



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME



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## REPORT

**by Nils Muižnieks**  
**Commissioner for Human Rights of the Council of Europe**

Following his visit to Azerbaijan  
from 22 to 24 May 2013

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## **Summary**

Commissioner Nils Muižnieks and his delegation visited Azerbaijan from 22 to 24 May 2013. In the course of this visit the Commissioner held discussions with state authorities and non-governmental organisations. The present report focuses on the following human rights issues:

### **I. Freedom of expression**

The Commissioner is seriously concerned at the apparent intensification of the practice of unjustified or selective criminal prosecution of journalists and others who express critical opinions. He reiterates that releasing all persons who are in detention because of the views they hold and express should be a priority for the Azerbaijani authorities in order to protect freedom of expression. Moreover, journalists documenting and reporting human rights violations are reported to be sometimes subjected to physical attacks. Referring to a recent judgment of the European Court of Human Rights, in which the Court found that the physical ill-treatment by state agents of journalists carrying out their professional duties had seriously hampered the exercise of their right to receive and impart information, the Commissioner calls on the authorities to respect in all cases their obligation to initiate prompt, thorough and transparent investigations when violence or threats of violence against journalists occur, and to bring the perpetrators to justice. Lastly, the need for a fully independent and impartial review by the judiciary of cases involving journalists and others expressing critical voices appears urgent.

In the Commissioner's view, the full decriminalisation of defamation in Azerbaijan is a logical further step to the non-application of criminal defamation provisions in recent years. The Commissioner regrets that amendments aimed at facilitating the application of defamation provisions to online expression were signed by the President of Azerbaijan on 4 June 2013. Another concern relates to the excessive damages which are sometimes awarded in civil defamation cases. The Commissioner urges the authorities to bring the long-standing work on the reform of defamation legislation to a successful conclusion, by ensuring that it provides for defamation to be dealt with through the awarding of proportionate damages and not imprisonment.

While welcoming the fact that the Internet in Azerbaijan is for the most part free from restrictions, the Commissioner takes note of information according to which there have been occasional blocks imposed on certain websites. The Commissioner is also concerned by recent developments aimed at restricting the exercise of fundamental freedoms online, including the numerous arrests and prosecutions of online activists, and the monitoring of online activities or the tracking of user data by security agencies. The Commissioner calls upon the authorities to cease practices of targeting social media users who express critical opinions of the authorities or use the Internet to call for or organise protests, and to refrain from restricting or controlling Internet access and information available via the web by legislative and technical means.

### **II. Freedom of assembly**

The Commissioner is concerned by persistent reports of limitations imposed on freedom of assembly, notably the excessive use of force by law enforcement officials to disperse demonstrations. An illustration of some of these limitations is provided by the events that unfolded in January 2013 in the town of Ismayilli, visited by the Commissioner on 23 May 2013. The Commissioner notes that, in three judgments against Azerbaijan, the Court found violations of Article 3 of the Convention (prohibition of inhuman or degrading treatment) due to excessive use of force against the applicants by law enforcement officials during demonstrations and to the lack of effective investigations in that respect. The Commissioner calls on the authorities to adopt effective measures to prevent the use of force against peaceful protestors by law enforcement officials.

The Commissioner remains concerned by the way the Law on Freedom of Assembly is currently being implemented in Azerbaijan. The authorities should ensure that no authorisation is required for the holding of public demonstrations and that the system of notification is applied in accordance with European standards. The Commissioner welcomes the announced publication by the authorities of a list of locations where demonstrations will be made possible, and calls for these to include adequate locations in the centre of Baku and other cities as a first step towards a better enjoyment of the right to freedom of assembly by the population of Azerbaijan.

Recent months have seen a harshening of the fines and the use of administrative detention against those who organise or participate in “unauthorised” public gatherings. The sanctions which can now be imposed, coupled with the fact that local authorities have not authorised a single rally in Baku city centre in recent years clearly have a chilling effect on the organisation of or participation in demonstrations. The Commissioner urges the authorities to ensure that no disproportionate sanction, which would undermine the fundamental right to peaceful assembly, is imposed.

### **III. Freedom of association**

A number of NGOs, especially those operating in the field of human rights and those openly critical of the government, are reported to encounter several obstacles in carrying out their work in Azerbaijan. The Commissioner notes that in its 2011 Opinion on the compatibility with human rights standards of the legislation on NGOs of Azerbaijan, the Council of Europe Venice Commission found the requirement for international NGOs to establish and register local branches and representatives, introduced by amendments in 2009, to be problematic. National NGOs have also faced difficulties, especially with regard to the restrictive application of the regulations on registration, which can result in long delays or the absence of any formal decision on registration. Regarding the registration issue, the Venice Commission noted in its Opinion that recent changes have added further complications to an already complicated and lengthy procedure. The Commissioner is worried to note that on 15 February 2013, amendments to the law on NGOs, the law on grants and the Code of Administrative Offenses which further restrict the operations of NGOs in Azerbaijan, were adopted by the Azerbaijani Parliament. Of equal concern is the political discourse which often accompanies the adoption of restrictive legislation. The authorities are called on to ensure full respect of the right to freedom of association, in particular by alleviating the registration requirements and making the whole process, as well as the functioning of NGOs, less bureaucratic.

### **IV. Right to property**

An increasing number of cases pending before the Court relate to the demolitions of houses and expropriations in Azerbaijan, a clear indicator that property rights have become a serious human rights issue in the country. The Commissioner regrets that these expropriations, which are part of a general urban renewal of Baku, have not abated and have led to a number of problems. Among these problems, he points out the lack of transparency in the process, the absence of a legal basis in national law and the violation of provisions of existing national laws on expropriation, as well as compensation which is sometimes below the market values of properties. The Commissioner emphasises that all persons affected by expropriations should have access to an effective remedy at national level. The Commissioner also notes reports according to which human rights defenders or lawyers involved in the defence of victims of expropriations, as well as journalists documenting the demolitions of properties, have sometimes been targeted. The Commissioner calls on the authorities to ensure that all further expropriations and demolitions are carried out in a lawful and transparent manner. At the same time, the authorities should provide those who have been evicted with fair compensation, set at market value.

The report contains the Commissioner's conclusions and recommendations to the Azerbaijani authorities and is published on the Commissioner's website along with the authorities' comments.

## Introduction

1. The present report follows a visit to Azerbaijan by the Council of Europe Commissioner for Human Rights, Nils Muižnieks, (hereinafter 'the Commissioner') from 22 to 24 May 2013.<sup>1</sup> The visit focused on recent human rights developments, in particular on those concerning the right to freedom of expression, notably through the Internet, the right to freedom of assembly and association, and the right to property.
2. During his visit, the Commissioner held discussions with the national authorities, including the Head of the Presidential Administration, Mr Ramiz Mehdiyev, the Minister of Internal Affairs, Mr Ramil Usubov, the Deputy Minister of Foreign Affairs, Mr Mahmud Mammad-Guliyev, the Deputy Minister of Justice, Mr Azer Jafarov, and the Deputy Minister of Communications and Information Technologies, Mr Elmir Velizade. He also held discussions in Baku with a number of representatives of non-governmental organisations as well as lawyers and journalists.
3. As part of his visit, the Commissioner travelled to the town of Ismayilli (approximately 190 km North-West of Baku), where he discussed the protests which took place there in January 2013. In Ismayilli, the Commissioner met with the Governor, Mr Mirdamed Sadigov, and with representatives of civil society. He also went to Kurdakhani pre-trial detention centre, near Baku, where he met with Ilgar Mammadov, Hilal Mammadov and Zaur Gurbanli.
4. The Commissioner wishes to thank the Azerbaijani authorities in Strasbourg and in Baku for their assistance in organising the visit and facilitating its independent and smooth execution. He also extends his thanks to all his interlocutors for their willingness to share with him their knowledge and views. In his capacity as an independent and impartial institution of the Council of Europe, he wishes to continue his constructive dialogue with the Azerbaijani authorities and to assist them in their efforts to enhance the effective observance of the human rights standards of the Council of Europe.
5. The visit of the Commissioner coincided with the build-up to the next presidential election, which is scheduled for 16 October 2013. In this context, several representatives of civil society organisations that met with the Commissioner deplored an intensification of repressive measures and increased restrictions on fundamental freedoms. The Commissioner stresses that the thorough respect of freedom of expression, assembly and association and of the rule of law, including around election times, is both a human rights obligation and an integral component of a healthy democracy.
6. The present report focuses on the following specific issues: freedom of expression (section I); freedom of assembly (section II); freedom of association (section III); and the right to property (section IV).

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<sup>1</sup> During his visit the Commissioner was accompanied by the Deputy to the Director of his Office, Mr Giancarlo Cardinale, and his Adviser, Ms Anne Weber.

## I. Freedom of expression

7. The situation of freedom of expression, including freedom of the media, in Azerbaijan has been a long-standing concern among national and international observers.<sup>2</sup> The latter include Commissioner Muižnieks' predecessor, Mr Thomas Hammarberg, who also highlighted important shortcomings in these areas in a report on Azerbaijan released in 2010,<sup>3</sup> as well as in observations published in 2011<sup>4</sup>. As detailed below, the Commissioner notes that most of these shortcomings remain unaddressed today and that in certain areas, a clear deterioration can also be observed.

