies to address the root causes of domestic violence. The draft law also provides for the establishment of shelters for victims and issuance of safety orders by the court. The draft law was set on the agenda of the Parliament.

58. Regarding the legal lacuna mentioned in paragraph 94 to sanction spousal rape, it should be noted that Article 149 of the Criminal Code defines sanctions against all cases and forms of rape, which cover also those of a domestic nature. Moreover, the abovementioned draft law on Prevention of Domestic Violence addresses this issue as well.
59. The State Programme for 2007-2010 on Implementation of the Employment Strategy of the Republic of Azerbaijan, which was endorsed by the President of Azerbaijan on 15 May 2007, provides for, *inter alia*, ensuring gender equality in the labour market, through, in particular, strengthening of execution of the relevant national legislation, promotion of women's competitiveness in the labour market, development of female entrepreneurship and self-employment, securing of vocational training for women, carrying out problem-oriented surveys. Furthermore, the Action Plan of the Decent Work Country Programme in co-operation with the International Labour Organization for 2006-2009 includes certain activities aimed particularly at the development of special training programmes, conduction of pilot projects to promote women's self-employment and approximation of working conditions with family life. As to the statistical data, in 2006 the Azerbaijani women comprised 48.1 percent of the total economically active people, and 45.2 percent of the employed. 48.1 percent of the unemployed population are women (i.e. less than men). The employment level of the Azerbaijani women is close to the average world level. The national ratio of employment of the Azerbaijani women is 92.5 percent of all able-bodied women. The gender survey shows that the Azerbaijani women are mostly employed in the social services sector (i.e. public health, education etc.). Thus, in 2006 the women's share was 82.9 percent of the total employed in public health and social services sector, and 66.2 percent in education. 15 427 women are active in public administration, defence and social protection areas. As for 1 January 2007, there were 158 women holding high level positions in the public agencies (19 percent of all such positions), including 14 of 125 parliamentarians (11.2 percent), a chair of a state committee, a chair of a state commission, the Ombudsperson, a vice-president of the Constitutional Court, three deputy ministers, as well as 14 percent of all judges. The State Committee on Issues of Family, Women and Children has developed and submitted to the Cabinet of Ministers a National Action Plan on Issues of Women and Children which envisages further promotion of involvement of women in public and social life and in decision-making process. It should also be noted that the huge number of refugees and IDPs in Azerbaijan is the main burden on the employment and economic policies of the Government.
60. The State Committee on Issues of Family, Women and Children conducts awareness-raising and surveys on a regular basis in order to research and address the issue of early marriage. The Committee has developed and submitted to the Parliament draft amendments to the national legislation to impose the age of 18 requirement to both boys and girls to enter into marriage as well as to determine exact circumstances under which the age requirement can be lowered to 17.
61. The increase in human trafficking in Azerbaijan should not be explained by "discrimination against women in the recruiting process" (paragraph 98). Article 16 of the Labour Code of Azerbaijan prohibits all forms of discrimination in labour relations. Furthermore, the Law of Azerbaijan on State Safeguards of Equality of Rights of Men and Women adopted on 10 October 2006 ensures the gender equality and non-discrimination in labour relations. It should be noted that employment to all public

institutions is carried out by test exams. As regards the linkage between human trafficking and poverty, Azerbaijan has succeeded to lower the poverty level through, in particular, implementation of State Programmes on "Reduction of poverty and economic development" and "Socio-economic development of regions". Currently, a new State Programme on Reduction of Poverty and Sustainable Development for 2008-2015 is being drafted.

