



Report

to the Azerbaijani Government on the visit to Azerbaijan carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

from 13 to 20 December 2012

The Azerbaijani Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2018) 30.

Strasbourg, 18 July 2018

Note: In accordance with Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, certain names have been deleted.

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Copy of the letter transmitting the CPT's report

Mr Emin Eyyubov
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Permanent Representative of Azerbaijan
to the Council of Europe
2, rue Westercamp
67000 Strasbourg

Strasbourg, 19 March 2013

Dear Ambassador,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Azerbaijani Government drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) after its visit to Azerbaijan from 13 to 20 December 2012. The report was adopted by the CPT at its 80th meeting, held from 4 to 8 March 2013.

The various recommendations, comments and requests for information formulated by the CPT are listed in the Appendix. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Azerbaijani authorities to provide **within three months**, i.e. by 19 June 2013, a response giving a full account of action taken to implement them. The CPT trusts that it will also be possible for the Azerbaijani authorities to provide, in the above-mentioned response, reactions to the comments formulated in this report as well as replies to the requests for information made.

The CPT would ask, in the event of the response being forwarded in the Azerbaijani language, that it be accompanied by an English or French translation.

I am at your entire disposal if you have any questions concerning either the CPT's visit report or the future procedure.

Yours faithfully,

Lətif Hüseynov
President of the European Committee for
the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

I. INTRODUCTION

A. Dates and context of the visit, composition of the delegation and places visited

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT visited Azerbaijan from 13 to 20 December 2012¹. The visit was one which appeared to the Committee “to be required in the circumstances” (cf. Article 7, paragraph 1, of the Convention).

The CPT felt that the time was ripe, one year after the periodic visit in 2011, to review the situation as regards the treatment of persons in police custody and the effectiveness of action being taken to combat ill-treatment. It should be recalled here that in the report on the 2011 visit, the CPT expressed concern that the progress in this area observed during the Committee’s earlier visit in 2006 had not been maintained.

The CPT also reached the conclusion that the organisation of an ad hoc visit was the only means of obtaining the information it had been seeking for more than a year in relation to T. Z., who died in August 2011 whilst remanded in custody in the Nakhchivan Autonomous Republic of Azerbaijan.

2. The visit was carried out by the following members of the CPT:

- Jean-Pierre RESTELLINI, Acting 2nd Vice-President of the CPT, Head of delegation
- Djordje ALEMPIJEVIĆ,
- Jari PIRJOLA.

They were supported by Trevor STEVENS, Executive Secretary of the CPT, and Isabelle SERVOZ-GALLUCCI from the CPT’s Secretariat, and assisted by:

- Eric SVANIDZE, lawyer with specialised knowledge of the effective investigation of ill-treatment (expert)
- Fakhri ABBASOV (interpreter)
- Shahla AGHALAROVA (interpreter)
- Mehriban ALIYEVA (interpreter)
- Mahammad GULUZADE (interpreter)
- Rashad SHIRINOV (interpreter).

¹ The CPT has previously carried out three periodic visits (in November/December 2002, in November 2006 and in December 2011) and three ad hoc visits (in January 2004, in May 2005 and in December 2008) to Azerbaijan. To date, only the reports on the 2002 and 2008 visits, together with the responses of the authorities, have been made public (at the request of the Azerbaijani authorities); they can be found at <http://www.cpt.coe.int>

3. The delegation visited the following places of deprivation of liberty:

Establishments under the Ministry of Internal Affairs

- Temporary detention facility of the Main Department for Combating Organised Crime, Baku
- Main Transport Police Department, Baku
- Nasimi District Police Department and temporary detention facility, Baku
- Police station No. 19, Nasimi District, Baku
- Police station No. 21, Nasimi District, Baku
- Police station No. 23, Nizami District, Baku
- Police station No. 37 and temporary detention facility, Khatai district, Baku
- Sabunchu District Police Department and temporary detention facility, Baku
- Sumgayit City Police Department and temporary detention facility
- Police station No. 1, Sumgayit

Establishments under the authority of the Ministry of Justice

- Baku Pre-trial detention facility (Zabrat)
- Pre-trial detention facility No. 3 (Shuvalan)

Establishments under the authority of the Ministry of National Security

- Investigative isolator and temporary detention facility, Baku

B. Consultations held by the delegation and co-operation

4. In the course of the visit, the CPT's delegation held consultations with Fikrat MAMMADOV, Minister of Justice and Oruj ZALOV, Deputy Minister of Internal Affairs. as well as with senior officials from the Departments of internal security and internal investigations of the Interior Ministry.

Further, the delegation had meetings with Rustam USUBOV, first Deputy Prosecutor General, and other senior officials from the Prosecutor General's Office and the Prosecutor's Office of Nakhchivan City. At these meetings, the delegation obtained much of the information which the CPT had been seeking concerning the Z. case. The meetings also provided the opportunity to examine in detail the investigations which had been carried out into a number of other – and more recent – cases involving allegations of ill-treatment by law enforcement officials.

In addition, the delegation met the leadership of the Medical Department of the Ministry of Justice as well as senior officials of the Penitentiary Service, in order to assess the contribution to combating ill-treatment by the police being made by the prison system through the admission procedures for newly-admitted prisoners. It also met with the Director of the Forensic Medical Examination and Pathological Anatomy Unit of the Ministry of Health.

5. The CPT puts a premium on its relations with national preventive mechanisms set up under the Optional Protocol to the United Nations Convention against Torture. Consequently, the delegation met, on the eve of the visit, Vugar MAHARRAMOV, Head of the National Preventive Mechanism Group of Azerbaijan, as well as representatives of the Human Rights Commissioner's Office (Ombudsman).

Meetings were also held with representatives of the ICRC as well as with a number of practising lawyers and members of the non-governmental organisation ACAT (Azerbaijan Committee against Torture).

6. During the visit, the level of co-operation extended to the delegation by the national authorities was generally good. In particular, the delegation enjoyed rapid access to the places it wished to visit (including ones not notified in advance), could speak in private with persons deprived of their liberty and was able to consult relevant documentation.

However, there is one notable exception to this positive picture. Despite a request made in writing well in advance of the visit, and notwithstanding repeated renewals of that request during the visit, a meeting between the delegation and the forensic medical doctor who personally carried out the post-mortem examination of T. Z. was not arranged. This is highly regrettable, given that the examination of the autopsy report (which was finally made available to the delegation) raises a number of questions which only that doctor would be in a position to answer (see section II.F).

7. As the CPT has already made clear in previous visit reports², the principle of co-operation between States Parties to the Convention and the CPT is not limited to steps taken to facilitate the task of a visiting delegation. It also requires that decisive action be taken to improve the situation in the light of the CPT's key findings, which in turn implies that the Committee should be duly informed of that action. Responses to the CPT's visit reports should be comprehensive and be delivered in good time; this has not always been the case insofar as reports on visits to Azerbaijan are concerned.

The CPT calls upon the Azerbaijani authorities to take the necessary steps to ensure that responses to visit reports – including this report on the 2012 visit – are provided within the deadlines set by the Committee and that they contain complete and accurate information in relation to the different issues raised. In this connection, it could be useful to designate an authority at national level with the task of reviewing the responses received from the ministries concerned prior to their transmission to the CPT.

C. Outline of the main findings during the 2012 visit

8. Some positive developments have occurred over the last twelve months. In particular, the long-awaited "Law on ensuring the rights and freedoms of individuals held in detention facilities" (LRFIDF) was adopted on 22 May 2012 and entered into force in July 2012. Although requiring elaboration on some points, this legislation constitutes undoubtedly a step forward. Moreover, as the CPT's delegation observed for itself, police establishments are the subject of frequent on-site monitoring by the national preventive mechanism as well as NGO representatives. Efforts also continue to be made to improve the medical screening of persons entering the prison system (though further steps are required to ensure the timely and accurate recording of injuries borne by newly-admitted prisoners – and of any related allegations – and the provision when appropriate of relevant information to the prosecuting authorities).

9. However, the fact remains that the CPT's delegation received a disturbing number of credible allegations of severe ill-treatment by the police, allegations which were often supported by medical evidence. The application in practice of safeguards against ill-treatment of persons detained by the police remains deficient in numerous respects. And it is also clear that many law enforcement officials who engage in ill-treatment are not being brought to justice. According to the information provided to the delegation by the Azerbaijani authorities, during the previous four years there had not been a single conviction of a police officer for an offence related to ill-treatment and not a single criminal prosecution had been brought in relation to such an offence. For a country – any country – with a population in excess of nine million, such an absence of involvement of the criminal justice system is far from indicative that persons in police custody are well-treated; it is indicative instead of a fundamental problem with the system of accountability for ill-treatment.

² See, for example, paragraph 8 of CPT 2012 (39).