### 1. Judicial harassment, intimidation and violence against journalists

8. The Commissioner is seriously concerned at the apparent intensification of the practice, highlighted by his predecessor in 2010 and 2011, of unjustified or selective criminal prosecution of journalists and others who express critical opinions. In recent years, several media workers have been prosecuted and/or sentenced for incitement to national, racial or religious hatred and in some instances terrorism, as well as for hooliganism, tax evasion, drug possession and illegal possession of weapons, with the credibility of the relevant charges being widely challenged. As a result, a number of journalists have to serve long prison terms or carry out corrective labour and/or pay heavy fines. According to the prison census conducted by the Committee to Protect Journalists (CPJ) in December 2012, Azerbaijan ranked among the top countries jailing journalists with nine imprisoned journalists.
9. Among those who have been prosecuted and detained on the basis of seemingly spurious charges feature Hilal Mammadov, editor-in-chief of *Tolishi Sado* newspaper, and Avaz Zeynalli, editor-in-chief and founder of *Khural* newspaper, both of whom the Commissioner had met in pre-trial detention in November 2012, on the occasion of a short visit to Azerbaijan. During his last visit, the Commissioner returned to Kurdakhani pre-trial detention centre, where he met with Hilal Mammadov for the second time. Hilal Mammadov was arrested on 21 June 2012 on charges of drug possession. A few days later, additional charges of treason and incitement to national, racial or religious hatred were brought against him. Under accusations of treason, Hilal Mammadov faces life imprisonment. The Commissioner shares the views of others who have stressed the inconsistencies in the various charges brought against the journalist and human rights defender.<sup>5</sup> The Commissioner is all the more worried given that Novruzali Mammadov, the former editor of *Tolishi Sado*, died in a prison hospital on 17 August 2009, while serving a ten-year sentence following his conviction for charges similar to those brought against Hilal Mammadov.
10. The case of Avaz Zeynalli is also of particular concern. Following his work exposing notably allegations of government corruption, he was arrested in October 2011 and charged with extortion, failure to implement a court decision and tax evasion. The charges of extortion were based on claims made by a Member of Parliament, Gular Ahmadova, who was later

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<sup>2</sup> See, for example, the Foreword by Frank La Rue, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, of the International Partnership Group for Azerbaijan (IPGA) report, [Running Scared: Azerbaijan's Silenced Voices](#) (2012), who noted that "Although there are not currently as many journalists in prison as there were in 2007, there are now more persons overall imprisoned in connection with exercising their right to free expression."

<sup>3</sup> Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Azerbaijan, [CommDH\(2010\)21](#), 29 June 2010.

<sup>4</sup> Observations on the human rights situation in Azerbaijan, [CommDH\(2011\)33](#), 29 September 2011.

<sup>5</sup> See for instance the [response](#) to the Report of the OSCE Representative on Freedom of the Media Dunja Mijatović by the U.S. Permanent Representative to the Permanent Council of the OSCE on 29 November 2012: "The United States is deeply concerned about the treatment in Azerbaijan of Talysh-language newspaper editor Hilal Mammadov, whose arrest on the dubious combination of narcotics possession and treason charges raises questions of politically motivated prosecution."

arrested on charges of embezzlement after being implicated in a corruption scandal in Azerbaijan. On 15 May 2013, the OSCE Representative on Freedom of the Media, Dunja Mijatović, condemned a 13 May decision of the Baku Appeals Court upholding a nine-year prison sentence for Avaz Zeynalli.

11. In addition to facing charges and imprisonment, journalists documenting and reporting human rights violations are reported to be sometimes subjected to physical attacks. According to the Azerbaijani Institute for Reporters' Freedom and Safety (IRFS), there have been more than 200 violent attacks against journalists since 2005<sup>6</sup> and more than 50 domestic and foreign journalists were harassed or attacked in 2011 alone. Moreover, impunity prevails and those responsible are reportedly rarely, if ever, brought to justice. The murder of the editor of *Monitor* magazine, Elmar Huseynov, in 2005, and the fatal stabbing of the journalist and writer Rafiq Tagi in 2011 remain unsolved to date. The Commissioner also notes that no effective and independent investigation into the death in prison of Novruzali Mammadov has been conducted.<sup>7</sup>
12. Another recent incident concerns the photo-journalist Mehman Huseynov, who faces up to five years' imprisonment on hooliganism charges over an argument he reportedly had with law enforcement officers while covering a demonstration in Baku in May 2012.
13. Some Azerbaijani journalists documenting on-going demolitions of properties have been prevented from carrying out their professional activities, and have also been subjected to physical attacks. On 18 April 2012, Idrak Abbasov and other journalists were attacked by approximately 20 policemen and security guards of the State oil company as they attempted to film house demolitions in the outskirts of Baku.<sup>8</sup> Idrak Abbasov, a journalist with the *Zerkalo* newspaper and the IRFS, was taken to hospital unconscious and suffered from broken ribs, damage to his internal organs and injuries to his eyes.
14. The Commissioner notes that in an October 2012 judgment,<sup>9</sup> the European Court of Human Rights (hereinafter 'the Court') held that Azerbaijan had violated Article 3 (prohibition of inhuman or degrading treatment) as well as Article 10 (freedom of expression) of the European Convention on Human Rights (hereinafter 'the Convention') in a case concerning a journalist who had been beaten by the police while covering an unauthorised demonstration in Baku in October 2005. The Court found in particular that the physical ill-treatment by state agents of journalists carrying out their professional duties had seriously hampered the exercise of their right to receive and impart information. It also found that irrespective of whether there had been any actual intention to interfere with the applicant's journalistic activity, he had been subjected to unnecessary and excessive use of force, despite having made clear efforts to identify himself as a journalist at work. The Commissioner notes that in the context of the execution of this judgment, the Azerbaijani authorities were invited to inform the Council of Europe Committee of Ministers of the specific measures envisaged to prevent such impediments to the exercise of journalistic activity.
15. During his meeting with the Commissioner, the Minister of Internal Affairs explained that the situation in this regard had improved. In addition to a number of training initiatives for police officers, special vests with a 'Press' sticker were distributed to journalists by the Press Council, in order to facilitate their identification. A Commission of the Press Council, in which the Ministry of Internal Affairs is taking part, had also been mandated to investigate complaints by journalists against the police.

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<sup>6</sup> IRFS, 2012 [Annual Report](#) on Freedom of Expression in Azerbaijan.

<sup>7</sup> See the Commissioner's report, [CommDH\(2010\)21](#), paras. 23-25.

<sup>8</sup> On 20 April 2012, the Secretary General of the Council of Europe issued a statement in reaction to these attacks, calling for better protection of journalists in Azerbaijan.

<sup>9</sup> *Najafli v. Azerbaijan*, judgment of 2 October 2012.

16. In addition to physical attacks, journalists and media workers in Azerbaijan have reported having been subject to various forms of intimidation. In March 2012, for instance, unknown persons attempted to blackmail Khadija Ismayilova, a journalist with Radio Free Europe/Radio Liberty (RFE/RL) who had notably investigated the business holdings of the family of President Aliyev. As she refused to be silenced, an intimate video of her, filmed by hidden camera, was posted on the Internet.
17. Across the aforementioned areas, the need for a fully independent and impartial review by the judiciary of cases involving journalists and others expressing critical voices appears urgent. The Commissioner notes that a lack of independence of the justice system in Azerbaijan was highlighted in the last monitoring report of the Parliamentary Assembly of the Council of Europe, which stressed that the executive branch continues to exert influence on the judiciary, thus contributing to the continuation of the problem.<sup>10</sup> The report also refers to information by defence lawyers claiming that they were denied the opportunity of challenging conflicting or inaccurate testimonies or arguments presented by the prosecution as incriminating evidence, or of presenting evidence of their own and calling on a number of key witnesses. Other reported deficiencies in court procedures include alleged refusal of the judge to enable the defence to examine the evidence used against the defendant, and convictions without convincing evidence.
18. The fact that some hearings take place behind closed doors is also problematic. This is for instance the case for the trial of Hilal Mammadov relating to the charges of treason. On 29 January 2013, the Baku Court of Grave Crimes began to hear his case behind closed doors, following the rejection of Hilal Mammadov's request to have a public hearing. Since then, his trial is continuing as a closed trial.