62. Statements made in paragraph 99 do not present the real situation. Indeed, the Government of Azerbaijan starting from 2004 has been regularly and systematically dealing with the relevant questions regarding the human trafficking including rehabilitation of the victims. To do this effectively, the relevant reforms have been carried out as to the legislative framework. On 6 May 2004 the President of the Republic of Azerbaijan endorsed the National Action Plan on Combating Trafficking in Human Beings in the Republic of Azerbaijan. It implies the establishment of an effective system of coordination among relevant public agencies in order to fight human trafficking, making use of other countries' best practices in this field, participation in international initiatives, and cooperation of public institutions, the civil society, international organizations and other stakeholders acting in this area. While developing the National Action Plan the provisions of the UN Convention Against Transnational Organized Crime and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children as well as Brussels Declaration on Preventing and Combating Trafficking in Human Beings have been taken into account. The National Action Plan envisages the improvement of the relevant national legislation, appointment of the National Coordinator, establishment of a special unit under the Ministry of Internal Affairs to fight human trafficking as well as ensuring protection of real and possible victims of human trafficking. Consequently, on 28 June 2005 the Law on Combating Human Trafficking was adopted and amendment was made to the Criminal Code (Article 144.1) on 30 September 2005 providing for maximum 15 year imprisonment for human trafficking. Moreover, the Law of the Republic of Azerbaijan on State Protection of Persons Participating in Criminal Procedure adopted on 11 December 1998 ensures the security and social protection of victims of human trafficking. Furthermore, in accordance with the Rules of establishment, funding and functioning of special institutions for victims of human trafficking and control over their performance approved by the Cabinet of Ministers of Azerbaijan on 9 November 2005 temporary shelters for the victims have been created. Other adopted instruments are the Rules of realization of social rehabilitation of victims of human trafficking, and the Regulations of the Assistance Fund for Victims of Human Trafficking, both approved by the Cabinet of Ministers in 2006. Furthermore, draft Rules governing the mechanism of identification of victims of human trafficking has been presented to the Cabinet of Ministers.
63. Efficient cooperation has been established in this area with many international organizations and institutions like the UN, IOM and OSCE, the General Secretariat of Interpol, the relevant governmental bodies of the CIS member states, the Embassy of the USA in Azerbaijan and the FBI. Furthermore, the mutual relationships with about 30 NGOs have been ensured to this end. Throughout the period various seminars and trainings have been organized in 54 cities and towns of Azerbaijan in order educate and to raise awareness of the people and the authorities. Measures were taken by the relevant public bodies in order to provide safe shelters, set up the emergency line, provide clothes for victims, secure jobs and their return to countries of origin, as well as to hold the specialized trainings for staff members. On the basis of the Cabinet of Ministers' Resolution the new shelter for victims of human trafficking started functioning in October 2006. The relevant training was carried out for the members of NGOs working in the shelter. Free medical, psychological, legal and other kinds of assistance have been ensured therein for victims of human trafficking by the Ministries of Health and of Education, as well as the Office of the UN High Commissioner for Refugees and the OSCE Office in Baku. Moreover, the Assistance Centre for victims of human trafficking under the Ministry of Labour and Social Protection of People was set up in accordance with the Resolution of the Cabinet of

Ministers in order to help victims to reintegrate into society, to ensure their education and psychological, medical and professional rehabilitation. All the abovementioned do not mean that all problems have been solved and no challenges remain in this very sensitive field. The Azerbaijani authorities keep this issue in the spotlight. All the measures taken in this sphere are regularly updated in the web site of the Ministry of Internal Affairs: [www.mia.gov.az](http://www.mia.gov.az).

