

Comments of the Azerbaijani authorities with regard to the report of the Commissioner of Human Rights of the Council of Europe

The Azerbaijani authorities provided necessary conditions for successful implementation of the mission of the Commissioner during his visit to Azerbaijan and facilitated all the contacts requested by the Commissioner's Office. Nevertheless, the draft of the report prepared following the visit does not duly reflect the views expressed by the authorities with regard to many of the issues raised by the Commissioner and if published as it stands now, cannot be considered as a balanced document. Therefore, thanking the Commissioner for the opportunity to react to the text prior to its dissemination, the Azerbaijani authorities would like to present the following comments and kindly ask for their publication together with the report of the Commissioner.

I. Freedom of expression

1. Judicial harassment, intimidation and violence against journalists

Paragraph 8:

All necessary conditions are created in the country so that media can freely operate and government officials have been encouraged to tolerate criticism and refrain from suing newspapers and other mass media outlets. For instance, in April 2009, the President of the Republic of Azerbaijan stated that any dispute with journalists should not result in their arrest and problems should be solved in accordance with international practice. It is a strong message in the direction of protection of the freedom of expression and media in the country.

The journalists referred to in the report have in no case been prosecuted for their professional activity. Only persons suspected of a specific crime are prosecuted in the manner prescribed by law and the principle of equality of all before law is strictly respected in this sense.

Paragraphs 9-10:

Criminal proceedings against the editor-in-chief of "Tolishi Sado" newspaper Hilal Mammadov and the editor-in-chief of "Khural" newspaper Avaz Zeynalli, have been instituted not because of their journalistic activity or realization of freedom of expression; they have been charged of concrete criminal offences.

Hilal Mammadov has been charged of illegal possession of 33.475 g of heroin, which had been found on his person and at his premises.

Besides, Hilal Mammadov has been charged of treason, as he had been involved in espionage activities of the secret services of the Islamic Republic of Iran. Moreover, in April and October 2006 he explicitly committed acts aimed at incitement of national hatred in mass media.

On 20 December 2012 the case was submitted to the Baku Court on Grave Crimes for examination. The judicial examination is still pending.

Avaz Zeynalli, editor-in-chief of “Khural” newspaper, has been found guilty of blackmailing several persons with publication of information which could harm their personal and business reputation. He has also been found guilty of receiving bribes in large amounts, tax evasion and non-compliance with the court decisions.

During the preliminary investigation and the trial, Avaz Zeynalli was assisted by a lawyer of his own choosing; all motions and requests submitted by the lawyer during the investigation were reviewed in conformity with law and in due time.

Paragraph 11:

A criminal case has been immediately instituted on the fact of murder of Elmar Huseynov and necessary operative-search activities have been conducted. As the result, 2 Georgian nationals, Tahir Khubanov and Teymuraz Aliyev have been charged under relevant Articles of the Penal Code of the Republic of Azerbaijan. Search notice has been issued in respect of both absconding offenders and the court has issued a decision on their arrest.

Law enforcement agencies of the Republic of Azerbaijan had several times sent requests on Tahir Khubanov and Teymuraz Aliyev’s extradition and both were put on Interpol’s wanted list.

As concerns the case of Novruzali Mammadov, the fact of his death on 17 August 2009 at the Medical Centre of the Penitentiary Service under the Ministry of Justice as a result of an illness, has been investigated thoroughly and objectively.

Novruzali Mammadov’s state of health was under constant supervision of doctors for the whole period of his detention in prison, he has been consulted by various specialists and received out-patient and in-patient treatment. He has undergone a series of medical examinations and doctors working in the system of Ministry of Health have been engaged in Novruzali Mammadov’s treatment.

On 17 August 2009, Novruzali Mammadov’s health condition suddenly worsened and medical examination revealed symptoms of acute ischemic attack. Novruzali Mammadov received emergency medical assistance by an experienced expert in the field of resuscitation. However, despite the measures taken, Novruzali Mammadov died on the same day.

A decision was taken to cancel proceedings in his case in conformity with Articles 39.1.1 and 212 of the Code of Criminal Procedure of the Republic of Azerbaijan.

When it comes to the case of Rafiq Taghi, a criminal case was immediately instituted on his attempted murder on 19 November 2011; criminal investigation and operative-search activities have been carried out, but in spite of all these actions, it was impossible to identify the offender(s). The investigation of this case is still pending.

Paragraph 12:

Mehman Huseynov has insulted a police officer and hit him several times. There are testimonies, video records and other evidences proving these actions committed by Mehman Huseynov. However, Mehman Huseynov has not been sentenced to imprisonment; he hadn't even been arrested.