#### *Conclusions and recommendations*

19. The Commissioner notes with concern that harassment of journalists and others expressing critical views has heightened in recent months, with charges being brought against them for increasingly serious crimes. The Commissioner reiterates that releasing all persons who are in detention because of the views they hold and express should be a priority for the Azerbaijani authorities in order to protect freedom of expression.
20. The Commissioner calls on the Azerbaijani authorities to respect in all cases their obligation to initiate prompt, thorough and transparent investigations when violence or threats of violence against journalists occur, and to bring the perpetrators to justice, where punishments should reflect the seriousness of this crime. He furthermore recalls that the Azerbaijani authorities must not hamper the work of journalists, especially those covering demonstrations or more generally documenting human rights violations. The Commissioner is expecting more information on the functioning of the Commission of the Press Council mandated to investigate complaints by journalists against the police, in particular statistics on the number of complaints dealt with each year and their outcome.
21. A particularly important concern in this context is the independence and impartiality of the courts, which appear to be particularly severe in judging journalists and other media professionals. Any reform should therefore be accompanied by measures to enhance the independent and impartial review of the relevant cases by the judiciary.
22. The Commissioner also calls on the authorities to ensure to everyone a public hearing, which is an essential feature of the right to a fair trial. The Court notably stressed that “the public

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<sup>10</sup> [Report](#) on the honouring of obligations and commitments by Azerbaijan, 20 December 2012. In particular, the report indicates “that, as in some other countries with a Soviet legacy, in many cases courts seem to be an extension of the prosecutor's office. This is evidenced, *inter alia*, by an almost inexistent percentage of acquittals (less than 1%).”

character of proceedings protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 § 1, a fair hearing, the guarantee of which is one of the foundations of a democratic society.”<sup>11</sup>

## **2. Defamation**

23. The decriminalisation of defamation is a long-standing recommendation of the Council of Europe.<sup>12</sup> In his 2008 report on Azerbaijan, the previous Commissioner recommended that the decriminalisation of defamation be considered as a matter of urgency. In his subsequent report in 2010, he regretted that little progress towards the decriminalisation of defamation had been made.
24. Azerbaijan’s own National Action Plan on human rights contains a commitment to decriminalise defamation in 2012. The Commissioner observes that the Azerbaijani Commissioner for Human Rights (Ombudsman) also encourages the elimination of criminal liability for defamation.<sup>13</sup> However, as of July 2013, Articles 147 (defamation) and 148 (insult) of the Azerbaijani Criminal Code still provide for up to six months’ imprisonment. This may be extended to three years for aggravated instances of defamation (Article 147.2). During the visit, the Azerbaijani authorities informed the Commissioner that, since 2009, a *de facto* moratorium on the use of criminal defamation provisions had been in place.<sup>14</sup> In their submission to the Working Group on the Universal Periodic Review of the Human Rights Council, the authorities notably indicated that “since 2009 the imprisonment for defamation in accordance with the articles 147 and 148 of the Criminal Code has never been employed. Particularly in 2011–2012 nobody was convicted for such offences.”<sup>15</sup>
25. In the Commissioner’s view, the full decriminalisation of defamation appears as a logical further step to the non-application of criminal defamation provisions in recent years. He notes that the decriminalisation of defamation is also required in order to execute two judgments of the Court against Azerbaijan.<sup>16</sup> The Court stated that “the imposition of a prison sentence for a press offence will be compatible with journalists’ freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in cases of hate speech or incitement to violence.”<sup>17</sup> The Court also stressed that the imposition of a prison sentence, by its very nature, has a chilling effect on the exercise of journalistic freedom. To date the execution by Azerbaijan of these judgments remains under the supervision of the Council of Europe Committee of Ministers.
26. The Commissioner welcomes that the authorities are currently engaged with the Council of Europe Venice Commission on a reform of the defamation legislation with a view to preparing a law in accordance with the Convention’s requirements. At the same time, the

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<sup>11</sup> See, *inter alia*, *Osinger v. Austria*, judgment of 24 March 2005, para. 44.

<sup>12</sup> See in particular [Recommendation 1814 \(2007\)](#) and [Resolution 1577 \(2007\)](#) of the Parliamentary Assembly of the Council of Europe, “Towards decriminalisation of defamation”, and the [Reply](#) adopted by the Committee of Ministers on 11 June 2008.

<sup>13</sup> [Submission](#) of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan to the Universal Periodic Review 2013, p. 5.

<sup>14</sup> According to the Azerbaijani Media Rights Institute, 31 criminal defamation cases were initiated in 2010 and 9 journalists were sentenced, mainly to corrective labour (no prison sentence). In 2011 and 2012, no criminal sentence was pronounced, although 7 criminal defamation cases were initiated in 2012.

<sup>15</sup> National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Azerbaijan, [A/HRC/WG.6/16/AZE/1](#), 7 February 2013, para. 57.

<sup>16</sup> *Mahmudov and Agazade v. Azerbaijan*, judgment of 18 December 2008, and *Fatullayev v. Azerbaijan*, judgment of 22 April 2010.

<sup>17</sup> *Mahmudov and Agazade v. Azerbaijan*, para. 50.

Commissioner finds it difficult to reconcile this commitment with the adoption by the Azerbaijani Parliament, two weeks before his visit, of amendments aimed at facilitating the application of defamation provisions to online expression. During his visit, the Commissioner called on the President of Azerbaijan not to sign these amendments into law. However, these amendments were signed by the President on 4 June 2013, a fact that both the Commissioner and the OSCE Representative on Freedom of the Media, Dunja Mijatović, deeply regretted.<sup>18</sup>

27. Another concern relates to the excessive damages which are sometimes awarded in civil defamation cases, putting the newspapers concerned under heavy pressure, or even threatening their economic survival. For instance, on 14 February 2013, the Supreme Court of Azerbaijan upheld a 30.000 AZN (approximately 30.000 €) compensation award imposed on the newspaper *Azadliq*, following a lawsuit filed by the Head of the Baku Metro. A few days later, the Court of Appeal of Baku rejected an appeal lodged by the same newspaper against a compensation award of 30.000 AZN imposed in another set of proceedings. This brings the total compensation award due by *Azadliq* to over 120.000 AZN, if one counts the 69.000 AZN imposed in 2012 as the result of a number of defamation cases.<sup>19</sup> The Commissioner would like to stress that a compensation award of a disproportionate amount may also contravene Article 10 of the Convention. In several cases, the Court found that the award of damages was disproportionate to the legitimate aim pursued by the applicants' conviction for insult and defamation.<sup>20</sup> According to the Court, as a matter of principle, unpredictably large damages awards in defamation cases are considered capable of having a chilling effect on the press and therefore require the most careful scrutiny.<sup>21</sup>

#### *Conclusions and recommendations*

28. The Commissioner notes a tendency in Azerbaijan to frequently open defamation proceedings against journalists. While he welcomes the decrease in the use of criminal defamation provisions, he remains concerned by the number of civil defamation cases, often initiated by public officials, in reaction to critical articles. The Commissioner recalls that, as repeatedly stated by the Court, freedom of expression is also applicable to "information" or "ideas" that offend, shock or disturb. Such are the demands of the pluralism, tolerance and broadmindedness without which there is no "democratic society". The Court also stressed that the limits of acceptable criticism are wider as regards a politician as such than as regards a private individual: unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance.<sup>22</sup>
29. The Commissioner notes that there are several applications against Azerbaijan raising complaints under Article 10 of the Convention pending before the Court. They have been brought by journalists who were sentenced to prison terms, allegedly for publishing defamatory articles or otherwise engaging in their professional activity.

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<sup>18</sup> See the joint [press release](#) "Council of Europe Commissioner for Human Rights and OSCE media freedom representative concerned at further restrictions to free expression in Azerbaijan", published on 6 June 2013.

<sup>19</sup> Another example concerns *Khural* newspaper: defamation suits resulted in large damages awards which forced the newspaper into bankruptcy.

<sup>20</sup> See for instance the case of *Koprivica v. Montenegro* (judgment of 22 November 2011), in which the Court considered that the damages the applicant was ordered to pay to the plaintiff were very substantial when compared to the applicant's income at the time, being roughly twenty-five times greater than the applicant's income, and even when compared to the highest incomes in the respondent State in general.

<sup>21</sup> *Independent News and Media and Independent Newspapers Ireland Limited v. Ireland*, judgment of 16 June 2005, para. 114.

<sup>22</sup> *Lingens v. Austria*, judgment of 8 July 1986, para. 42.

30. The Commissioner urges the authorities to bring the long-standing work on the reform of defamation legislation to a successful conclusion, by ensuring that it provides for defamation to be dealt with through proportionate damages awards and not imprisonment. This should include a review of all parts of legislation, including the recent amendments extending the application of defamation to online content.