*As to the issues relating to children (Chapter 5, section II)*

64. Regarding the juvenile justice system (paragraphs 101-104), the number of criminal proceedings against juveniles decreases year by year. Thus, in 2006, 955 criminal cases of 1334 persons were investigated and submitted to the court by the Prosecutor's Office of which only 21 cases had to do with juveniles. In the first half of 2007, only 5 cases out of total 445 submitted to the court by the Prosecutor's Office related to juveniles. In all these cases the requirements of the criminal process have been strictly followed. Furthermore, the National Coordination Council for Protection of Children's Rights which consists of representatives of all relevant public agencies was established in 2007 on the initiative of the State Committee on Issues of Family, Women and Children. The Committee has also submitted its proposals to the Cabinet of Ministers on setting up a system of commissions dealing with children's rights defence. It also recommended the improvement of the performance of guardianship institutions, creation of specialised institutions to provide services for juveniles, and consolidation of the overall children's rights defence system. In 2006, UNICEF, the Ministry of Internal Affairs and the Ministry of Justice signed an annual Action Plan for the development of the juvenile justice system in Azerbaijan. In the framework of the Action Plan a number of seminars and conferences were held to discuss the issue and analyze the situation in this area. Promotional materials were translated into Azerbaijani.
65. The allegation in paragraph 102 that there are no specific measures to ensure the protection of juveniles in the law enforcement and justice systems is far from being true. There are special isolation centres created in accordance with Article 434.3 of the Criminal Code of Azerbaijan and governed by the Regulations of Organization of the Interior Agencies' Temporary Isolation Centres for Juveniles approved by the order of the Minister of Internal Affairs on 24 February 2007. Special trainings were organized for the staff members of the MIA to work with children, in the framework of the Programme of Development of Juvenile Justice in Azerbaijan worked out by UNICEF in accordance with the recommendations of 44th session of the UN Committee on Children's Rights held in January-February 2007. The Programme also envisages establishment of a juvenile justice system in a pilot district in Baku, designation and training of a judge who will examine cases of juveniles, as well as development of the draft Juvenile Code of Azerbaijan. The Programme is envisaged to be implemented in 3 years. Furthermore, in September 2007 the memorandum was signed with the UNICEF, OSCE Baku Office, the UK Embassy and the NGO Alliance comprising more than 70 NGOs on working with children in detention and ensuring social, legal and psychological assistance to them. Last but not least, the Judicial Legal Council also pays attention to this issue which is included in the curriculum of the preliminary training of judges.
66. Regarding the institutionalisation (paragraphs 105 and 106), on 29 March 2006, the President of the Republic of Azerbaijan endorsed the State Programme for 2006-2015 on Deinstitutionalization of Children and Alternative Care. The Programme implies preventive measures against institutionalization of children, promotion of deinstitutionalization and family type care. In the framework of the Programme, support centres for children and families function under the State Committee on Issues of Family, Women and Children. They were established in cooperation with U.S. "Save the Children". The Presidential Decree of 12 March 2007 defined the State Committee as the central body with regard to the Hague Convention on Intercountry Adoption of 1993. The State Committee has developed and submitted for

approval to the Cabinet of Ministers the Regulations of Accreditation of Agencies Providing Legal Assistance to Foreigners and Stateless Persons on Interstate Child Adoption. The Regulations is aimed inter alia at the prevention of trafficking in children under the pretext of adoption.

67. Regarding the violence against children, it should be noted that the issues relating thereto are regulated by a number of laws like the Family Code, Criminal Code, Law on Education, Code of Administrative Offences, Law on the Rights of Children, Law on Prevention of Juvenile Delinquency and Homelessness and Law on Social Protection of Parentless Children. The State Committee on Issues of Family, Women and Children pays particular attention to large-scale awareness-raising campaigns in this field. The Committee has also elaborated and submitted to the Cabinet of Ministers the National Action Plan for Protection of Children's Rights which in particular addresses the issue of violence against children.

*As to the people with disabilities (paragraphs 108 and 109)*

68. The Republic of Azerbaijan has already completed all internal procedures necessary for signing the UN Convention on the Rights of Persons with Disabilities. The signature will take place soon. As regards the reasonable accommodation and access to public buildings, it was envisaged to a certain extent in the Law of Azerbaijan on Prevention of Disability, Rehabilitation and Social Protection of People with Disabilities dated 25 August 1992.