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Legal framework

10. The legal framework governing deprivation of liberty by law enforcement agencies was described in the relevant sections of the report on the CPT's 2011 visit. As regards more particularly criminal suspects, it is recalled that pursuant to the CCP, they may be held by the police on their own authority for up to 48 hours. Within 12 hours from the time of deprivation of liberty, the supervising prosecutor shall be notified of the fact of detention.³ Within 24 hours of the start of detention, an inquiry officer or an investigator must initiate a criminal case or release the suspect. By the expiry of the 48-hour period, criminal charges must be brought and, if a submission has been made by the prosecutor for the application of remand in custody, the suspect must be presented to a judge. The latter shall decide without delay whether the person concerned is to be remanded in custody, made subject to another preventive measure (e.g. bail, house arrest, etc.) or released.⁴ Persons remanded in custody may not be held in a police detention facility for longer than 24 hours after the judge's decision and should be transferred to an investigative isolator before the expiry of this period (which does not include the time spent transporting the person to the remand facility).⁵

11. The precise situation of persons held in detention facilities, both at the stage of police custody and after having being placed on remand, has now been fleshed out in the previously-mentioned Law adopted on 22 May 2012, the LRFIDF. Various sections of this Law will be commented upon later in this report. However, it can already be said that in general, the CPT has a favourable impression of the Law's provisions.

12. Specific reference should be made in this part of the report to section 8 of the LRFIDF, dealing with the return of remand prisoners to police detention facilities for investigative purposes. The CPT would recall in this context that it is far preferable from the standpoint of the prevention of ill-treatment for further questioning of persons committed to a remand prison (investigative isolator) to be carried out in that establishment rather than on police premises. The Committee welcomes the requirement, introduced by section 8, of a reasoned court decision for any transfer of a remand prisoner to a temporary detention facility unless the prisoner is to be returned to the remand prison on the same day. It is also very positive that in the case of all transfers, the prisoners concerned are to be subject to a medical examination both on leaving the remand prison and on their return.

From the delegation's interviews with inmates, law enforcement officials and prison staff, it transpired that the frequency of transfers of remand prisoners to temporary detention facilities implying a stay there of more than one day had diminished following the entry into force of the LRFIDF. Nevertheless, **the CPT considers that the objective should remain to end completely the practice of returning remand prisoners to police detention facilities for further questioning** (as distinct, for example, from transfers for the purpose of ensuring a prisoner's attendance at court proceedings).

³ Section 153.2.3 of the CCP.

⁴ Section 148.4, *ibid.*

⁵ Section 157.3, *ibid.*

13. According to section 11 of the LRFIDE, the relevant authority shall adopt “Rules of Internal Discipline in detention facilities”, and section 1.6 of the Presidential Decree of 6 July 2012 on the application of the Law provides that those Rules should be approved within three months. However, the Rules had still not been adopted at the time of the CPT’s visit in December 2012.

The CPT would like to be informed in due course of the adoption of the Rules of Internal Discipline and to receive a copy of them.

14. The CPT was also pleased to note that, further to the existing offence of torture, specific offences of torture and of cruel, inhuman or degrading treatment or punishment by a public official have now been inserted into the Criminal Code (section 293). The definition of torture in the Code corresponds to that contained in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

B. Information gathered concerning treatment of persons in police custody

15. In the course of the visit, the CPT’s delegation interviewed scores of persons about their experience while in police custody during the last twelve months.

Many of the persons interviewed were, at the time of the visit, held in a remand prison. In the Baku Pre-trial detention facility (Zabrat) and Pre-trial detention facility No. 3 (Shuvalan), the delegation interviewed numerous prisoners who were recorded as having arrived in those establishments bearing bodily injuries. Interviews were also carried out with other inmates selected on a random basis, both in these two remand prisons and in the Investigative Isolator of the Ministry of National Security.

The delegation also interviewed persons who were still in police custody and being held in temporary detention facilities.

16. A significant proportion of the persons interviewed alleged that they had been physically ill-treated during their period of police custody, when being questioned by police officers. The allegations were received from both adults – men and women – and juveniles. The forms of ill-treatment alleged consisted for a large part of slaps, punches, kicks and truncheon blows. A number of persons alleged that they had received blows to the soles of their feet; detailed and concordant accounts were received from persons interviewed separately of the manner in which this practice (known as “falaka”) had been applied to them.

Some allegations were also received of excessive use of force at the time of apprehension (e.g. kicks and punches after the person concerned had been brought under control). In particular, several persons who had been detained in the context of a demonstration in October 2012 in front of the Ministry of Education described how they had been brutalised after having been apprehended.

Among the persons interviewed who made no allegations of ill-treatment, a number of them said they had immediately confessed to the crime of which they were suspected or provided other information being sought by the police. It should also be noted that some persons interviewed were reluctant to speak at all about their experience while in police custody; they appeared to be concerned that doing so could have negative repercussions for them.

17. In a number of cases, the delegation gathered medical evidence (e.g. in the relevant records in the detention facilities visited, and in forensic medical reports) that was consistent with allegations of recent severe ill-treatment by law enforcement officials. Further, some of the allegations received were corroborated by the observations of the delegation's own medical doctors.

Descriptions are given below of some cases, by way of illustration.

a) a person interviewed at Pre-trial detention facility No. 3 alleged that, at the time of apprehension and during his detention at Police station No. 25, Nizami District, in the early hours of 4 March 2012, he had been slapped, punched and kicked by several police officers. Further, he said that later on 4 March, adhesive tape had been banded over his head, he had been placed face down the floor, hand- and ankle-cuffed together in the so-called "swallow position", his shoes were removed and he was beaten on the soles of his feet with a truncheon. He also alleged that he had received truncheon blows to one side of his body when he had tried to roll over while receiving blows to his feet. Following his admission to Pre-trial detention facility No. 3 in the evening of 7 March, he was medically examined the next day and found to display swelling on both feet and in the malleolar (ankle) region. A chest X-ray was also requested, and he was subsequently diagnosed on 12 March as having a fractured 8th rib on the right. This person's case was notified by the prison director to the Nizami District Prosecutor's Office on 12 March; the person's father also lodged a complaint about the manner in which his son had been treated.

b) two persons interviewed separately at Pre-trial detention facility No. 3 had been detained at Police Station No. 23, Nizami District, from 5 to 6 March 2012. The first person said that when he declined to confess to additional offences which he had not committed, his hands, legs, eyes and mouth were taped, he was put face down on the floor and the soles of his feet were beaten (with the shoes removed but the socks on) and blows were also delivered to his head. On his admission to the Khatai temporary detention facility on 6 March, he was found to bear swellings on both feet. On admission to Pre-trial detention facility No. 3 on 8 March, haematomas on the left leg and under the left eye were recorded. He mentioned the name of the second person as someone who had been detained at the same time and who had been particularly severely ill-treated. The second person declined to go into detail about the manner in which he had been treated, save to say that the injuries that he had borne on admission to prison had been caused by the police; instead, he referred the delegation to the complaint concerning him which had been lodged by his lawyer. On admission to the Khatai temporary detention facility on 6 March 2012, he was recorded as having swollen lips and reddish injuries on the face, legs and elbows. On arrival at Pre-trial detention facility No. 3 on 8 March, he been found to bear multiple haematomas on the legs, the soles of the feet, the head and the ears. A formal complaint about his treatment by the police had been lodged in early April 2012, and referred to beatings with a truncheon and the leg of a chair;

c) a person interviewed at Baku Pre-trial detention facility said that he had voluntarily gone to Yasamal Police Station on 27 March 2012, in relation to an offence of which he was suspected. He alleged that immediately after having been remanded in custody, he was returned to the police station and was ill-treated by police officers, who wished him to confess to another offence. He said that he had been handcuffed in the back, made to sit on a chair with his legs on another chair (with shoes removed) and subjected to truncheon blows to the soles of his feet. On his arrival at Baku Pre-trial detention facility on 3 April, he was found to bear swellings on the soles of both feet;

d) a person interviewed at Baku Pre-trial detention facility alleged that he had been ill-treated at Sahil Police Station late in July 2012, in order to obtain a confession. He said that in addition to punches and kicks to various parts of his body, he had been handcuffed behind the back, made to sit down, and had his legs put through the bars of the back of a chair and tied together with a belt. In this position, with one police sitting on his legs, he had been subjected to blows to the soles of his feet with a truncheon. When admitted to Baku Pre-trial detention facility on 31 July, he had been found to bear an oval 15 x 20 cm haematoma on the left thigh, as well as multiple bruises on the front part of the right thigh, on both knees, on the region of the left inner ankle, on the back side of the right lower leg, and on the back side of the left calf.

e) a person interviewed at Baku Pre-trial detention facility said that he was beaten by both uniformed and plain clothes police officers during his participation in a demonstration in front of the Ministry of Education in October 2012. He alleged that after he had fallen to the ground after receiving truncheon blows, the police had continued to beat him and that he had then been pulled behind a bus where the beating had continued. On his admission to Baku Pre-trial detention facility, the following injuries were observed: “Yellowish periorbital lesion on the right and in the right temple region. Abrasion on the left side of the chest 1.5 x 0.3 cm on both sides of the chest and on the right shoulder a small abrasion”;

f) a person interviewed at Baku Pre-trial detention facility said that she was ill-treated while detained at Police Station No. 37, Khatai District, on 28 and 29 November 2012. She alleged that she had been kicked on the legs and hit in the face, and to have been beaten on the soles of her feet with a rubber baton while held down on the floor by several police officers. On admission to the Khatai temporary detention facility on 29 November, she was observed to have haematomas around the right eye as well as injuries to both knees and the soles of the feet. On admission to Baku Pre-trial detention facility on 1 December 2012, it was noted that she displayed haematomas around the right eye as well as multiple yellowish bruises on the legs and the soles of the feet. After her arrival in prison she made a complaint about her treatment by the police, which was forwarded by the prison director to the relevant prosecutor’s office by letter of 11 December 2012.