### **3. Internet freedom**

31. With the space for free expression in traditional Azerbaijani media constantly being reduced, critical voices in the country make increasing use of the Internet in order to be heard. Any restrictions of Internet freedom and the right to receive and impart information through new technologies, including social media, are therefore areas which merit further attention.
32. Research shows that 11% of the Azerbaijani population of approximately nine million has daily access to the Internet<sup>23</sup> (compared to 7% two years ago). Official statistics indicate that, at the beginning of 2012, 65% of the population between 15 and 74 years old were Internet users.<sup>24</sup> According to Freedom House, despite a notable increase in Internet penetration over the past few years, the quality of connections remains very low, with paid prices not corresponding to advertised speeds and many users still relying on slow dial-up connections.<sup>25</sup> More than one million persons in the country are reported to be on Facebook.
33. The Internet in Azerbaijan is treated as mass media and included in the list of telecommunications services regulated by the 2005 Law on Telecommunications. Since Azerbaijan does not have an independent regulatory body for the telecommunications sector, the Ministry of Communications and Information Technologies carries out the regulatory functions in this regard. The Government recently decided to vest the Azerbaijani National Press Council, which already oversees issues relating to ethics and standards in the mainstream media, with new authorities over the Internet. A commission was set up on 14 February 2013 under the Azerbaijani Press Council, with the mandate to handle citizens' complaints about ethical violations online, hacker attacks on web pages and other issues related to online media. Some of the Commissioner's interlocutors expressed concerns about the establishment of the Internet regulatory body under the Press Council and indicated a preference for a separate, independent body.
34. The Commissioner was informed of the Government's plan to develop a system of licensing for online televisions. The Commissioner notes that the granting of licences usually presupposes drawing up a list of frequencies which will be allocated to broadcasting services, something which seems difficult to implement with regard to Internet. The Commissioner would also like to draw the authorities' attention to the Declaration on freedom of communication on the Internet, which states that "the provision of services via the Internet should not be made subject to specific authorisation schemes on the sole grounds of the means of transmission used."<sup>26</sup>
35. Over 40 Internet service providers (ISPs) currently operate in Azerbaijan. Delta Telecom is the primary ISP in the country and owner of the international gateway; it supplies international connectivity to 90 to 95 % of all users in Azerbaijan and sells international traffic to almost all ISPs.<sup>27</sup> The largest ISP operating outside of Baku is Aztelekom. A main concern in this area

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<sup>23</sup> <http://www.katyppearce.net/new-caucasus-internet-stats/>. See also the report by the Expression Online Initiative, [Searching for Freedom: Online Expression in Azerbaijan](#), November 2012.

<sup>24</sup> State Statistical Committee of the Republic of Azerbaijan, *Information Society in Azerbaijan*, Statistical yearbook, 2012, p. 24.

<sup>25</sup> Freedom House, *Freedom on the Net 2012*, [Azerbaijan](#).

<sup>26</sup> [Declaration](#) on freedom of communication on the Internet, adopted by the Council of Europe Committee of Ministers on 28 May 2003, Principle 5.

<sup>27</sup> Freedom House, *Freedom on the Net 2012*, above.

is the apparent lack of transparency over the ownership of ISPs, which undermines trust in their independence.

### *Blocking and filtering*

36. During the visit, the authorities have stated that there is no blocking of websites in practice in Azerbaijan. The Deputy Minister of Communications and Information Technologies explained to the Commissioner that such a blocking would only be possible after a court decision. Nevertheless, the Commissioner has received information according to which there have been occasional blocks imposed on certain websites and that opposition news sites such as Radio *Azadliq* (the website of the Azerbaijani service of Radio Free Europe/Radio Liberty) had experienced some slowdown, especially before elections. In 2006 and 2007, Reporters without Borders had condemned the blocking of *tinsohbeti.com*, a satirical blog with cartoons making fun of the President and the government, also including articles that openly criticised the government's economic policies. In 2010, it was the satirical website *eqreb.com* which reported being blocked in Azerbaijan. Earlier this year, Internet users in Azerbaijan reported that they could not access the website *imgur.com*, which is used to anonymously share photos with social networks and online communities. The reason for that might be the fact that the website had made available some of the documents which had been leaked from the Special State Protection Service of Azerbaijan a few weeks earlier. At the time of the visit, the website *par-anoia.net*, where the group Anonymous had released the abovementioned documents, alongside other documents from the Ministry of Communications and Information Technologies, was also inaccessible in Azerbaijan, while it was available from other countries.
37. The Google Transparency Report indicates that two removal requests were made by the Azerbaijani Government over the period January-June 2012: one concerning the website *panoramio* (photo-sharing) on the basis of the fight against hate speech; another concerning the results of a web search, on the basis of a court order on grounds on defamation. However, no specific detail on these two requests is given.
38. According to the Deputy Minister of Communications and Information Technologies, content filtering is regulated in accordance with international standards and limited to filtering out pornographic content with a view to protecting children. The Chairman of the Social Policy Committee of the Azerbaijani Parliament announced in February 2013 that a draft law to limit the access of children to the Internet would be submitted to Parliament. Several NGOs have expressed concern that the introduction of this type of legislation might be a prelude to further technical censorship of the Internet.
39. Overall, however, the Internet in Azerbaijan is often described as “free and open”,<sup>28</sup> with little first-generation control (i.e. filtering and direct censorship). However, the Commissioner received information according to which resort to second- (content regulation) or third-generation (media framing, monitoring and arrests) control, to discourage Internet use, is increasing. For instance, the Commissioner noted a trend in media to associate the use of Internet, and in particular social media, with psychological problems and mental illness, or more generally to describe the bad influence it has on people.<sup>29</sup>

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<sup>28</sup> OpenNet Initiative, [Report on Azerbaijan](#), 2010.

<sup>29</sup> For example, on 16 May 2013, the Minister of Communications and Information Technologies said in an interview that the social networks were often used to insult people and that “according to world statistics, 5-10% of divorces are due to the negative impact of the Internet” (source: <http://www.contact.az/docs/2013/Social/050600035226en.htm#.UdvSrG04--W>).

### *Online surveillance*

40. Azerbaijani law explicitly prohibits the arbitrary invasion of privacy and court orders are required for the surveillance of private communications. However, the law “On operative-search activity” (Article 10, section IV) authorises law enforcement agencies to conduct surveillance without a court order in cases regarded as necessary “to prevent serious crimes against the person or especially dangerous crimes against the state.”
41. During his visit, the Commissioner received information from various interlocutors that security agencies were monitoring online activities or tracking user data in Azerbaijan. In particular, some of the Commissioner’s interlocutors reported that the authorities had referred to their Facebook activities or had shown them their private mailbox during interrogations.
42. A Swedish investigative documentary revealed in April 2012 that a Stockholm-based telecommunications company had reportedly installed a “black box” on the server of one mobile phone company,<sup>30</sup> enabling law enforcement officials to monitor all mobile phone communications, including text messages, internet activities, and phone calls, without any judicial oversight.

### *Arrests and prosecutions of online activists*

43. In recent years, the authorities have arrested and prosecuted online media actors, notably bloggers or social media activists, in moves which have often been described as retaliation against their online activities. Many of the bloggers and activists met by the Commissioner highlighted that while technically they are for the most part ‘free’ to express themselves, the consequences of doing so can be highly prejudicial to them. This appears to have been the case for many bloggers who have since been freed, such as Adnan Hajizadeh and Emin Milli, arrested in early September 2009 for hooliganism after having posted a video on YouTube which was critical of the government.<sup>31</sup>
44. In 2011, Bakhtiyar Hajiyev, an online activist and candidate in the 2010 parliamentary elections, was sentenced to two years in prison for evading military service, despite his request to perform alternative service. He had previously promoted an anti-government protest called “Great People's Day” planned for a few weeks later, through social media. Another online youth activist, Jabbar Savalan, was arrested in February 2011 after posting criticism of the authorities and calls for pro-democracy protests on his Facebook page. He was sentenced to 30 months’ imprisonment on charges of drug possession and was pardoned in December 2011.
45. In another incident, *Khayal* TV correspondents Vugar Gonagov and Zaur Guliyev were arrested on 13 March 2012 and accused of provoking the mass riots that broke out two weeks earlier in Guba, after they had posted a video online of the regional Governor making derogatory remarks about local citizens. Both journalists were charged with organising mass disorder, and Zaur Guliyev was additionally charged with abuse of office. The Commissioner visited Vugar Gonagov in pre-trial detention in November 2012. On 15 March 2013, Vugar Gonagov and Zaur Guliyev were convicted and given three year suspended sentences.
46. A few days before the visit, on 17 May 2013, another youth activist, Ilkin Rustemzade, was arrested in connection with a Harlem Shake video he allegedly filmed in Baku and which was posted on YouTube. He was charged with hooliganism and sentenced to 2 months of pre-trial detention.

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<sup>30</sup> Freedom House, *Freedom on the Net* 2012, above.

<sup>31</sup> See the Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Azerbaijan, [CommDH\(2010\)21](#) , 29 June 2010, paras. 27-28.

47. During the visit, the Commissioner met with Zaur Gurbanli, a blogger, activist and board member of the NIDA Civic Movement, who is currently held in pre-trial detention in Kurdakhani under accusations of illegal possession of weapons. He had already been arrested a first time in September 2012, but no charges were brought against him. The Commissioner is worried about the health of Zaur Gurbanli, which is reported to have deteriorated after his visit.
48. The Commissioner was also informed of the closure of the Free Thought University (*Azad Fikir Universiteti*) in Baku, an independent institution for alternative education, proposing weekly lectures also available online. On 10 April 2012, its doors were sealed by representatives of the Prosecutor General of Azerbaijan. The reasons for this closure remain unclear. The Free Thought University was the first organisation to receive the Ambassadorial Award for freedom of expression over the Internet from the U.S. Mission to the OSCE in 2010, for its innovative use of new media to promote democratic reforms, civil society, independent media, human rights and the rule of law.