Paragraph 13:

The incident with Idrak Abbasov, reporter of "Zerkalo" newspaper, took place when a group of persons tried to stop the demolition of illegal buildings by stoning the employees of the State Oil Company of Azerbaijan who carried out the demolition. Investigation of the incident is pending.

Paragraph 16:

Investigation of blackmailing of Khadija Ismayilova, journalist of Radio Free Europe/ Radio Freedom, is pending. Based on Khadija Ismayilova's application about violation of integrity of her personal life, the Office of the Prosecutor General instituted a criminal case under Article 156.1 of the Penal Code of the Republic of Azerbaijan on 15 March 2012. Preliminary investigation is currently conducted by the Baku City Prosecutor's Office.

Paragraph 17:

Whole series of measures aimed at ensuring the independence of the judicial system have been implemented, including revision and improvement of the laws regulating activity of courts in close cooperation with the Council of Europe.

In accordance with the new legislation, the self-governing body of judicial power - Judicial-Legal Council has been created, one of the main goals of which is to prevent external interference with the independence of judges and courts' activity. Assessment of judges' activity, changing place of work, promotion, disciplinary proceedings, and other issues are within the competence of this independent body which does not depend on organizational, financial and any other support of legislative, executive or judicial branches, local self-government, legal persons or individuals.

Moreover, another independent body - Judges Selection Committee has been formed and the rules on selection of judge candidates by most transparent and progressive methods have been adopted. This selection procedure was recognized as an example of the best practice in the reports prepared by the European Commission for the Efficiency of Justice (CEPEJ) and within the framework of the program jointly implemented by the Council of Europe and the European Union "Eastern Partnership – Enhancing judicial reform in the Eastern Partnership countries".

Taking into account the significant increase of the workload of courts due to country's rapid economic development, the number of judges has been increased by half in the last years, while the number of court staff has been increased by 75% and assistant staff being assigned to each judge. Financial security of judges is also paid due attention. Compared to 2000, their wages were increased about 30 fold. At the same time, in order to facilitate the access of the population to the courts, up to 20 new regional courts including grave crimes courts, courts of appeal, administrative-economic courts and others have been established in the past 5 years. Regarded as an important step towards strengthening the independence of the judicial power, administrative courts satisfy up to 80% of legal claims submitted by citizens concerning disputable administrative acts of state bodies.

Paragraph 18:

In accordance with the Constitution and the Code of Criminal Procedure of the Republic of Azerbaijan cases in all courts shall be open. Closed hearing is allowed only if, the open court proceedings are likely to be the cause of disclosure of state, professional or commercial secrets or existence of the need to protect the confidentiality of personal or family life is evident. In all cases, the court decisions made during the criminal proceedings are announced publicly.

Since 2006 the Baku Office of OSCE monitors first instance, appeal and cassation courts in the country. In the last monitoring report prepared by OSCE it is mentioned that transparency principles are generally applied in the courts, court proceedings are open to public and media, information on date and place of procedures is posted, the right to free defense is generally not breached.

Along with this, in order to improve legal services rendered to the population, a single Internet portal of the judicial system, which contains information about all the courts and judges, has been launched. Through the portal it is possible to obtain detailed information about supreme, appeal and first instance courts, their jurisdiction, on-going cases and judgments, documents necessary to appeal etc., receive forms of statements of claim and samples of other court documents, as well as apply online and get an answer. In addition, all cases and final judicial acts of courts will be posted on the electronic information base portal, which is currently being built.

2. Defamation**Paragraph 23:**

On 14 May 2013, the Parliament of the Republic of Azerbaijan adopted amendments to the Criminal Code of Azerbaijan. In particular, Articles 147 (Libel) and 148 (Insult) of the Criminal Code have been amended to include responsibility for actions committed “through a publicly displayed Internet information resource”.

The idea behind these amendments was to provide private individuals with legal protection against libel and insult in Internet resources. Latest statistical data indicate that more 65% of the Azerbaijani population uses Internet and the Government have adopted a number of measures aimed at regularization of social relations in the cyber space. These measures include, for example, establishment of e-Government, provision of e-services to individuals, and introduction of the criminal responsibility for cybercrime. Having regard to the fact that criminal responsibility for defamation is envisaged in the legislation of almost all the Council of Europe Member-States, this measure does not appear to be extraordinary.

At the same time it is worth noting that, during the last three years no journalist or public figure was brought to criminal responsibility for libel or insult.