*As to the situation stemming from the Nagorno-Karabakh conflict (Chapter 6)*

69. The following change should be made in paragraph 110: "During the escalation and in the aftermath of the **Armenia-Azerbaijan** Nagorno-Karabakh conflict (1991-1993)."
70. As a result of the conflict between Armenia and Azerbaijan over the Nagorno-Karabakh region of the Republic of Azerbaijan 685 586 Azerbaijani citizens have been displaced. From 2001 to 2007, in accordance with the Presidential orders and decrees 47 new settlements were founded that enabled to relocate IDPs from 9 tent camps out of total 12 and those living in railway wagons. The IDPs in the last 3 tent camps remaining by the visit of the Commissioner were relocated on 24 December 2007. During these years the Azerbaijani authorities have established close cooperation with 72 international and 32 national humanitarian organizations in order to improve the living conditions of the IDPs. The state budget of Azerbaijan for 2008 envisages monthly food provision to 270 000 IDPs.
71. In order to define the status of IDPs, to ensure their rights and social protection, so far the President of the Republic of Azerbaijan has issued 47 orders and decrees, the Parliament passed 23 laws, the Cabinet of Ministers adopted 203 resolutions and decrees. The national legislative framework has been aligned with the relevant norms of international law. The IDPs have the same rights under the Constitution as other citizens of Azerbaijan. The acquisition by the IDPs of a personal property at their own expense does not absolutely mean their deprivation of IDP status or privileges envisaged by law. It goes without saying that there are lots of IDPs who succeeded to purchase houses or other estate. They do not have any restraint in doing business, conducting trade or engaging in any other legal activity. The IDPs who acquired personal property have the same right to restitution as any other IDP who do not have such a property.
72. In accordance with the Presidential Order of 31 October 2007 amending the State Programme on Improvement of living conditions of IDPs and refugees and their employment, starting from January 2008 new settlements will be founded to replace IDPs residing in frame houses, schools, military barracks and other public buildings. Thus, in 2008 the process of relocation of IDPs will be completed.

73. The IDPs have been temporarily registered in those regions where they had found refuge. This kind of registration is in the interest of IDPs themselves as it enables them to make use of the state financial and humanitarian assistance, exemption from payment for public utilities as well as to have accommodation. Moreover, the national legislation provides the equal rights and freedoms to the IDPs like all other citizens of Azerbaijan, in particular the freedom of movement, right to work, and right to acquire housing or other estate all over the country.
74. The duty of provision of medical care and medicines to IDPs lies with relevant public agencies in accordance with Article 10 of the Law of the Republic of Azerbaijan of 21 May 1999 on Social Protection of IDPs and persons identical to them. The abovementioned Presidential Order of 31 October 2007 envisages improvement of the medical care provided to IDPs as well.
75. IDPs constantly voice their wish to return to their homelands, stay connected to their heritage and be able to visit the graves of their ancestors. To date 3 500 houses have been repaired in those territories which had been previously occupied by the Armenian armed forces and liberated afterwards by those of Azerbaijan. Approximately 36 000 IDPs have returned to those houses.
76. As regards missing persons and prisoners of war, the State Commission on the issues of Prisoners of War, Hostages and Missing Persons was established on 8 February 1993. As for 10 December 2007, **4 354** persons are still registered as persons missing in the conflict zone and currently in search. During 1988-2007 years **1 393** Azerbaijani citizens have been released from the Armenian captivity.
77. Information on **414** persons of Armenian origin who have disappeared during the conflict was submitted to the Commission by the ICRC. As a result of the inquiry done by the State Commission only **389** persons of Armenian origin were identified to have disappeared in the territory of the Republic of Azerbaijan. Most of these 389 persons disappeared in those Azerbaijani territories which are currently occupied by Armenia. The impossibility of Azerbaijan to enjoy its jurisdiction over these territories made it difficult to identify the fate of these people. According to the findings of the State Commission only 5 persons of Armenian origin disappeared in the Azerbaijani territories far from the conflict zone (Baku, Ganja, Oghuz). The Azerbaijani authorities are still carrying out their search.
78. In accordance with its obligations enshrined in the Agreement between the Government of the Republic of Azerbaijan and the ICRC, the State Commission on the issues of Prisoners of War, Hostages and Missing persons has established and further strengthens close cooperation with the ICRC.

*As regards the summary of recommendations*

1. Regarding recommendations 5, 6 and 7, access to a lawyer and possibility to warn relatives at the time of arrest as well as access to medical care are comprehensively ensured by the Criminal Procedure Code. Moreover, requests made by arrested persons for the medical care as well as rejections of such care are registered in a special book. Taking into account the recommendations of the CPT, the Registration book of arrested persons was reformed to include the names, signatures and ID card numbers of their lawyers, the date and time of the meeting with a lawyer, as well as the relevant information on the doctor who examines arrested persons.