### *Conclusions and recommendations*

49. In Azerbaijan today, as in most other European countries, the Internet has become an essential enabler for the practical exercise of a number of human rights, including freedom of expression, freedom of assembly and freedom of association. While welcoming the fact that the Internet in Azerbaijan is for the most part free from practices such as blocking and filtering, the Commissioner is concerned by recent developments aimed at restricting the exercise of fundamental freedoms online. These include the numerous arrests and prosecutions of online activists, but also the recent extension of criminal defamation provisions to online content,<sup>32</sup> as well as the Government's project to develop a system of licensing for online television stations. In this context, the Commissioner calls upon the authorities to cease practices of targeting social media users who express critical opinions of the authorities or use the Internet to call for or organise protests, and to refrain from restricting or controlling Internet access and information available via the web by legislative and technical means.
50. The Commissioner recalls that, in a recent judgment, the Court found that measures which restrict access to information on the Internet must be based on a law that is precise enough to clearly regulate the scope of the ban and that offers sufficient opportunities for judicial review.<sup>33</sup> It also found that domestic courts are under an obligation to examine whether a blocking measure is necessary, and in particular whether it is targeted enough so as to impact only on the specific content that requires blocking. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression added that "any determination on what [website] content should be blocked must be undertaken by a competent judicial authority or a body which is independent of any political, commercial, or other unwarranted influences."<sup>34</sup> The Commissioner therefore calls on the authorities to ensure more transparency; in particular the parameters allowing for the blocking of websites must be made clear and open to judicial review.
51. Regarding online surveillance, the Council of Europe has developed an extensive body of standards in this regard, most recently in a "Declaration on Risks to Fundamental Rights stemming from Digital Tracking and other Surveillance Technologies", adopted by the

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<sup>32</sup> See Section on defamation, above.

<sup>33</sup> *Ahmet Yildirim v. Turkey*, judgment of 18 December 2012. The case concerned a court decision to block access to Google Sites, which hosted an Internet site whose owner was facing criminal proceedings for insulting the memory of Atatürk. As a result of the decision, access to all other sites hosted by the service was blocked. The Court held that there had been a violation of Article 10.

<sup>34</sup> [Report](#) by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression Frank La Rue, 16 May 2011, para. 70.

Committee of Ministers on 11 June 2013. The Commissioner exhorts the Azerbaijani authorities to guarantee the right to respect of private and family life, home and correspondence (Article 8 of the Convention), in accordance with the Court's case-law.

52. Furthermore, the Commissioner has received serious allegations of ill-treatment against some of the bloggers currently in detention. He draws the authorities' attention to the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) regarding detention by law enforcement officials, particularly as regards effective investigations. The Commissioner reiterates the recommendation of the 2010 Report that the authorities authorise the publication of all CPT reports and widely disseminate them among all stakeholders.

## **II. Freedom of assembly**

### ***1. General context and the excessive use of force by law enforcement officials***

53. The issue of limitations imposed on freedom of assembly has regularly been raised by local and international observers in recent years. The most frequent problems encountered include the banning of demonstrations in central and easily accessible locations and the use of force to disperse the demonstrations which still go ahead, leading to arrests and, in some cases, harsh sentences.
54. An illustration of some of these problems is provided by the events that unfolded in the town of Ismayilli from 23 January 2013, following a car accident allegedly involving a relative of the former Governor. Having heard about this accident, several local residents started to demonstrate and destroyed some property – a hotel alleged to belong to the Governor and cars were burnt. The police eventually intervened. The next day, hundreds of protestors called for the Governor's resignation. Police reportedly used tear gas and rubber bullets to disperse the crowd. The local Governor was later dismissed by an order of the President of Azerbaijan.
55. The Commissioner visited Ismayilli on 23 May 2013. He was informed that a total of 18 persons had been arrested in relation to these protests. The lawyers of two of these persons gave a detailed account of the events and the charges brought against their clients, who are currently in pre-trial detention in Kurdakhani. They are accused of violent resistance to the police (Article 315 of the Criminal Code), organisation of mass disorders accompanied with violence (Article 220 of the Criminal Code), and destruction of property (Article 186 of the Criminal Code). However, the sequence of the events leading to their arrests raises doubts as to the charges brought against them.
56. During his discussion with the Commissioner, the new Governor agreed that there was a feeling of "bureaucratic arbitrariness" among the local population which may have prompted the residents to take to the streets. He said that he was determined to shed light on the circumstances of these arrests. The Commissioner stresses that social tension is best eased through dialogue and when the rights to peaceful assembly and freedom of expression are fully respected.
57. Other persons arrested in connection with the Ismayilli events include two opposition leaders: Tofiq Yagublu, deputy chair of the opposition political party Musavat and journalist with the *Yeni Musavat* newspaper; and Ilgar Mammadov, Chair of the Republican Alternative Civic Movement ("REAL"), Director of the Baku School of Political Studies of the Council of Europe, and also a potential candidate in the upcoming presidential election. Both were arrested on 4 February 2013 and charged with organising public disorder (Article 233 of the Criminal Code). The Commissioner was able to meet with Ilgar Mammadov in Kurdakhani detention centre, where he is being held in pre-trial detention since February 2013. He notes that a few

days after the notification of the Court's decision to give priority to his case,<sup>35</sup> new charges were brought against him under aforementioned Article 220, which carries a penalty of up to 12 years of imprisonment. On 3 May 2013, the Secretary General of the Council of Europe expressed his concern and disappointment at the new charges brought against Ilgar Mammadov.

58. The Commissioner finds it difficult to believe that these persons, who spent approximately one hour in Ismayilli on 24 January 2013, can be held responsible for protests which started the day before and acts of violence which followed. It appears that Ilgar Mammadov only described his impressions from this short visit on his blog on 25 January 2013, complemented by some additional information three days later. Moreover, in the Commissioner's view, that a political opponent is made to languish in jail five months before an important election on charges which are called into question by numerous observers,<sup>36</sup> is in itself a very problematic development.
59. During his visit, the Commissioner also received information from various interlocutors that peaceful assemblies had been forcefully dispersed by the police in other parts of the country. This was for instance the case for a protest, with an attempted sit-in, which took place in Baku on 10 March 2013 and was violently repressed. This protest was part of a series of protests triggered by the death of a conscript in January 2013; among the protesters were the families of soldiers who were killed or injured in suspected hazing incidents. During the demonstration, the police reportedly moved in and violently dragged away the participants. According to several reports, rubber bullets, tear gas and water cannons were used against protesters.
60. The Commissioner notes that, in three judgments against Azerbaijan, the Court found violations of Article 3 of the Convention (prohibition of inhuman or degrading treatment) both under its substantive and procedural aspect due to excessive use of force against the applicants by law enforcement officials during demonstrations and to the lack of effective investigations in that respect.<sup>37</sup> These judgments are under enhanced supervision before the Council of Europe Committee of Ministers. In its last decision, adopted on 6 June 2013, the Committee of Ministers urged the authorities to provide "a consolidated and updated action plan on the measures taken/envisaged to prevent excessive use of force by law enforcement officials during demonstrations and to ensure that effective investigations into allegations of ill treatment are carried out without delay."

#### *Conclusions and recommendations*

61. The Commissioner calls on the authorities to adopt effective measures to prevent the use of force against peaceful protestors by law enforcement officials. In particular, he reiterates the recommendation of the 2010 Report, inviting the authorities to reform the existing system of internal disciplinary investigations of police ill-treatment and to introduce an independent police complaints body.
62. Regarding the events in Ismayilli, the Commissioner urges the authorities to release all persons against whom there is no reliable evidence as to their involvement in acts of violence.

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<sup>35</sup> Case of *Ilgar Mammadov v. Azerbaijan*, Application no. 15172/13, lodged on 25 February 2013, communicated to the authorities on 8 April 2013. On 24 April, the parties were informed that the Court had decided, under Rule 41 of the Rules of the Court, to give priority to this application.

<sup>36</sup> See lastly the resolution adopted by the European Parliament on 13 June 2013 on "Azerbaijan: the case of Ilgar Mammadov", in which the Parliament "strongly condemns the detention of Mr Mammadov, calls for his immediate and unconditional release and an end to his prosecution."

<sup>37</sup> *Muradova v. Azerbaijan*, judgment of 2 April 2009, *Rizvanov v. Azerbaijan*, judgment of 17 April 2012, and *Najafli, v. Azerbaijan*, judgment of 2 October 2012.