3. Internet freedom**Paragraph 32:**

Katy Pearce is well-known for her anti-Azerbaijani views and has repeatedly disfigured Azerbaijani statistics in her researches. Meanwhile, during the meeting with the Commissioner, the Deputy Minister of Communication and Information Technologies Mr Velizadeh noted that every year cost for internet connectivity is decreasing because of market competitiveness and the prices are as almost same as the average in Europe. At the moment all communication services are rapidly developing in the country and more than 65% of the population has access to Internet, whereas 50 percent are users of broadband.

Paragraph 33:

During the meeting, the Deputy Minister of Communication and Information Technologies also noted that Regulatory Department functioning within the Ministry is partially independent which provides a ground for its further transformation into fully independent regulatory institution.

Paragraph 35:

Delta Telecom sells internet capacity to ISP's. In 2008-2012 Delta Telecom increased international internet channels' capacity by 12.9 times and reached 200Gbps and this in its turn directly affected the quality and the price of the internet services. For instance, in comparison to 2004 the price of internet connectivity dropped from 1200 AZN to 10 AZN. As regards the issue of transparency of ISPs owners, this kind of information is contained in the database of taxpayers.

Paragraph 36:

During the meeting, the Deputy Minister noted that in Azerbaijan, just like in other countries, websites can be blocked only by a court decision. As regards the information concerning par-anoia.net, this web-site was accessible during the Commissioner's visit. It has also been established that the majority of the material presented as obtained from computers of the Ministry of Communications and Information Technologies had no connection with the Ministry and among the ones considered related to the Ministry there were a number of falsified documents. This information was reported in Azerbaijani media (<http://ictnews.aziread.-23349-Qews-l.html>).

Paragraph 37:

As a result of falsification by Armenian users, a large number of historical and cultural monuments of Azerbaijan are being presented as Armenian ones on Google's panoramio.com website. Due to ineffectiveness of the steps taken by Azerbaijani users to prevent such a situation and by taking into account the public appeal, the Ministry sent to Google the relevant requests which weren't considered either.

Paragraph 38:

During the meeting, the Deputy Minister stated that in order to provide safe use of the Internet by children, certain measures are being taken in education network and in accordance with international practice and the Public Council's proposals. Furthermore, on 1 March 2013, the Minister of Communications and Information Technologies of the Republic of Azerbaijan Mr. Ali Abbasov in an interview to Trend Agency stated that "the use of internet enhances access to information and

communication between people; it creates opportunity to acquire the necessary knowledge. At home parents and at school teachers are responsible for how and for what reason underage children use the Internet. The Parliament is not planning to pass a new law in this regard.

"(<http://az.trend.az/news/society/2125117.html>, <http://nws.milli.az/hitech/172557.html>).

Paragraph 40:

In accordance with Article 445 of the Code of Criminal Procedure, operative-search activities are carried out on the basis of a court decision. In cases envisaged by Article 10, section 4 of the law "On operative-search activity", operative-search activities can be carried out without a court decision by a reasoned decision of the competent authority of operative-search activity. In this case as well, an authorized person shall submit, within 48 hours, a reasoned decision to conduct such operations to the relevant court and prosecutor. These legislation requirements are consistent with international practice.

Paragraph 41:

During the meeting with the Commissioner, the Deputy Minister of Communication and Information Technologies pointed out that in social networks and other internet resources illegal actions and offensive calls are monitored in every single country of the world. As an example the Deputy Minister mentioned the information that was referred to and used from social networks during the investigation of the recent Boston bomb attack and the riots in London. It is also a standard procedure for law enforcement bodies to track stolen cars while being sold online. It was mentioned that Azerbaijan is practicing the same means.

Paragraphs 43/45:

Adnan Hajizadeh, Emin Abdullayev (Emin Milli), as well as Bakhtiyar Hajiyevev, youth activists Jabbar Savalanli, Ilkin Rustamzadeh, employees of "Khayal TV" Vugar Gonagov and Zaur Guliyev, a board member of NIDA Civic Movement Zaur Gurbanli were charged not of their internet or journalistic activity, but of concrete criminal offences. The offences committed by Adnan Hajizadeh, Emin Abdullayev, Bakhtiyar Hajiyevev, Jabbar Savalanli, Vugar Gonagov and Zaur Guliyev had been subject to judicial examination, and their guilt had been proved during the trials.

Paragraphs 47:

Zaur Gurbanli underwent medical examination when he was brought to the pre-trial detention facility. He stated that he suffered from thalassemia and that he had undergone a surgery in 2011. During the examination he had no complaints about state of his health: no signs of pathology or any injuries had been revealed.

