

## **Comments of the Azerbaijani authorities on the observations on human rights situation in Azerbaijan by Mr Nils Muiznieks, Commissioner for Human Rights of the Council of Europe**

After having examined the observations, the Azerbaijani authorities regret that the reflections supposed to update the Commissioner's 6 August 2013 report still contain numerous groundless allegations. The Azerbaijani side has serious doubts as to the credibility of the sources the Commissioner relies on while preparing the country-specific observations. In this regard, the Azerbaijani authorities call on the Commissioner to verify the objectivity of these sources and to closely cooperate with the authorities to ensure that the future reports are fair and balanced.

### **Freedom of expression**

The Government stresses that all persons convicted or being in pre-trial detention, including Parviz Hashimli, Abdul Abilov and Omar Mammadov have been brought into justice not because of their journalistic or online activity, but concrete criminal offences they have committed. Journalism, online activism, or human rights defence related activity does not exempt anybody from liability for the criminal offences.

The Government refutes the allegation that Khadija Ismayilova has been summoned to the Prosecutor General's Office for having leaked state secrets to US congressional aides visiting Baku. In fact, she has been questioned for disclosing a confidential document of the Ministry of National Security. Her civil and professional rights have in no way been violated during this process. According to Article 11 of the Law on the "Mass Media", journalists must reveal their sources only if the Court so decides in the cases prescribed by law.

Furthermore, the Government totally reject all allegations on the increasing use of surveillance by intelligence services on human rights defenders and media representatives, as well as use of a Remote Control System spyware. This allegation is not based on reliable evidence and therefore casts a shadow on the objectivity of the sources of information. It is a matter of deep surprise and regret to target Azerbaijan which has nothing to do with the production, use and distribution of such kind of technologies.

As regards the defamation, the Government continues the consultations with the Venice Commission on the adoption of the relevant law. The Commissioner's claim that the "defamation is still associated with excessively high criminal sanctions, including imprisonment" lacks credibility. Since 2009, moratorium has been imposed on criminal prosecution of media representatives and so far no journalist has been arrested for the views expressed and reported. The Azerbaijani courts do not admit complaints to institute criminal proceedings against media on

"insult" or "libel". If admitted, such complaints are dealt with under the Code of Administrative Offences.

Furthermore, the Government disapproves the claims on disproportionate fines and their serious negative impact on the activity of media. For instance, in 2013 there have been claims amounting to 4.5 million € against the media agencies, however the courts have decided on the payment of only 125 000 € compensation award (in 2009 - 20 000 out of 3 millions, in 2010 - 30 000 out of 1 million, in 2012 - 180 000 out of 3.7 millions). These figures demonstrate once again that courts take account of financial situation of mass media outlets while dealing with their cases.

On 21 February 2014 the Plenum of the Supreme Court adopted decision on "Judicial practice as to the examination of cases concerning the complaints lodged with a view of private prosecution".

In its decision the Plenum made a number of recommendations to the domestic courts in relation to matters of law and procedure. In particular, the Plenum referred to the case-law of the European Court of Human Rights as to questions of admissibility, burden of proof, proportionality and sanctioning in the defamation cases.

The Plenum stressed that 249 complaints were lodged with a view of private prosecution in respect of 401 individuals in 2012-2013. Out of this number 44 (10.9 %) complaints have been lodged against journalists, whereas no single journalist has been convicted by a court. In one case the court acquitted the journalist, in ten cases the proceedings have been terminated and in 33 cases the courts refused to admit the complaint and hold its judicial examination.

On the same day the Plenum adopted decision on "Submission, within the initiative procedure to the Milli Madjlis of the Republic of Azerbaijan, of proposals to amend the Criminal Code of the Republic of Azerbaijan".

The Plenum, while relying on the position of the European Court that the preference should be given to the imposition of sanctions not related to imprisonment, considered appropriate the provision of only sentence of fine in Articles 147.1 (defamation) and 148 (insult) of the Criminal Code.

At the same time, the Plenum considered that the criminal law should be amended so as to include the norms providing for responsibility for insult and libel committed through creation of hostility based on racial, ethnic, religious or other social identity or through incitement to violence, and in this connection the relevant legislative proposals should be submitted, within the initiative procedure, to the Milli Madjlis of the Republic of Azerbaijan.

At their 1193rd meeting (4-6 March 2014) the CoE Committee of Deputies "welcomed the decision of the Plenum of the Supreme Court of 21 February 2014 which highlights,...the necessity of ensuring that prison sentences be imposed only in exceptional circumstances and also draws the attention of domestic courts to other Convention requirements in the field of freedom of expression".

They have also "noted with interest the legislative proposal made by the Plenum relating to the imposition of prison sentences in defamation cases, welcomed the authorities' intention to submit it to the Venice Commission, and invited the authorities, in co-operation with the Venice Commission, to ensure that the necessary general legislative changes are rapidly adopted, sufficiently precise and fully in line with the Convention requirements.

The Deputies have also "noted with interest the information regarding practical measures, such as further training and awareness raising, to ensure that the Convention requirements are rapidly and fully integrated in the general practice of prosecutors and courts, and stressed the importance of continuing efforts in this respect".

### **Freedom of association**

The amendments to the NGO legislation passed by the Milli Majlis on 17 December 2013 were extensively discussed with the Milli Majlis, Ministry of Justice, international organizations and civil society representatives before it was signed into law by the President of the Republic of Azerbaijan. The new changes are destined to further improve the legal basis and transparency of functioning of NGOs, as well as to contribute to their development. With this in mind, it was decided to establish legal and monitoring commissions composed of local and international NGOs within the Council of State Support to NGOs under the President with a view to rapidly addressing the problems which may arise during the implementation of the law.

The report states that ".....for instance as concerns the validity, after an initial period of 90 days, of the certificate that NGOs receive upon registration.....". However, the final text adopted by the Milli Majlis and approved by the President does not contain such provision.

It should be underlined that the recent amendments are of clarifying nature and aims to remove contradictions in normative acts. Some of the amendments envisage strengthening fight against corruption, money-laundering and terrorism financing.

In an effort to further stimulate the civil society development, no administrative measure has been taken against 13 NGOs having violated the legislation in the course of 2013.

**Freedom of assembly**

The Government disagree with the Commissioner's statement that "a number of peaceful protests ... have recently been dispersed by the police, sometimes with excessive force, and participants have been arrested and sentenced to administrative detention and fines".

During the last year a number of assemblies, including fortuitous assemblies have been held in the different parts of the country, in particular in the central areas of Baku. There were no reports of police intervention with the peaceful assemblies or sanctioning for holding assembly.

As to the events in the town of İsmayıllı in January 2013, the Government is not aware of any reports of the "trials in which significant irregularities were observed".

**Right to property**

The Government ensures that any expropriation and demolition is carried out in a lawful and transparent manner and that property owners are being provided with fair compensation, set at market value.