## **2. Procedural requirements to hold an assembly**

63. Azerbaijan amended its Law on Freedom of Assembly in 2008, following two opinions adopted by the Council of Europe Venice Commission.<sup>38</sup> While the law is thus in line with international standards, undue restrictions of the right to freedom of peaceful assembly are widely reported in practice. The problems mainly stem from the interpretation of Article 5 of the law. This Article provides for a “notification” procedure before convening an assembly. In 2006, the Venice Commission welcomed the confirmation by representatives of the Government that the requirement in the law was for notification and not for a prior permission to hold the assembly, noting that “other provisions of the Law could, as they currently stand, encourage the competent authorities to issue a blanket prohibition as soon as the notification process proves incomplete.”<sup>39</sup> In 2007, the Venice Commission added that a system of notification is in itself admissible so long as it is only meant to help the authorities cope more easily with the practical problems involved with the holding of an assembly; it also stressed that it is indeed important that assemblies can be held with a presumption of legality so as to avoid any chilling effect on organisers and participants.<sup>40</sup>
64. The Commissioner notes that the authorities have also confirmed that the legislation does not require permission for rallies.<sup>41</sup> However, the authorities appear to have interpreted it as requiring such permission, and a system of authorisation has in practice replaced the system of notification. Peaceful protesters have for instance been effectively banned from demonstrating in central Baku since 2006, despite advanced notification of the assemblies. Several requests by the political opposition or civil society to hold demonstrations were allegedly denied or, when allowed, organisers were obliged to have them in areas very remote from the city centre.
65. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association underlined that the exercise of the right to freedom of peaceful assembly should not be subject to prior authorisation by the authorities, but at the most to a prior notification procedure, which should not be burdensome. In case an assembly is not allowed or is restricted, a detailed and timely written explanation should be provided, which can be appealed before an impartial and independent court.<sup>42</sup> The Guidelines on Freedom of Peaceful Assembly published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), together with the Venice Commission, add that under international human rights law, it is not even necessary for domestic legislation to require advance notification about an assembly. Indeed, in an open society, many types of assembly do not warrant any form of official regulation. Prior notification should, therefore, only be required where its purpose is to enable the state to put in place necessary arrangements to facilitate freedom of

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<sup>38</sup> Opinion on the Law on Freedom of Assembly in Azerbaijan, adopted by the Venice Commission at its 68<sup>th</sup> Plenary Session (Venice, 13-14 October 2006), [CDL-AD\(2006\)034](#), and Opinion on the Draft Amendments to the Law on Freedom of Assembly of Azerbaijan adopted by the Venice Commission at its 73<sup>rd</sup> Plenary Session (Venice, 14-15 December 2007), [CDL-AD\(2007\)042](#).

<sup>39</sup> CDL-AD(2006)034, para. 23.

<sup>40</sup> CDL-AD(2007)042, para. 14-15: “The Venice Commission therefore welcomes that the requirements of Article 5 have now been eased, by adding a flexibility clause which explicitly provides the organisers with the possibility to remedy any shortcoming in their notification form at any time prior to the day of convening the intended assembly, and with the possibility of notifying the intention to organise an assembly in lesser time than the five-day notice, which is required “as a rule” and whose non-respect can now be justified.”

<sup>41</sup> [Information](#) provided by the Azerbaijani authorities concerning the observations of the Commissioner for Human Rights, CommDH(2011)34, 29 September 2011, para. 6: “According to the provisions of the law, organizers should notify in written the relevant authorities about the place and time of demonstrations and itinerary of rallies. In fact, the legislation does not require issuing permission for rallies; thus, the authorities can only issue a warning, if need be.”

<sup>42</sup> [Report](#) of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, 21 May 2012, Recommendation 90.

assembly and to protect public order, public safety and the rights and freedoms of others. Any such legal provision should require the organiser of an assembly to submit a notice of intent rather than a request for permission.<sup>43</sup>

66. The Court has also warned against a legal obligation to comply with excessive administrative requirements, including the obligation to submit a traffic organisation plan, as this was likely to violate the principle of proportionality and to be understood as a system based on permission rather than registration.<sup>44</sup> It has also stated that a notification requirement “should not represent a hidden obstacle to the freedom of peaceful assembly as it is protected by the Convention. It goes without saying that any demonstration in a public place may cause a certain level of disruption to ordinary life and encounter hostility.”<sup>45</sup>
67. During the visit, the Commissioner discussed this issue with the Head of the Presidential Administration and the Minister of Internal Affairs, both of whom stressed that the restrictions in place aimed at protecting the rights of others – namely families using city parks and squares, where the demonstrations should take place, for leisure, as well as avoiding any traffic disruption. Assurances were however given that a number of locations, easily accessible and close to the centre of Baku, would be identified by the authorities for the organisation of public gatherings.

#### *Conclusions and recommendations*

68. The Commissioner remains concerned by the way the Law on Freedom of Assembly is currently being implemented in Azerbaijan. He therefore calls on the authorities to assess the functioning of that law. In particular, the authorities should ensure that no authorisation is required for the holding of public demonstrations and that the system of notification is applied in accordance with European standards.
69. The Commissioner welcomes the announced publication by the authorities of a list of locations where demonstrations will be made possible, and calls for these to include adequate locations in the centre of Baku and other cities, as a first step towards a better enjoyment of the right to freedom of assembly by the population of Azerbaijan. Given the need for tolerance in a democratic society, the authorities should nevertheless seek to facilitate and protect public assemblies at the organisers’ preferred location.

### **3. The criminalisation of the organisation of and participation in peaceful assemblies**

70. Recent months have seen a harshening of the fines and the use of administrative detention against those who organise or participate in “unauthorised” public gatherings. In November 2012, the Azerbaijani Parliament approved amendments to the Law on Freedom of Assembly, the Criminal Code and the Code of Administrative Offences, which significantly increased the penalties for those violating the rules relating to the organisation of and participation in demonstrations. Under the new provisions, participants can be fined between 500 to 1000 AZN<sup>46</sup> - the average monthly salary in Azerbaijan is approximately 400 AZN; and organisers can be fined from 1500 to 3000 AZN if they are ordinary citizens, or between 3000 and 6000 AZN if they are officials. If the organiser is a legal entity, the fine can range from 15.000 to 30.000 AZN.
71. These new provisions were used for instance on 26 January 2013, when a large group of persons was arrested following their participation in a peaceful protest in Baku aimed at expressing solidarity with the Ismayilli events described above. A number of persons were

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<sup>43</sup> See [Guidelines](#) on Freedom of Peaceful Assembly, Second edition, 2010, Guiding principle 4.1.

<sup>44</sup> *Baczkowski and others v. Poland*, 3 May 2007, para. 71.

<sup>45</sup> *Oya Ataman v. Turkey*, 5 December 2006, para. 38.

<sup>46</sup> This corresponds to a 70-fold increase.

sentenced to 13 to 15 days of administrative detention, and 20 persons were given fines from 300 to 2500 AZN, by application of Article 298.1 ('Violation of the procedure of organisation and conduct of assemblies, meetings, demonstrations, rallies and pickets') and Article 298.2 ('Violation of the procedure of participation of assemblies, meetings, demonstrations, rallies and pickets') of the Code of Administrative Offences. According to the authorities, these persons were arrested because of their "participation in the rally in the central streets of the city of Baku which has not been organized in accordance with the national legislation".<sup>47</sup> The refusal or impossibility to pay such fines has led to those concerned being sentenced to community service hours or having their personal belongings seized.<sup>48</sup>

72. On 14 May 2013, the Azerbaijani Parliament also adopted amendments to the Code of Administrative Offences extending the maximum period of administrative detention from 15 days to two months, notably for those violating the rules for holding rallies.
73. The Commissioner recalls that the Court has considered that the very essence of the right to freedom of peaceful assembly, guaranteed by Article 11 of the Convention, would be impaired if the State was to impose sanctions, especially severe ones such as deprivation of liberty, on participants in a demonstration for the mere fact of attending it, without committing any reprehensible act.<sup>49</sup>
74. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association also stressed that when the organisers fail to notify the authorities, "the assembly should not be dissolved automatically and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment. This is all the more relevant in the case of spontaneous assemblies where the organizers are unable to comply with the requisite notification requirements, or where there is no existing or identifiable organizer."<sup>50</sup>
75. Another concern relates to the reported non-implementation of due process standards in proceedings brought against participants in "unauthorised" demonstrations. In a recent judgment, the Court found that Azerbaijan had violated the rights of opposition protestors to a fair trial (Article 6 of the Convention) during criminal proceedings brought against them for their alleged participation in unauthorised demonstrations against the presidential election in October 2003.<sup>51</sup> The Court was particularly concerned about various shortcomings regarding the admission and examination of evidence in the trials, and the insufficient reasons given by the domestic courts for their convictions. There had also been restrictions on the applicants' initial access to legal assistance which had affected their defence rights. The Commissioner notes that a number of cases concerning alleged violations of Article 6 in proceedings concerning administrative detention are also pending before the Court.<sup>52</sup>

#### *Conclusions and recommendations*

76. The Commissioner is deeply concerned by the recent amendments to the Law on Freedom of Assembly, the Criminal Code and the Code of Administrative Offences, which further erode the right to freedom of assembly. The sanctions which can now be imposed, coupled with the fact that local authorities have not authorised a single rally in Baku city centre in recent years, clearly have a chilling effect on the organisation of or participation in demonstrations.

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<sup>47</sup> Response from the Ministry of Internal Affairs to the communication AZE 2/2013 – UN Special Procedures of the Human Rights Council.

<sup>48</sup> For instance, on 11 June 2013, a district court in Baku sentenced Khadija Ismayilova to 220 hours of community service, following her refusal to pay a 400 AZN fine imposed in January 2013.

<sup>49</sup> *Galstyan v. Armenia*, judgment of 15 November 2007, para. 117.

<sup>50</sup> [Report](#) of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 29.

<sup>51</sup> *Asadbeyli and Others v. Azerbaijan*, judgment of 11 December 2012.

<sup>52</sup> See for instance *Hasanov v. Azerbaijan*, applications nos. 39919/07 and 56947/10, lodged on 21 August 2007 and 22 September 2010, communicated to the authorities on 9 March 2012.