18. Ever since its first visit in 2002, the CPT has been drawing the attention of the Azerbaijani authorities to the problem of ill-treatment by the police. Despite some positive measures adopted in recent times, this problem has yet to be overcome. Persons deprived of their liberty in Azerbaijan run an appreciable risk of being ill-treated, both at the time of their apprehension and when being questioned by law enforcement officials. From the information gathered during the 2012 visit, it is clear that the risk of ill-treatment is particularly high vis-à-vis persons who do not immediately confess to an offence of which they are suspected or provide other information sought by the police, and that the ill-treatment inflicted on such persons can be of such severity as to amount to torture.

At the end-of-visit talks, the delegation highlighted two specific police stations in Baku (No. 19 in the Nasimi District, and No. 23 in the Nizami District) in respect of which it had received a considerable number of allegations of physical ill-treatment by police officers, some of them supported by medical evidence. The Deputy Minister of Internal Affairs reassured the delegation that these establishments would be put under close supervision. **The CPT would like to be informed of the precise measures taken in this respect.**

19. The various measures required to combat ill-treatment by the police have been described in previous visit reports, and the CPT will return to certain of them in the present report. In many cases, it is a question of building on what already exists, of ensuring that legal safeguards which are in place are applied in practice and that there is an appropriate response on the part of the relevant authorities when indications of ill-treatment come to light.

However, it is also essential that no one is left in any doubt concerning the commitment of the State to put a stop to the abuse of detained persons by public officials. This will underpin the action being taken at all other levels. **The CPT recommends that a formal statement be issued by the highest political authority, delivering the message that there will be “zero tolerance” of torture and other forms of ill-treatment.** This statement might usefully be issued on the occasion of the adoption of the Rules of Internal Discipline referred to in paragraph 13; it should be made clear for all that what is said in section 27 of the Law adopted on 22 May 2012⁶ are not empty words.

C. Recording and reporting of injuries and allegations

a. screening on admission to prison

20. As the CPT has made clear in previous reports, the prompt and proper medical examination of persons admitted to prison and the timely transmission to the authorities concerned of relevant information obtained through that screening are crucial components of any strategy to combat torture and other forms of ill-treatment. In this connection, the CPT’s delegation examined in depth the current arrangements for medical screening of new arrivals at pre-trial detention facilities.

21. The delegation found that there had been some improvement as regards the quality of recording of injuries and the recording of related allegations and that reporting procedures had been clarified, as a result of new instructions issued after the CPT’s 2011 visit⁷. In particular, there is now a well-established and centralised system of recording all traumatic lesions observed on persons entering the prison system (as well as injuries sustained during their time in the prison system). Nevertheless, it is also clear that for them to fulfil their potential as a means of combating ill-treatment, the current arrangements need to be further refined.

22. At present, one major weakness relates to the administrative “act” drawn up at the moment of a prisoner’s arrival at the pre-trial detention facility and his/her handover to its custody, which is co-signed by prison staff, the police escort and the prisoner. This document contains not only a first account of any injuries observed on the prisoner but also records the prisoner’s explanation as to the origin of those injuries, given in the presence of the police escort. Unsurprisingly, the delegation found examples of prisoners affirming that the multiple injuries they bore – and which were clearly indicative of ill-treatment – were “self-inflicted” or “the result of a fall”. Numerous prisoners confirmed that they had been frightened to reveal the true origin of their injuries in the presence of the police.

⁶ “Detained or arrested persons cannot be subjected to torture and inhuman or degrading treatment or punishment”.

⁷ Reference should also be made to section 22.1 of the LRFIDF, which stipulates that any injuries displayed by persons admitted to a detention facility and any complaints of ill-treatment made by them shall be immediately recorded by the facility’s management.

Admittedly, there is subsequently the possibility for the prisoner to retract this initial explanation when he/she is examined by a doctor within the following 24 hours. However, the “act” drawn up on arrival is forwarded to the prison director, remains in the prisoner’s file, and can have an important impact on the future course of events.

The CPT recommends that existing procedures be reviewed so as to ensure that prisoners who are found to display injuries on their admission to a pre-trial detention facility are not questioned about the origin of those injuries at the very moment of their arrival, when the procedure of handover from police custody occurs.

23. Further, despite the overall improvement observed, the delegation did encounter specific cases in which injuries displayed by prisoners were not properly recorded. For example, in two cases from Baku Pre-trial detention facility, although swelling of the soles of the feet had been recorded in the “act” drawn up on the prisoner’s arrival, no reference was made to those injuries in the medical file established after the first medical examination. In one of those cases, this discrepancy may have had important legal consequences, as it was on the basis of the content of the medical file that a response was subsequently given to a request from a public prosecutor about the case.

In the case of another prisoner, although he had been found to display injuries to his legs and swelling on the soles of his feet when admitted to Sumgayit City temporary detention facility on 1 September 2012, no injuries were recorded when the person concerned was admitted to Pre-trial detention facility No. 3 on 4 September 2012.

The CPT recommends that the administrative “act”, drawn up on a prisoner’s arrival at a pre-trial detention facility be systematically forwarded to the facility’s medical service, so that it can be taken into account during the first medical examination of the prisoner. Further, steps should be taken to ensure that the record of any injuries observed on admission to a temporary detention facility is included in the file which accompanies the person concerned.

The CPT also recommends that the Azerbaijani authorities pursue their efforts to ensure that the health-care services of pre-trial detention facilities perform a thorough screening of newly-arrived prisoners. The record drawn up by the doctor should contain a detailed description of injuries observed and of any allegations made by the prisoner; at present, the descriptions of injuries and related allegations tend to be very summary in nature. And the doctor should provide observations indicating the consistency between any allegations made and the objective medical findings; at present, this is rarely if ever done (see also the recommendation in paragraph 27).

24. During discussions with the Penitentiary Department and the Directors of Baku Pre-trial detention facility and Pre-trial detention facility No. 3, the delegation was informed that if a newly-arrived prisoner displays injuries and he/she makes allegations of ill-treatment (either spontaneously or upon questioning by the facility’s operational staff), the case must be brought to the attention of the prosecution service by the prison director.

Nevertheless, the CPT notes that of the 167 prisoners during the eleven months of January to November 2012 who were recorded as displaying injuries on their arrival at Baku Pre-trial detention facility and Pre-trial detention facility No. 3, the cases of only five prisoners had been notified to the prosecution service. One of those cases, which was notified following an intervention by the delegation, deserves to be described as it illustrates several of the weaknesses of the current arrangements.

25. The prisoner concerned had been admitted to Baku Pre-trial detention facility on 16 November 2012. According to the “act” drawn up on his arrival, he displayed a stitched wound on the right side of the head, an injury to the left hand, and red bruises on the soles of both feet; the prisoner was recorded as saying that the wounds had been self-inflicted during apprehension. This information had subsequently been reflected in the establishment’s register of traumatic lesions. When interviewed by the delegation, the prisoner alleged that he had been subjected to various forms of ill-treatment whilst detained by the police from 14 to 16 November, including blows to the soles of his feet at Zabrat Police Station. He said that he had been afraid to reveal the origin of his injuries on his arrival at the prison because of the presence of the police, but that he had subsequently told everything to a doctor when medically examined.

The delegation discussed this prisoner’s case with the prison Director. He said that he had not notified it to the prosecution service given that the prisoner had said the injuries were self-inflicted. The delegation commented that such injuries, and in particular those to the soles of the feet, were unlikely to have been self-inflicted and, on the contrary, were highly indicative of ill-treatment. In the light of those comments, the Director agreed to interview the prisoner. The delegation was subsequently informed that the prisoner had alleged ill-treatment by the police and that consequently his case had been notified to the prosecution service. At the delegation’s request, it was provided with a copy of the correspondence in question. An examination of that correspondence has revealed that in the appended description of the injuries which the prisoner displayed on his arrival, reference is made only to the injuries to the head and left hand. The CPT would like to believe that the omission of any reference to the injuries on the soles of the feet was accidental.