77. The Commissioner is of the view that participants in peaceful assemblies should not be sanctioned for the mere fact of being present at and actively participating in the demonstration in question, provided they do not do anything illegal, violent or obscene in the course of it. The Commissioner therefore urges the authorities to ensure that no disproportionate sanction, which would undermine the fundamental right to peaceful assembly, is imposed.
78. Finally, the Commissioner calls on the Azerbaijani authorities to ensure the full respect of fair trial guarantees for protesters.

### III. Freedom of association

79. According to the authorities, approximately 3000 non-governmental organisations (NGOs) currently operate in Azerbaijan. In December 2012, the President of Azerbaijan approved a Development Concept (*Azerbaijan 2020: the vision of the future*), according to which a National Action Plan on civil society development must be prepared and implemented. This plan should include the adoption of new legislative acts stimulating civil society development, public and private sector support for civil society, and greater financial assistance to NGO projects and programmes.
80. However, a number of NGOs, especially those operating in the field of human rights and those openly critical of the government, are reported to encounter several obstacles in carrying out their work. Already in 2011, the Commissioner's predecessor expressed concern about "information indicating that in the past months several national and international NGOs have faced difficulties in carrying out their activities freely, and that some of them have even been obliged to cease their activities in Azerbaijan."<sup>53</sup>
81. Particular reference was made to the 2009 amendments to the NGO law, which introduced a number of restrictive provisions concerning international NGOs, including the requirement for international NGOs wishing to operate in Azerbaijan to establish and register local branches and representatives, on the basis of an agreement signed by such organisations with the government. The procedure for concluding such agreements is contained in a Decree published in March 2011. The agreement should be the outcome of a negotiation process between the Ministry of Justice and the NGOs, in the course of which the NGOs must accept a series of conditions and pledges.
82. In 2011, the Human Rights House in Baku was asked to cease all activities until an agreement with the authorities was concluded. In spite of regular communication with the Azerbaijani authorities and the submission of a new registration application on 3 November 2011, the organisation is still closed. In addition, in January 2012, it had to move out of its premises, as the local owner did not want to renew the lease, allegedly after being contacted by the Azerbaijani police in December 2011. The Commissioner was informed that in the meantime another international NGO, the National Democratic Institute, has also been closed.
83. The Commissioner notes that in its 2011 Opinion on the compatibility with human rights standards of the legislation on NGOs of Azerbaijan, the Venice Commission found the aforementioned requirement for international NGOs to establish and register local branches and representatives to be problematic.<sup>54</sup> A specific problem consisted in the absence in the

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<sup>53</sup> Observations on the human rights situation in Azerbaijan, [CommDH\(2011\)33](#), 29 September 2011.

<sup>54</sup> Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, adopted by the Venice Commission at its 88<sup>th</sup> Plenary Session (Venice, 14-15 October 2011), [CDL-AD\(2011\)035](#).

Decree of any specific time-frame, within which the “negotiations” with the Ministry of Justice should be concluded and the agreement signed. Another issue related to the absence of definition in the Decree of the conditions that foreign NGOs must meet if they want to operate in Azerbaijan, among them: the NGO must “respect national and moral values” and must not be involved in “political and religious propaganda”. The Venice Commission stressed that “in the absence of any specification, it is clear that a rejection of a registration based on one of these conditions could hardly be found compatible with Article 11” of the Convention.<sup>55</sup>

84. National NGOs have also faced difficulties, especially with regard to the restrictive application of the regulations on registration, which can result in long delays or the absence of any formal decision on registration. For instance, on 19 February 2013, the Baku Administrative-Economic Court rejected the appeal of the Human Rights Club (HRC) against the Ministry of Justice’s decision to deny HRC registration, on grounds that HRC did not specify the responsibilities of its lawful representative in the decision on the establishment of the organisation. Another organisation, the Election Monitoring and Democracy Studies Centre, remains unregistered to date, although it has sent registration requests six times to the Ministry of Justice since December 2008. New reasons are reportedly advanced each time by the Ministry to refuse registration, including minor typographical errors in the application form. Some interlocutors informed the Commissioner that about 1000 NGOs remain unregistered in Azerbaijan.
85. The Court had to examine several cases concerning violations of the right to freedom of association (Article 11 of the Convention) in Azerbaijan due to the repeated failure of the Ministry of Justice to decide definitively, or to respond within the statutory time-limits on the applicants’ requests for registration of their associations.<sup>56</sup>
86. The issue of registration was also highlighted in the above-mentioned Venice Commission Opinion. It concluded “that, while legislation relating to NGOs legal status has been improved in some aspects over the years, the 2009 amendments and the 2011 Decree unfortunately overturn the previous efforts to meet with the requirements of international standards.”<sup>57</sup> With regard to the registration issue in particular, the Venice Commission noted that these changes have added further complications to an already complicated and lengthy procedure. According to the Venice Commission, “the main deficiencies relate to the fact that the registration of NGOs is a lengthy and complicated procedure, whose outcomes are somewhat difficult to predict. Recorded practice shows that some of the NGOs which applied for registration have never got formal decision, and those that have got it, often needed to wait for an extensive period of time.”<sup>58</sup>
87. During his discussion with the Commissioner, the Deputy Minister of Justice acknowledged that the registration procedure was still the source of some problems but stressed that the competent authorities were working to resolve them. In particular, he referred to the “State Programme on the improvement of the Azerbaijani Judicial system in 2009–2013”, in the framework of which some improvements to the registration procedure are also expected.
88. The Commissioner notes that on 15 February 2013, amendments to the law on NGOs, the law on grants and the Code of Administrative Offenses which further restrict the operations of NGOs in Azerbaijan were adopted by the Azerbaijani Parliament. These amendments were signed into law by the President of Azerbaijan on 11 March 2013. They require NGOs to sign a formal grant agreement when they receive funding for amounts exceeding 200 AZN. If a

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<sup>55</sup> [CDL-AD\(2011\)035](#), para. 93.

<sup>56</sup> *Ramzanova and others v. Azerbaijan*, judgment of 1 February 2007; *Aliyev and others v. Azerbaijan*, judgment of 18 December 2008; *Nasibova v. Azerbaijan*, judgment of 18 October 2007; *Ismayilov v. Azerbaijan*, judgment of 17 January 2008.

<sup>57</sup> [CDL-AD\(2011\)035](#), para. 117.

<sup>58</sup> [CDL-AD\(2011\)035](#), para. 60.

copy of the grant agreement is not presented to the Ministry of Justice within the period prescribed by law, officials can be fined between 1500 and 2500 AZN and legal entities can be fined from 5000 to 7000 AZN. NGOs receiving any kind of grant or donation over 200 AZN without a formal agreement could also face fines<sup>59</sup> and confiscation of their property.

89. Furthermore, the amendments mean that the only way for NGOs to receive grants or donations of over 200 AZN is by bank transfer. This creates a particular problem for NGOs which are unregistered in Azerbaijan and thus cannot open bank accounts. They will be unable to receive donations in cash in the future.
90. The Commissioner recalls that the Council of Europe Committee of Ministers' Recommendation on the legal status of non-governmental organisations in Europe clearly states that NGOs should be free to solicit and receive funding "not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies, subject only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties."<sup>60</sup>

#### *Conclusions and recommendations*

91. The Commissioner is particularly worried to note that problems relating to the registration of NGOs have not abated. Many of the relevant provisions remain very vague and their implementation is therefore unforeseeable. Moreover, the recent amendments have added reporting obligations regarding the grants and donations received to already heavy reporting obligations for NGOs. The Commissioner urges the Azerbaijani authorities to ensure full respect of the right to freedom of association. To this end, he calls upon the authorities to alleviate the registration requirements and make the whole process, as well as the functioning of NGOs, less bureaucratic.
92. The Commissioner would appreciate receiving information on the follow-up that is being provided by the authorities to the Opinion of the Venice Commission, which identified shortcomings in the NGO legislation. He urges the authorities to swiftly address these deficiencies.
93. Of equal concern is the political discourse which often accompanies the adoption of restrictive legislation. The Commissioner notes a negative campaign against NGOs in the media, with politicians questioning the legitimacy of NGO work or stigmatising NGOs, in particular those receiving funds from abroad. He calls upon the authorities to refrain from such statements and to create an enabling environment for NGOs wishing to operate in Azerbaijan.

#### **IV. Right to property**

94. The majority of cases against Azerbaijan pending before the Court concern complaints about violations of the right to property under Article 1 of Protocol No. 1 to the Convention. Most of these cases concern the non-execution of final domestic judgments regarding the eviction of internally displaced persons or refugees who illegally settled in other people's homes.

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<sup>59</sup> The fines for violations of the law on grants were actually increased substantially and penalties, for legal entities, for not providing information about grants or donations can now reach 15000 AZN.

<sup>60</sup> [Recommendation \(2007\)14](#) on the legal status of non-governmental organisations in Europe, adopted by the Committee of Ministers on 10 October 2007, para 50.

However, an increasing number of cases relates to the demolitions of houses and expropriations, a clear indicator that property rights have become a serious human rights issue in the country.<sup>61</sup>

95. In 2011, the Commissioner's predecessor had called upon the authorities to halt forced evictions which were taking place in Baku.<sup>62</sup> He made particular reference to the demolition, in mid-August 2011, of a building in Baku which was carried out despite a court decision prohibiting the destruction of the building pending a hearing scheduled for September, and in the absence of any prior notification or compensation offer to the owners. The Commissioner stressed at the time that the persons affected should at the very least obtain adequate compensation for the loss of their property.
96. Regrettably, these forced evictions have continued, as part of a general urban renewal of Baku. For example, in 2012, several buildings, among them historical buildings, were demolished in the city centre to make way for the 'Winter Boulevard', an esplanade with shopping centres and underground parking which was inaugurated in May 2013. Hundreds of persons were also evicted from residential buildings near the National Flag Square, in view of the construction of a road and park leading to the Baku Crystal Hall where the 2012 Eurovision Song Contest was held. It is reported that gas and water supplies were often cut off to compel residents to leave, and that demolitions have sometimes started while residents continued to live in the buildings, in disregard for their health and safety.
97. Article 13.1 of the Constitution of the Republic of Azerbaijan declares property inviolable and protected by the State, while Article 29.4 of the Constitution provides that: "No one shall be deprived of his or her property without a court decision. Total confiscation of property is not permitted. Alienation of the property for State needs may be permitted only on the condition of prior and fair compensation of its value". Moreover, Section 2.6 of the National Human Rights Action Plan, adopted in December 2011, aims at "increasing the effectiveness of the measures in the field of ensuring the right to peaceful enjoyment of property".
98. According to Azerbaijani law, authorities can resort to expropriations only in exceptional circumstances, for purposes that are clearly in the public interest.<sup>63</sup> State needs justifying expropriation include the construction of roads or other communication lines, the delimitation of a state border or the construction of defence facilities.<sup>64</sup>
99. Azerbaijani law also contains due process guarantees: expropriation for state needs must be based on a decision of the Cabinet of Ministers; the relevant Cabinet of Ministers decision must then be entered into the State Committee on Property's registry; property owners must be notified in writing that their properties will be expropriated no less than one year in advance; and the state must provide property owners with compensation at market value or alternative housing.

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<sup>61</sup> A hundred of cases are currently pending before the Court. See for instance the case of *Akhverdiyev v. Azerbaijan*, application no. 76254/11, lodged on 1 December 2011, communicated to the authorities on 14 January 2013, which concerns the demolition of a house in the Khutor suburb of Baku in December 2009.

<sup>62</sup> Observations on the human rights situation in Azerbaijan, [CommDH\(2011\)33](#), 29 September 2011.

<sup>63</sup> Article 203 of the Civil Code allows for certain circumstances, unrelated to state needs, when a property owner may be compulsorily dispossessed of his or her property, such as: forfeiture of property for liabilities; expropriation of property which may not belong to the given person under the law; the alienation of immovable property in connection with purchase of a land plot; purchase of non-maintained cultural valuables; requisition; and confiscation.

<sup>64</sup> Article 157.9 of the Civil Code, as amended on 1 June 2004 provides that: "Private property can be alienated by the State if required by the State or public necessity, for the purposes of building roads or other communication lines, delimiting the State border strip or constructing the [State] defence facilities, by a decision of the relevant authority [the Cabinet of Ministers], only in cases permitted by law, and subject to prior payment of compensation in an amount corresponding to its market value".

100. During the visit, the Commissioner discussed the issue of property rights with several interlocutors, notably with civil society representatives and lawyers defending persons whose houses have been demolished, as well as with the Head of the Presidential Administration and the Deputy Minister of Justice.
101. The main concerns raised in this context are three-fold. Firstly, there appears to be a lack of transparency in the process. The Parliamentary Assembly of the Council of Europe has stressed that long-term planning is not public enough; that there is no public access to documentation; and that the procedure and decision-making process are unclear.<sup>65</sup> It has also noted that the Baku City authorities have not presented an urban development programme at any of the court hearings where local residents have challenged the demolition of their houses.
102. Secondly, many observers have underlined that the ongoing expropriations and demolitions of properties in central Baku are not lawful, as they have no legal basis in national law and directly violate provisions of existing national laws on expropriation. Despite the provision in Article 29.4 of the Constitution that expropriations must be based on a court order, many demolitions have been carried out without such an order or, in some cases, despite the court decision prohibiting demolition pending the final outcome of the court proceedings. Moreover, there has been no decision of the Cabinet of Ministers approving the expropriations, and no such decision has been entered into the State Committee on Property. Many of the residents interviewed by the NGO *Human Rights Watch* said they were notified less than a year in advance of demolitions.<sup>66</sup> Some property owners had no warning at all, or as little as a few hours' or weeks' notification.
103. Thirdly, it is reported that property owners were generally offered compensation below the market values of properties. The compensation proposed is usually 1500 AZN per square meter, which appears to be quite low for many of the expropriated properties, located in central and highly desirable areas. The authorities have invoked the fact that the buildings demolished were often old and dilapidated to justify the level of compensation.
104. During the visit, the Commissioner emphasised that all persons affected by expropriations should have access to an effective remedy at national level. The Deputy Minister of Justice indicated that 91 court cases had been initiated by residents; in 11 cases, the case was solved in favour of the applicants, with the level of compensation having been increased. In 8 cases, the amount was however less than requested. Other proceedings are still ongoing.
105. Recalling the relevant case-law of the Court, the Commissioner underlines that procedures of expropriation should follow strict criteria in order to ensure that all the persons concerned enjoy the protection of property as guaranteed by Article 1 of Protocol No. 1 to the Convention. According to the Court, the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful. In the Court's view, the phrase "subject to the conditions provided for by law" in Article 1 requires in the first place the existence of and compliance with adequately accessible and sufficiently precise domestic legal provisions. In particular, the Court has found that an interference with property which is manifestly in breach of national law is accordingly a violation of the Convention.<sup>67</sup> The Court has also held that "the principle of proportionality required that compensation reasonably related to the market value of the property be paid to the applicant."<sup>68</sup>

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<sup>65</sup> [Report](#) on the honouring of obligations and commitments by Azerbaijan, 20 December 2012, para. 279.

<sup>66</sup> Human Rights Watch, "[They Took Everything from Me](#) - Forced Evictions, Unlawful Expropriations, and House Demolitions in Azerbaijan's Capital", 29 February 2012. See also the report of the Public Association for Assistance to Free Economy, "On condition of property rights in 2011-2012 in Azerbaijan", 2013.

<sup>67</sup> *Iatridis v. Greece*, judgment of 25 March 1999.

<sup>68</sup> *Velikovi and Others v. Bulgaria*, judgment of 15 March 2007, para. 238.

106. Furthermore, forced evictions can constitute a violation of Article 8 of the Convention (right to private and family life). Member states may interfere with this right only in accordance with the law, with a legitimate aim, and as necessary in a democratic society. In numerous cases, the Court has held that the government's destruction of private homes and household property "constitute particularly grave and unjustified interferences with the applicants' rights to respect for their private and family lives".<sup>69</sup>
107. Lastly, the Commissioner notes reports according to which human rights defenders or lawyers involved in the defence of victims of expropriations, as well as journalists documenting the demolitions of properties<sup>70</sup> have sometimes been targeted. For instance, on 27 February 2013, an Azerbaijani court sentenced the lawyer Bakhtiyar Mammadov to eight years in prison on the charge of large-scale extortion. Bakhtiyar Mammadov was representing several residents who were forcibly evicted from their homes which were demolished in 2012, and had challenged the compensation they were offered. He had also alleged that a high-level official involved in the compensation funds was corrupt.

#### *Conclusions and recommendations*

108. The Commissioner calls on the authorities to ensure that all further expropriations and demolitions are carried out in a lawful and transparent manner. Those who have been evicted should be provided with fair compensation, set at market value.
109. The Commissioner would also like to reiterate the recent conclusions adopted by the UN Committee on Economic, Social and Cultural Rights, which urged the authorities to "ensure that any relocation of homes necessary for city renewal be carried out with prior consultations among affected households, with their informed consent and with full respect to the safety and dignity of people following an adequate and transparent procedure."<sup>71</sup>
110. Referring to the number of cases relating to the expropriations and demolitions pending before the Court, the Commissioner urges the authorities to ensure that an effective remedy exists at national level, instead of awaiting the outcome of these cases. More generally, they should better implement the Court's case-law rather than relying on the Court to correct the shortcomings of national remedies.
111. The Commissioner will continue to closely follow developments concerning the aforementioned issues in Azerbaijan. He intends to take all necessary measures, in accordance with his mandate as an independent and impartial institution of the Council of Europe, in order to promote the effective implementation of the Council of Europe standards relating to human rights protection. The Commissioner stands ready to continue a constructive dialogue with the Azerbaijani authorities and assist them in their efforts to remedy the shortcomings outlined in the present report.

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<sup>69</sup> See, *inter alia*, *Akdivar and others v. Turkey*, judgment of 16 September 1996.

<sup>70</sup> See above, Section I.1.

<sup>71</sup> UN Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Azerbaijan, 17 May 2013, [E/C.12/AZE/CO/3](#), para. 22.