The CPT recommends that immediate steps be taken to correct this error and notify the relevant prosecution service that the prisoner concerned also displayed red bruises on the soles of both feet on his arrival at Baku Pre-trial detention facility on 16 November 2012.

26. According to section 22.2 of the recently-adopted LRFIDF, persons remanded in custody are to be medically examined within 24 hours of their admission to the pre-trial detention facility. And section 22.3 stipulates that complaints about ill-treatment as well as written information *about bodily injuries possibly resulting from ill-treatment* which are revealed during medical examination shall be immediately sent to the prosecutor in charge of the preliminary investigation.

During discussions with the Penitentiary Department and other Ministry of Justice officials, the delegation was informed that in the light of these provisions, consideration was being given to including in the Rules of Internal Discipline currently being prepared (see paragraph 13) a provision to the effect that the obligation to notify the prosecution service applied not only in cases of express allegations of ill-treatment but also where in view of the character of the injuries observed it can be assumed that the prisoner concerned may have been ill-treated.

The wording of section 22.3 and the draft rule under consideration by the Penitentiary Department are very much in line with recommendations already made by the CPT⁸. **Consequently, the CPT would greatly welcome the adoption of the proposed Rule on this point.** Applied correctly, section 22.3 and the proposed Rule would ensure that in a case such as the one described in paragraph 25, the injuries observed on arrival are notified without delay to the prosecution service.

27. The CPT understands that the reporting obligation contained in section 22.3 of the LRFIDF will continue to be placed on the management of the detention facility concerned (e.g. the prison director). However, in order for that obligation to be fulfilled properly, the support of the relevant medical services will be necessary. More specifically, in cases of the kind described in paragraph 26, the medical service should expressly draw the prison director's attention to the fact that the injuries observed are indicative of ill-treatment; it is much better placed than a prison director to make such an assessment. **The CPT recommends that this point also be addressed in the Rules of Internal Discipline.**

28. As for the case of a prisoner who does make an express allegation of ill-treatment but who is not found to display bodily injuries, it would appear from the wording of section 22.3 that such a case should also be immediately notified to the prosecutor. **The CPT would like to receive confirmation that this is the correct interpretation of the section.**

In this connection, it should be emphasised that the absence of visible physical marks does not necessarily mean that the person examined has not been ill-treated.

29. The CPT was pleased to note that the confidentiality of the medical examinations of newly-arrived prisoners during the 24 hours after their admission to Baku Pre-trial detention facility and Pre-trial detention facility No. 3 was respected.

However, this was not the case at the Investigative isolator of the Ministry of National Security. Custodial staff were systematically present during the first medical examination of newly-arrived prisoners and indeed during any subsequent medical examination of a prisoner. This is a clear violation of section 22.7.1 of the LRFIDF, which stipulates that particular attention should be paid to respecting medical confidentiality during the medical examination of a detained or arrested person. **The CPT recommends that steps be taken to ensure that all medical examinations of prisoners at the Investigative Isolator of the Ministry of National Security are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of custodial staff.**

⁸ See, for example, the recommendation in paragraph 73 of the report on the 2011: “Whenever injuries are recorded which are consistent with allegations of ill-treatment made by a prisoner (*or which, even in the absence of allegations, are indicative of ill-treatment*), the record should be brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned”.

b. screening at the level of temporary detention facilities⁹

30. According to section 22.1 of the LRFIDF, the recording of injuries and any complaints of ill-treatment should also be taking place at the stage of admission to a temporary detention facility. At least insofar as injuries are concerned, the delegation came across examples of this being done, in particular at the Khatai District and Sumgayit City temporary detention facilities (see the cases referred to in paragraph 17 b. and f. and paragraph 23). However, this task was being carried out by custodial staff.

31. Section 22.1 provides that any injuries displayed by detained persons on their admission shall be recorded by “the management of the facility”; however, this provision has to be interpreted in the light of the title of section 22, which is “Provision of health care”. Further, it is self-evident that only a health-care professional is qualified to make an accurate description of injuries.

Consequently, **the CPT recommends that the task of recording any injuries displayed by detained persons on admission to a temporary detention facility be carried out by a health-care professional. If necessary, this requirement could be met by having recourse in appropriate cases to the emergency services¹⁰.**

32. As for the reporting obligation set out in section 22.3, the CPT understands that it applies also at this stage, i.e. that any complaints of ill-treatment made by a person admitted to a temporary detention facility and written information about bodily injuries possibly resulting from ill-treatment which are revealed during medical examination of such a person must be immediately notified to the prosecutor in charge of the preliminary examination. **The CPT would like to receive confirmation that this is the case.**

c. involvement of forensic doctors

33. The delegation found that forensic doctors could become implicated in the examination of injuries at a very early stage of the procedure, prior to the transfer of the person concerned to a remand prison. For example, a judge before whom a detained person is brought with a view to his remand in custody might insist on that person being examined by a forensic doctor before taking a decision. Further, the delegation came across examples of police officers themselves taking the initiative to bring an injured detained person to a forensic doctor.

34. The persons concerned alleged – and the practice was confirmed during the delegation’s discussions at the General Prosecutor’s Office – that the escorting police officers were present during the forensic examination. The delegation also encountered cases in which the forensic examination was apparently very superficial. For example, the report of a forensic examination on 7 March 2012 of the second person referred to in paragraph 17 b. referred only to a 5 x 4 cm bruise on the right foot. This is in striking contrast to the multiple injuries recorded on his admission to Khatai temporary detention facility on 6 March and to Pre-trial detention facility No. 3 on 8 March.

⁹ As regards more generally access to a doctor during police custody, see paragraphs 40 to 42 below.

¹⁰ In this connection, it is interesting to note that at Sabunchu District temporary detention facility, the local emergency service was called to check all new arrivals, irrespective of whether the persons concerned displayed injuries.

It is self-evident that the presence of police officers during forensic examinations can result in undue pressure being put on the detained person and perhaps even on the doctor, thereby undermining the integrity of the examination.

The CPT recommends that steps be taken immediately to ensure that all forensic examinations of detained persons take place out of the hearing and – unless the doctor requests otherwise in a particular case – out of the sight of law enforcement officials. Such examinations should be carried out in a thorough manner and a full account of objective medical findings should be drawn up. Further, steps should be taken to guarantee the confidential transmission of the results of the forensic examination to the requesting authority.

35. Of course, if forensic doctors are to provide all the necessary support to the criminal justice system as regards the investigation of cases involving allegations of ill-treatment by law enforcement officials, it is also essential that they are fully aware of the types of ill-treatment commonly used and the possible resulting injuries. **It would appear from the delegation's discussions with forensic doctors that there is considerable room for progress in this regard.**

D. Safeguards against ill-treatment by the police

36. With the entry into force of the LRFIDF, the legal situation as regards safeguards against ill-treatment offered to persons detained by the police has been reinforced. However, the information gathered during the 2012 visit shows that much remains to be done to ensure that persons detained by law enforcement agencies enjoy in practice proper safeguards, in particular from the very outset of their detention, i.e. as from the moment when they are obliged to remain with the police.

37. As regards the exercise of the right of notification of custody, pursuant to sections 15.1.1 of the LRFIDF, detained persons have the right, immediately after admission to a temporary detention facility, to inform by phone a close relative or any other person "of legitimate interest to them" about their detention¹¹. Most detained persons met by the delegation confirmed that they had been placed in a position to exercise this right. However, a number of person met by the delegation alleged either that their relatives had not been notified, or that they did not know whether notification had been given. It also remained the case that the exercise of this right was not possible at the very outset of deprivation of liberty but only from the time when the protocol of detention was drawn up, a procedural step often taken several hours after the moment of deprivation of liberty.

The CPT reiterates its long-standing recommendation that persons deprived of their liberty by the police be accorded the right to inform a close relative or another third party of their situation, as from the very outset of their deprivation of liberty (that is from the moment when they are obliged to remain with the police). The exercise of this right should be recorded in writing. In the event of the notification (telephone call) being given by a police officer instead of the detained person himself, the person concerned should be provided with feedback on whether it has been possible to give the notification.

¹¹ According to Section 19.8 of the LRFIDF, the right of detained persons to notify a third party of their custody can be restricted for a certain period by a reasoned decision of the body conducting criminal proceedings for the purpose of crime prevention and for ensuring the criminal prosecution and security of individuals; any such decision can be appealed to a court.

38. Pursuant to section 19.1 of the LRFIDF, detained persons enjoy the right of access to a lawyer, "from the moment of detention". **The CPT would like to receive confirmation that this expression is to be understood in the sense of "as from the moment when the person concerned is obliged to remain with the police"; if necessary, this point should be made clear in the rules of internal discipline currently being prepared.**

The CPT welcomes the fact that according to section 19.1, detained persons are able to have confidential meetings with their lawyers, with no limitation as to the frequency and duration of such meetings. As for section 19.2¹², **the CPT would like to receive confirmation that by virtue of this provision, the right of access to a lawyer includes the right to have the lawyer physically present during any questioning conducted by the police and that the lawyer is able to intervene in the course of questioning.**

39. However, from countless interviews with both detained persons and police officers, it is clear that, in fact, detained persons do not at present have access to a lawyer at the beginning of their period of police custody. This is a serious failing, as it is precisely during these first hours that the risk of ill-treatment is the highest. A detained person's contact with a lawyer, frequently appointed *ex officio*, occurred at best when he/she was interviewed by an investigator, but even this was the exception rather than the rule. Many detained persons described how they had met their lawyer for the first (and frequently last) time at the court hearing on the issue of remand in custody. And there was a chorus of criticism of the poor quality of the assistance provided by *ex officio* lawyers; apparently, they often remained completely silent during the proceedings before the judge and sometimes did not even speak to the detained person.

In the light of the information gathered during the visit, **the CPT calls upon the Azerbaijani authorities to take all necessary steps to ensure that the right of access to a lawyer for persons in police custody, as guaranteed by law, is fully effective in practice. As regards more particularly *ex officio* lawyers, they should be reminded, through the appropriate channels, of their duty to represent to the best of their ability the interests of the persons to whom they are assigned and, more specifically, to take appropriate action whenever there are indications that such persons may have been ill-treated by the police.**

40. As regards access to a doctor, section 22 of the LRFIDF addresses in detail the question of the provision of health care to persons placed in detention facilities, including persons taken into police custody and kept in a temporary detention facility. And reference has already been made to the application of some of the provisions of section 22 at the stage of police custody (see paragraphs 30 to 32).

¹² Which provides that a detained person who has requested legal assistance shall not be subjected to questioning before such assistance is provided, or his/her questioning should not continue in the absence of the defense lawyer.

Section 22.2 stipulates that "arrested" persons (i.e. accused persons who have been remanded in custody by court) shall undergo a medical check by health-care staff within 24 hours of their admission to the facility in which they are kept. However, other provisions of the LRFIDF, e.g. sections 12.1.1 and 33.1.3, appear to indicate that "detained" persons (e.g. a person detained on suspicion of having committed a crime) should also undergo a medical examination upon their admission to a temporary detention facility. **The CPT would like to receive confirmation that this is indeed the correct interpretation of the LRFIDF and that all persons placed in a temporary detention facility should be medically examined by health-care staff within 24 hours of their admission.**

Provision is also made for the immediate medical examination of detained persons who fall ill (section 22.5 of the LRFIDF) as well as for the possibility for detained persons to be examined by a doctor of their choice, at their expense (section 22.6). Further, it is stipulated that the results of all medical examinations have to be recorded.

41. As regards the situation on the ground, the delegation found that it varied considerably from one temporary detention facility to another. In some, all persons admitted were rapidly seen by health-care staff; this was the case for example at Sabunchu District temporary detention facility, where recourse was had for this purpose to the emergency services. However, in many other temporary detention facilities, there did not seem to be a systematic medical check on admission, health-care staff only intervening in case of need. In most cases, health care was provided by the local ambulance service, though in some temporary detention facilities, a doctor working in the police department concerned could be involved (e.g. at the Main Department for Combating Organised Crime and in Sumgayit City police station). As for the records made of the results of medical examinations, sometimes they reflected the health-care complaint, sometimes the treatment prescribed, but rarely both. In all cases, the records made were extremely succinct.

The findings of the 2012 visit clearly indicate that the provisions of section 22 of the LRFIDF have yet to be given full effect in practice at the stage of placement in a temporary detention facility. **The CPT recommends that all necessary steps be taken to ensure that these provisions are fully implemented at this stage.**

42. As regards access to a doctor for persons in police custody during the period prior to placement in a temporary detention facility, this appears to remain unregulated. **The CPT must recommend once again that the right of persons in police custody to have access to a doctor should be expressly guaranteed as from the very outset of their deprivation of liberty.**

43. Information on rights was still usually provided only at the moment when the protocol of detention was drawn up, which, as already indicated, frequently happened hours after the actual apprehension. Some persons interviewed by the delegation stated that they had not been expressly informed of their rights at any time while in police custody (as distinct from being told to sign a procedural document which might have referred to those rights).

The CPT calls upon the Azerbaijani authorities to take steps to ensure that all persons detained by the police are fully informed of their fundamental rights as from the outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon arrival at police premises) by provision of a written form setting out the rights in a straightforward manner. Particular care should be taken to ensure that detained persons are actually able to understand their rights; it is incumbent on police officers to ascertain that this is the case. The written form should be available in an appropriate range of languages.

44. The information gathered during the 2012 visit indicates that effective action is still often not taken by judicial/investigative authorities when there are indications that a detained person brought before them may have been ill-treated. Once again, a CPT delegation heard allegations of the judge, at the stage of remand in custody, not taking action despite detained persons having complained of ill-treatment. In other cases, despite the detained person clearly being injured, the judge had apparently refrained from pursuing the matter as the person had said that the injuries were "accidental" or simply had said nothing at all; this attitude of "no complaints, no questions" was also displayed by certain senior investigators met by the delegation, and even doctors.

The CPT recommends that a message be delivered, through the appropriate channels, to both judges and investigators, reminding them of their obligation to take relevant action whenever they have reasons to believe that a person brought before them may have been subjected to ill-treatment. Whenever a detained person alleges ill-treatment, a forensic medical examination should be immediately ordered and the necessary steps taken to ensure that the allegations are promptly and properly investigated. Even in the absence of an express allegation of ill-treatment, judges and investigators should ensure that such an examination is requested whenever there are other grounds (e.g. visible injuries, a person's appearance or demeanour) to believe that a criminal suspect brought before them has been ill-treated. Under no circumstances should they authorise the return of a criminal suspect to the custody of law enforcement officials if there is reason to believe that the latter have ill-treated the person in question.

45. Of course, combating ill-treatment must start at home, that is within the law enforcement agencies themselves. Too often the esprit de corps leads to a willingness to stick together and cover up the illegal actions of colleagues. Positive action is required, through training and by example, to promote an institutional culture where it is regarded as unprofessional – and unsafe from a career path standpoint – to work and associate with colleagues who have resort to ill-treatment, and where it is correct and professionally rewarding to belong to a team which abstains from such acts. An atmosphere must be created in which the right thing to do is to report ill-treatment by colleagues; there must be a clear understanding that culpability for ill-treatment extends beyond the actual perpetrators to anyone who knows that ill-treatment is occurring and fails to act to prevent or report it. This implies the existence of a clear reporting line as well as the adoption of a framework for the legal protection of individuals who disclose information on ill-treatment and other malpractice. **The CPT recommends the adoption of such "whistle-blower" protection legislation.**

E. Investigations into cases involving possible ill-treatment by the police

a. preliminary remarks

46. The credibility of the prohibition of torture is undermined each time officials responsible for such offences are not held to account for their actions. If the emergence of information indicative of ill-treatment is not followed by a prompt and effective response, those minded to ill-treat persons deprived of their liberty will quickly come to believe – and with good reason – that they can do so with impunity. All efforts to promote human rights principles through strict recruitment policies and professional training will be undermined. Conversely, when officials who ill-treat persons in their custody – or who authorise or condone such acts – are brought to justice, this sends an unequivocal message that such conduct will not be tolerated.

In this context, the CPT has already expressed concern about the fact that no criminal proceedings whatsoever have been brought in recent years against law enforcement officials for an offence related to ill-treatment of persons in their custody (see paragraph 9). As the Committee's delegation stressed during the end-of-visit discussions with the Deputy Minister of Internal Affairs, simply removing from the police service those officers who are found to have engaged in ill-treatment is not sufficient.

47. It is well-established through the case-law of the European Court of Human Rights that, whenever a person is injured while in the hands of public officials, there is a strong presumption that the person has been ill-treated and the authorities' duty is to provide a convincing explanation of how the injuries were caused.

The CPT recommends that it be made clear to the competent authorities that any such case should be considered as indicative of possible ill-treatment – and hence be the subject of an “effective investigation” – until such time as a plausible, evidence-based, alternative explanation for the injuries is provided.

48. The core characteristics of an effective investigation have been established through an abundant case-law of the European Court of Human Rights¹³. In particular, the investigation should be thorough and comprehensive, it should be conducted in a prompt and expeditious manner, and the persons responsible for carrying out the investigation should be independent from those implicated in the events.

As already indicated¹⁴, the CPT's delegation examined together with the Prosecutor General's Office the action taken in a number of cases involving allegations of ill-treatment by law enforcement officials. Comments on certain of those cases will be given in the following paragraphs. As for the inquiry into the death of T. Z., this is considered in section II.F of this report.

The delegation also had the opportunity to meet the Head of the Interior Ministry's Department of Internal Investigations.

¹³ The CPT commented upon the criteria of an effective investigation in its 14th General Report (see document CPT/Inf (2004)28).

¹⁴ See paragraph 4.

- b. some cases involving recent allegations of ill-treatment by the police¹⁵

49. The delegation raised the case of *five persons who had been detained in early March 2012 at Police Station No. 23, Nizami District*, on suspicion of involvement in related crimes. All of the persons concerned had been found to display injuries on their arrival at Pre-trial detention facility No. 3 on 8 March; one of them had been interviewed by the delegation and had made allegations of ill-treatment by the police (see paragraph 17 b. above). According to the Prosecutor General's Office, complaints of ill-treatment had been lodged in respect of two of the persons, G. A. and U. I.

The preliminary inquiry carried out by the Baku Nizami District Prosecutor's Office concerning the allegations of ill-treatment in respect of Mr A. had found that the allegations were unfounded; consequently, the institution of criminal proceedings was rejected. From the written information provided by the Prosecutor General's Office, it is clear that in reaching this conclusion, the District Prosecutor's Office had relied heavily on the results of an investigation conducted by the Baku City Police Department. This is already sufficient to raise serious doubts as to whether the preliminary inquiry respected the criterion of independence. Other aspects of the inquiry raise questions about its thoroughness. For example, emphasis is placed on the results of a forensic examination carried out on 7 March, which indicated that the only injury displayed by Mr A. was a 5 x 4 cm bruise on the right forefoot. No reference is made to the injuries recorded on his admission to Khatai temporary detention facility on 6 March (he had been found to display swollen lips and reddish injuries on the face, legs and elbows) or to those recorded on his admission to Pre-trial detention facility No. 3 on 8 March (i.e. multiple haematomas on the legs, the soles of the feet, and the head and the ears).¹⁶ Other shortcomings in the conduct of the inquiry include the failure to identify and question possible witnesses (in particular, other persons detained at the same time as Mr A. as well as the custodial staff of the Khatai temporary detention facility on duty at the time of his admission) and the failure to examine CCTV footage of the relevant period at Police Station No. 23. It is also noteworthy that according to the formal charges laid against him, Mr A. had been apprehended at 16.00 on 5 March, whereas the protocol of detention was drawn up at 14.10 on 6 March; the inquiry had failed to address the lawfulness of this initial period of 22 hours of detention.

The preliminary inquiry concerning the allegations of ill-treatment of U. I. (which had also resulted in a decision not to institute criminal proceedings) displayed similar shortcomings, in particular, a failure to examine records of injuries on admission to the temporary detention facility and the pre-trial detention facility, to identify and question possible witnesses and to examine relevant CCTV footage. During the meeting at the Prosecutor's General's Office, it was acknowledged that there had been deficiencies in this inquiry (as regards the questioning of the alleged victim and the quality of a forensic report which had been relied upon) and the delegation was informed that the decision not to institute criminal proceedings had been revoked and the preliminary inquiry re-launched. It was also stated that the points raised by the delegation would be addressed with respect to all of the persons who had been detained at Police Station No. 23 in the context of the criminal case concerned.

The CPT recommends that the inquiry into the allegations of ill-treatment in respect of G. A. be re-opened and that it form part of a broader investigation into the manner in which all the persons detained on 5 and 6 March at Police Station No. 23 in relation to the same criminal case had been treated.

¹⁵ Pursuant to Article 11, paragraph 3, of the Convention, the names given in the following paragraphs will be deleted in the event of this report being published.

¹⁶ See also paragraphs 33 and 34 above.

50. The cases of *M. H. and R. C.* were also raised with the Prosecutor General's Office.

Mr H. had lodged a complaint alleging that he had been ill-treated (kicked and punched) on 19 January 2012 at Police Station No. 10, together with two other detained persons. A preliminary inquiry was carried out by Garadagh District Prosecutor's Office, which involved a forensic examination as well as the questioning of Mr H. and the police officers who had apprehended him. However, the persons who had been detained at the same time were not questioned. The results of the forensic examination were dated 22 May and were consistent with an act of self-harm apparently committed by Mr H. shortly after his arrest, and a decision was taken the same day not to institute criminal proceedings. Quite apart from the delay in arranging for the forensic examination, it is noteworthy that the decision not to initiate criminal proceedings was taken without waiting for information on injuries recorded on Mr H.'s admission to Baku Pre-trial detention facility, information which had been requested by a separate letter dated the very same day i.e. 22 May. Further, no examination was made of CCTV footage of the relevant period at Police Station No. 10, despite the fact that the ill-treatment of Mr H. (and of the other persons detained) was said to have occurred in a corridor which was covered by CCTV monitoring. **The CPT recommends that the inquiry into the allegations of ill-treatment made by M. H. be re-opened and that it form part of a broader investigation covering also the manner in which the other persons detained at the same time were treated.**

Reference has already been made earlier in this report to the case of R. C. (see paragraph 17 a. above). A pre-investigative inquiry was opened by the Baku Nizami District Prosecutor's office, but was subsequently closed on 4 April 2012 with the decision not to institute criminal proceedings. The inquiry involved a forensic examination as well as the questioning of Mr C. and the police officers who had apprehended him. However, no attempt was made to identify and question possible witnesses, in particular other persons held at the Khatai temporary detention facility at the relevant time. According to the results of the forensic examination, dated 31 March, Mr C. displayed the following injuries: swelling, bruise and scrape in the thorax region under the right shoulder blade, and swelling and bruise on the left big toe; it was indicated that these injuries could have been caused by Mr C. falling down at the time of the crime. However, no reference was made to the injuries which Mr C. had been found to display on his admission to the Khatai temporary detention facility on 4 March, as well as following his admission to Pre-trial detention facility No. 3 on 7 March. Further, no examination had been made of CCTV footage of the relevant period at Police Station No. 25. It is also noteworthy that according to the documentation consulted by the delegation, Mr C. had been apprehended at 23.00 on 3 March, whereas the protocol of detention was drawn up at 18.00 on 4 March; the inquiry failed to address the lawfulness of this initial period of 19 hours of detention. **The CPT recommends that the inquiry into the allegations of ill-treatment made in respect of R. C. be re-opened.**

51. The cases of *E. C., A. M. and K. B.* should be raised in this context. Each of these prisoners had been found to bear multiple injuries on their admission to Baku Pre-trial detention facility in November 2012, and two of them alleged that they had been ill-treated while in police custody. All three of the cases were brought to the attention of the prosecution service by the prison director, by letters dated 11 December 2012. **The CPT would like to receive a full account of the investigations carried out into these cases.**

Reference should also be made to a number of *persons apprehended during a demonstration in front of the Ministry of Education in October 2012* and who at the time of the visit were being held in Baku Pre-trial detention facility. Many of these prisoners had been found to bear injuries when admitted to the establishment (see, for example, paragraph 17 e. above), and the delegation was informed that their cases were the subject of a specific investigation. **The CPT would like to be informed of the outcome of that investigation.**

52. More generally, the CPT wishes to emphasise that the *recordings of the CCTV systems* which have now been installed in the majority of police stations and temporary detention facilities can be a significant tool in the investigation of allegations of police treatment and related issues such as unlawful detention and the application in practice of safeguards against ill-treatment.

In the light of the information gathered by its delegation, **the CPT recommends that appropriate steps be taken to ensure that prosecution services fully exploit such recordings when examining cases involving allegations of ill-treatment by the police. Consideration should also be given to extending the period of storage of CCTV footage.**¹⁷

53. Whenever an investigation is initiated by a prosecutor into possible police ill-treatment, the question will arise of who will be responsible for the operational conduct of that investigation. As already indicated (see paragraph 48), it is essential that the persons entrusted with the operational conduct of the investigation are independent of those implicated in the events and, ideally, they should be completely separate from the agency concerned. Consequently, **the CPT recommends that when prosecutors require operational support from another service for the investigation of cases of possible ill-treatment by the police, that support be sought from the Ministry of Internal Affairs' Department of Internal Investigations rather than from a Police Department.**

Of course, it would be far preferable for the prosecutors concerned to use their own operational investigators. In this connection, **the CPT recommends that consideration be given to setting up a specialised team of prosecutors at national level with the task of carrying out investigations throughout the country into cases involving possible ill-treatment inflicted by members of the police or other public officials, and to providing that team with its own support staff for the operational conduct of its investigations.**

c. activities of the Department of Internal Investigations

54. The Department of Internal Investigation (DII) of the Ministry of Internal Affairs is a separate unit within that Ministry, and directly subordinated to the Minister. It is entrusted with inquiries into possible offences by officials of the Internal Affairs Ministry and can intervene, inter alia, on the basis of complaints received from individuals or the Ombudsman's Office. The DII findings may lead to disciplinary sanctions. It is not entitled to initiate criminal proceedings; however, the Ministry may refer a given case to the relevant prosecution service for consideration of the possible criminal responsibility of the officials concerned.

¹⁷ The CPT's delegation was informed that at present the footage is stored for one month.

55. During its meeting with the Head of the DII, the delegation reviewed a number of recent inquiries of the department related to matters linked to the CPT's mandate. And it noted with interest that the DII was increasingly making use of the recordings of the CCTV systems.

However, during the examination of specific cases and in the course of the delegation's discussions with the leadership of the DII and the Deputy Minister of Internal Affairs, it became apparent that applying disciplinary sanctions against law enforcement officials who have committed an offence – including that of ill-treating persons in their custody – was the privileged solution rather than transmitting the case to the relevant prosecution service for examination and possible criminal prosecution.

The CPT recommends that appropriate steps be taken to ensure that whenever an inquiry of the Department of Internal Investigations reveals evidence of ill-treatment of detained persons by law enforcement officials, the matter is brought without delay to the attention of the relevant prosecution service.

F. The Z. case

56. On 9 September 2011, the CPT wrote to the Azerbaijani authorities concerning the death in August 2011 of T. Z. (aged 31) who, at the time, was remanded in custody in the Nakhchivan Autonomous Republic of Azerbaijan. The Committee had received allegations that Mr Z. had died as a result of injuries inflicted by officials of the Ministry of National Security.

This was the first in a series of letters from the CPT on the same subject, aimed at obtaining detailed information on investigations carried out into the death of Mr Z. as well as copies of all relevant medical/autopsy reports. Some of the information requested was subsequently provided by the Azerbaijani authorities but certain documents of a medical nature remained outstanding. As already indicated, much of this remaining information – and in particular the autopsy report – was finally provided during the 2012 visit.

57. According to the information provided by the Azerbaijani authorities, a protocol of detention was drawn up in respect of Mr Z. in the afternoon of 24 August 2011 and he was placed in the temporary detention facility of the Ministry of Internal Affairs of the Nakhchivan Autonomous Republic of Azerbaijan. He was subsequently remanded in custody on 26 August and transferred the same day to the Pre-trial detention facility of the Ministry of Justice. Apart from some skin deformations in the chest and navel areas, no marks were observed on his body on his admission to the facility, and the diagnosis during the preliminary examination carried out on 27 August after Mr Z.'s admission to the Pre-trial detention facility was "practically healthy". At approximately 9.00 on 28 August, Mr Z. was transferred from the Pre-trial detention facility to the Ministry of National Security of Nakhchivan "for the purposes of conducting necessary investigative activities", following a written request from an investigator of that Ministry. Mr Z. began to feel unwell en route to the Ministry of National Security and, on his arrival there, he was not able to make a statement. An ambulance was called and he was transferred to Nakhchivan City Medical Diagnostic Centre; on his arrival at the Diagnostic Centre, he was found to be dead (confirmed by a certificate issued by the Centre at 13.35 the same day).

A pre-investigative inquiry was opened by the Prosecutor's Office of the City of Nakhchivan on 28 August 2011. An autopsy of Mr Z.'s body was carried out at the "Forensic Medicine and Pathological Anatomy Unification" of the Nakhchivan Autonomous Republic of Azerbaijan on the same day (between 17.00 and 18.30). According to the autopsy's conclusions dated 8 September: no signs of injury were found on the body or clothes of Mr Z.; the cause of his death was "thrombosis of lower parts veins resulting in thromboembolism of lung artery"; the time of death was 28 August. On 9 September, the prosecutor's office closed the pre-investigative inquiry with the decision not to initiate a criminal case.

58. The autopsy report and those photographs provided have been examined by forensic doctors within the Committee. Video footage of the body of Mr Z., apparently taken by his relatives after the body had been returned to them, has also been examined. This material gives rise to the following observations:

- in the photographs provided to the delegation, only the upper part of the body is undressed; in order for a proper assessment to be made, the photographs of the undressed lower part of the body should also have been provided;

- in the video footage, visible lesions can be observed on both gluteal regions and in the right coccygeal region, in the form of bluish violet discoloration of the skin, clearly distinct from post-mortem lividity and indicative of bruises and haematomas; no description of such lesions is provided in the autopsy report;
- pathological findings described in the autopsy report and notably:
 - (external examination) thromboses in the lower extremities (“Thrombus are detected at the both lower areas”);
 - (internal examination) thrombotic embolus in the pulmonary artery (“At the cut of the lung artery there was freely disposed thrombus mass at reddish-grey colour was detected”) and sub-epicardial haemorrhages (“Few dot alike haemorrhages are detected at the epicardium”)

are not documented in the photographs made available to the delegation;

- in the autopsy report, no reference is made to incisions having been made through the soft tissue of the lower extremities to enable examination of superficial and deep veins; and such incisions are not apparent on the video footage;
- the results of the toxicological analyses and of the histological examination of sampled organs have not been included in the autopsy report and have not been otherwise provided to the delegation.

59. The CPT considers that on the basis of the forensic examination carried out it is not possible to conclude that the cause of Mr Z.'s death was that referred to in the autopsy report (“thrombosis of lower parts veins resulting in thromboembolism of lung artery”). To reach such a conclusion would require a detailed examination of veins on both lower extremities including histological assessment of any thrombus found for evaluation of eventual vein pathology and maturity of the thrombus.

Further, taking into account the circumstances of Mr Z.'s death, i.e. rapid deterioration of the health of a young man while in detention, other possible causes of death should have been fully explored, in particular through examination of sub-cutaneous tissues by full exposure of the soft tissues and musculature on the back of the body including the extremities (so-called “peel-off” procedure).

Finally, the CPT notes that none of the principal findings in the autopsy report, notably the absence of injuries to the body (and more specifically the lower part), the finding of a thrombus in the lower extremities and of thrombotic embolus in the pulmonary artery, are supported by photographic evidence.

The CPT recommends that the forensic medicine aspects of this case be reviewed at a higher level, taking into account, inter alia, Recommendation No. R(99)3 of the Committee of Ministers of the Council of Europe to member states on the harmonisation of medico-legal autopsy rules. If the Azerbaijani authorities were to so request, the Committee would be ready to designate a forensic medical expert to participate in that review.

60. The CPT's delegation had the possibility to review the pre-investigative inquiry undertaken by the Prosecutor's Office of the City of Nakhchivan, during a discussion with the City Prosecutor, Mr Rahim Nehmatov, on 13 December 2012. In the light of that discussion, as well as the related documentation at the CPT's disposal, it would appear that the inquiry did not meet the criteria of an "effective investigation", and in particular the criterion of thoroughness. Specific reference should be made to the following points:

- the precise circumstances of Mr Z.'s deprivation of liberty on 24 August 2011 were not clarified and, in particular, where and when exactly he was first apprehended, and where he was held, up until his transfer to the temporary detention facility of the Ministry of Internal Affairs; this would require examination of all relevant registers of the Ministry of National Security;
- the custodial and medical registers in the temporary detention facility where he was held from 24 to 26 August were not examined; further, the custodial staff of that facility were not questioned and inmates possibly present at the same time were not identified and questioned;
- the judge before whom Mr Z. was brought on 26 August, with a view to being remanded in custody, was not interviewed;
- the custodial staff at the Pre-trial detention facility of the Ministry of Justice who had contact with Mr Z., on his admission on 26 August and during his detention, were not interviewed; further, inmates with whom Mr Z. might have had contacts during his stay in this facility were not identified and questioned;
- the reason why it was not possible for the competent investigator of the Ministry of National Security to carry out the "necessary investigative activities" at the Pre-trial detention facility on 28 August, instead of at the Ministry, was not clarified;
- the relevant records concerning the medical assistance provided to Mr Z. by the ambulance team were not examined (according to written documentation provided by the General Prosecutor's Office, medical aid was given by the team).

In the case of a death in custody, the criterion of thoroughness also requires that there should be an autopsy which provides a complete record of injury and an objective analysis of clinical findings including the cause of death. On this point, the CPT has already expressed reservations concerning the post mortem examination of Mr Z. (see paragraphs 58 and 59 above).

61. In the light of the above, **the CPT recommends that the inquiry into the death of T. Z. be re-opened, and that it be carried out in such a form and in such a way as to meet the criteria of an effective investigation as set out in paragraph 48 above.**

APPENDIX

LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION

Cooperation

recommendations

- the Azerbaijani authorities to take the necessary steps to ensure that responses to visit reports – including the report on the 2012 visit – are provided within the deadlines set by the Committee and that they contain complete and accurate information in relation to the different issues raised (paragraph 7).

Legal framework

comments

- with reference to section 8 of the LRFIDF, the objective should remain to end completely the practice of returning remand prisoners to police detention facilities for further questioning (paragraph 12).

requests for information

- information, in due course, on the adoption of the Rules of Internal Discipline and provision of a copy of them (paragraph 13).

Information gathered concerning treatment of persons in police custody

recommendations

- a formal statement to be issued by the highest political authority, delivering the message that there will be “zero tolerance” of torture and other forms of ill-treatment (paragraph 19).

requests for information

- the precise measures taken as regards the close supervision put in place concerning Police Station No. 19 (Nasimi District), and Police Station No. 23 (Nizami District) in Baku (paragraph 18).

Recording and reporting of injuries and allegations

a. screening on admission to prison

recommendations

- existing procedures to be reviewed so as to ensure that prisoners who are found to display injuries on their admission to a pre-trial detention facility are not questioned about the origin of those injuries at the very moment of their arrival, when the procedure of handover from police custody occurs (paragraph 22);
- the administrative “act” drawn up on a prisoner’s arrival at a pre-trial detention facility to be systematically forwarded to the facility’s medical service, so that it can be taken into account during the first medical examination of the prisoner. Further, steps to be taken to ensure that the record of any injuries observed on admission to a temporary detention facility is included in the file which accompanies the person concerned (paragraph 23);
- the Azerbaijani authorities to pursue their efforts to ensure that the health-care services of pre-trial detention facilities perform a thorough screening of newly-arrived prisoners. The record drawn up by the doctor should contain a detailed description of injuries observed and of any allegations made by the prisoner, and the doctor should provide observations indicating the consistency between any allegations made and the objective medical findings (paragraph 23);
- immediate steps to be taken to notify the relevant prosecution service that the prisoner referred to in paragraph 25 also displayed red bruises on the soles of both feet on his arrival at Baku pre-trial detention facility on 16 November 2012 (paragraph 25);
- the Rules of Internal Discipline to spell out that prison medical services should expressly draw the attention of the prison management to cases in which injuries observed on newly-arrived prisoners are indicative of ill-treatment (paragraph 27);
- steps to be taken to ensure that all medical examinations of prisoners at the Investigative Isolator of the Ministry of National Security are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of custodial staff (paragraph 29).

comments

- the CPT would greatly welcome the adoption of the proposed Rule stipulating that the obligation to notify the prosecution service applied not only in cases of express allegations of ill-treatment but also where in view of the character of the injuries observed it can be assumed that the prisoner concerned may have been ill-treated (paragraph 26).

requests for information

- confirmation that by virtue of section 22.3 of the LRFIDF, the case of a prisoner who makes an express allegation of ill-treatment should be immediately notified to the relevant prosecutor even if the prisoner concerned does not display bodily injuries (paragraph 28).

b. screening at the level of temporary detention facilities

recommendations

- the task of recording any injuries displayed by detained persons on admission to a temporary detention facility to be carried out by a health-care professional. If necessary, this requirement could be met by having recourse in appropriate cases to the emergency services (paragraph 31).

requests for information

- confirmation that any complaints of ill-treatment made by a person admitted to a temporary detention facility and written information about bodily injuries possibly resulting from ill-treatment which are revealed during medical examination of such a person must be immediately notified to the prosecutor in charge of the preliminary examination (paragraph 32).

c. involvement of forensic doctors

recommendations

- steps to be taken immediately to ensure that all forensic examinations of detained persons take place out of the hearing and – unless the doctor requests otherwise in a particular case – out of the sight of law enforcement officials. Such examinations should be carried out in a thorough manner and a full account of objective medical findings should be drawn up. Further, steps should be taken to guarantee the confidential transmission of the results of the forensic examination to the requesting authority (paragraph 34).

comments

- forensic doctors need to be fully aware of the types of ill-treatment commonly used and the possible resulting injuries (paragraph 35).

Safeguards against ill-treatment by the police

recommendations

- persons deprived of their liberty by the police to be accorded the right to inform a close relative or another third party of their situation, as from the very outset of their deprivation of liberty (that is from the moment when they are obliged to remain with the police). The exercise of this right should be recorded in writing. In the event of the notification (telephone call) being given by a police officer instead of the detained person himself, the person concerned should be provided with feedback on whether it has been possible to give the notification (paragraph 37);

- the Azerbaijani authorities to take all necessary steps to ensure that the right of access to a lawyer for persons in police custody, as guaranteed by law, is fully effective in practice. As regards more particularly *ex officio* lawyers, they should be reminded, through the appropriate channels, of their duty to represent to the best of their ability the interests of the persons to whom they are assigned and, more specifically, to take appropriate action whenever there are indications that such persons may have been ill-treated by the police (paragraph 39);
- all necessary steps to be taken to ensure that the provisions of section 22 of the LRFIDF are fully implemented at the stage of placement in a temporary detention facility (paragraph 41);
- the right of persons in police custody to have access to a doctor to be expressly guaranteed as from the very outset of their deprivation of liberty (paragraph 42);
- the Azerbaijani authorities to take steps to ensure that all persons detained by the police are fully informed of their fundamental rights as from the outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon arrival at police premises) by provision of a written form setting out the rights in a straightforward manner. Particular care should be taken to ensure that detained persons are actually able to understand their rights; it is incumbent on police officers to ascertain that this is the case. The written form should be available in an appropriate range of languages (paragraph 43);
- a message to be delivered, through the appropriate channels, to both judges and investigators, reminding them of their obligation to take relevant action whenever they have reasons to believe that a person brought before them may have been subjected to ill-treatment. Whenever a detained person alleges ill-treatment, a forensic medical examination should be immediately ordered and the necessary steps taken to ensure that the allegations are promptly and properly investigated. Even in the absence of an express allegation of ill-treatment, judges and investigators should ensure that such an examination is requested whenever there are other grounds (e.g. visible injuries, a person's appearance or demeanour) to believe that a criminal suspect brought before them has been ill-treated. Under no circumstances should they authorise the return of a criminal suspect to the custody of law enforcement officials if there is reason to believe that the latter have ill-treated the person in question (paragraph 44);
- "whistle-blower" protection legislation (i.e. legal protection for individuals who disclose information on ill-treatment and other malpractice) to be adopted (paragraph 45).

requests for information

- confirmation that access to a lawyer "from the moment of detention" is to be understood in the sense of "as from the moment when the person concerned is obliged to remain with the police"; if necessary, this point should be made clear in the rules of internal discipline currently being prepared (paragraph 38);
- confirmation that by virtue of section 19.2 of the LRFIDF, the right of access to a lawyer includes the right to have the lawyer physically present during any questioning conducted by the police and that the lawyer is able to intervene in the course of questioning (paragraph 38);

- confirmation that all persons placed in a temporary detention facility should be medically examined by health-care staff within 24 hours of their admission (paragraph 40).

Investigations into cases involving possible ill-treatment by the police

a. preliminary remarks

recommendations

- whenever a person is injured while in the hands of public officials, the case to be considered as indicative of possible ill-treatment – and hence to be the subject of an “effective investigation” – until such time as a plausible, evidence-based, alternative explanation for the injuries is provided (paragraph 47).

b. some cases involving recent allegations of ill-treatment by the police

recommendations

- the inquiry into the allegations of ill-treatment in respect of G. A. to be reopened and to form part of a broader investigation into the manner in which all the persons detained on 5 and 6 March at Police Station No. 23 in Baku in relation to the same criminal case had been treated (paragraph 49);
- the inquiry into the allegations of ill-treatment made by M. H. to be re-opened and to form part of a broader investigation covering also the manner in which the other persons detained at the same time were treated (paragraph 50);
- the inquiry into the allegations of ill-treatment made in respect of R. C. to be re-opened (paragraph 50);
- appropriate steps to be taken to ensure that prosecution services fully exploit CCTV recordings when examining cases involving allegations of ill-treatment by the police. Consideration should also be given to extending the period of storage of CCTV footage (paragraph 52);
- when prosecutors require operational support from another service for the investigation of cases of possible ill-treatment by the police, that support to be sought from the Ministry of Internal Affairs' Department of Internal Investigations rather than from a Police Department (paragraph 53);
- consideration to be given to setting up a specialised team of prosecutors at national level with the task of carrying out investigations throughout the country into cases involving possible ill-treatment inflicted by members of the police or other public officials, and to providing that team with its own support staff for the operational conduct of its investigations (paragraph 53).

requests for information

- a full account of the investigations carried out into the three cases mentioned in paragraph 51 (paragraph 51);
- the outcome of the investigation into the cases of persons apprehended during a demonstration in front of the Ministry of Education in October 2012 (paragraph 51).

c. activities of the Department of Internal Investigations

recommendations

- appropriate steps to be taken to ensure that whenever an inquiry of the DII reveals evidence of ill-treatment of detained persons by law enforcement officials, the matter is brought without delay to the attention of the relevant prosecution service (paragraph 55).

The Z. case

recommendations

- the forensic medicine aspects of the T. Z. case to be reviewed at a higher level, taking into account inter alia Recommendation No. R(99)3 of the Committee of Ministers of the Council of Europe to member states on the harmonisation of medico-legal autopsy rules (paragraph 59);
- the inquiry into the death of T. Z. to be re-opened and to be carried out in such a form and in such a way as to meet the criteria of an effective investigation as set out in paragraph 48 (paragraph 61).