Based on the anamnesis, Zaur Gurbanli was consulted by a qualified physician-hematologist from the Hematology and Transfusion-Research Institute: no clinical signs of thalassemia have been established. On 11 June 2013, a blood sample was taken from Zaur Gurbanli and a specialized examination was carried out in the Institute's laboratory. He was found to be a carrier of B-thalassemia gene. Doctor-hematologist did not advise additional treatment for the patient at the moment; however, he proposed periodical examination every 3 months for prevention purposes. Currently, Zaur Gurbanli's state of health is satisfactory and he is under permanent supervision by a doctor.

Paragraphs 48:

Although necessary investigation was conducted with participation of a Project Coordinator of “Azad Fikir Universiteti” (“Free Thought University”), no decision was taken by preliminary investigation or judicial body on shutting down AFU.

II. Freedom of assembly**1. General context and the excessive use of force by law enforcement officials****Paragraphs 53:**

Freedom of free assembly is guaranteed by the Constitution of the Republic of Azerbaijan. According to Article 5 of the Law on Freedom of Free Assembly, written notification is given to the local executive authority for agreeing on the place and time of assembly, and the route of the street march. The substantiated decision about the assembly is delivered to the organizers by the concerned authority within 3 working days.

According to the requirements of the same law, the relevant executive authority in each city and region has allocated special places for conducting such meetings, assemblies and demonstrations. The list of proposed places was published in the local media and announced to the population through the available means.

Paragraphs 54, 57, 58

The events occurred in Ismayilli originated from a simple dispute over a traffic accident and later some interested forces tried to get these events politicized.

Emil Shamsaddinov, employee of the “Chirag” hotel located in Ismayilli city, committed drunk driving accident on 23 January 2013. Over a dispute, he together with the passenger Elmaddin Mammadov beat and injured Ramil Bakirov, owner of the car they damaged. They also voiced indecent expressions with regard to the local inhabitants thus generating a larger protest having resulted in burning of the mentioned hotel. Proceeding from the requirements set out in Article 14 of the Law on Freedom of Free Assembly, police forces prevented the unlawful actions directed to violation of public order.

A criminal case was instituted against Emil Shamsaddinov and Elmaddin Mammadov as well as other participants of the conflict in conformity with Article 233 (organization of and active participation in the actions causing violation of public order), Article 315 (resistance or use of force towards the representative of power) and other provisions of the Criminal Code in the Investigation Department of General Prosecutor’s Office for grave crimes on 23 January 2013.

No unlawful actions were taken in respect to professional or political activities of Ilgar Mammadov, chairman of Republican Alternative Movement, and Tofiq Yagublu, deputy-chairman of Musavat Party whose names are referred to in the context of these events. Both being Baku residents, arrived in Ismayilli on 24 January 2013 and organized life-threatening violence against police and tried to use

mass unrest, deliberate destruction of private property and other unlawful acts to create tension and break public order. There are numerous evidences proving these acts.

Defendants' rights under the Code of Criminal Procedure of the Republic of Azerbaijan have been ensured. Ilgar Mammadov is assisted by 6 lawyers, while Tofiq Yagublu is assisted by 5 lawyers, all of them being of their own choosing.

At present preliminary investigation on their case is underway.

It should also be noted that the state registry does not contain any information concerning an organization called the Baku School of Political Studies of the Council of Europe.

Paragraphs 59:

On 26 January and 10 March 2013, a group of persons attempted to gather in Fountains Square in Baku without informing the relevant executive authority in breach of the requirements of Article 5 of the Law on Freedom of Free Assembly.

In accordance with Article 14 of the Law, the police demanded that the organizers and participants of the gathering stop their actions and leave the square; those who did not comply with the police order were detained or other measures prescribed in the Law were applied.

As regards the alleged reason of protests – the death of a conscript, the military prosecuting authority instituted a criminal case in connection with that fact.

Paragraphs 61:

Within the framework of the reforms conducted in 2004, the Internal Investigations Department charged of investigation and prevention of unlawful actions of the police officers has been established in the apparatus of the Ministry of Internal Affairs.

That department conducts official investigations freely, impartially and objectively, and reports the results to the senior officials of the Ministry. If official investigation reveals facts of violation of requirements of the Law on Police, Code of Ethical Conduct of the Police Officers and other normative legal acts, disciplinary sanctions are applied to the police officers in question. If there are signs of a criminal offence in their actions, the collected materials are sent to relevant investigation authorities for adoption of a decision in accordance with the requirements of procedural legislation.

2. Procedural requirements to hold an assembly

3. The criminalization of the organization of and participation in peaceful assemblies

Paragraphs 70, 71:

Amendments recently made to the Law on Freedom of Free Assembly are related to organizers of mass gatherings. Here, a legal entity may be the organizer as well.

Amendments to the Penal Code and the Administrative Offences Code should not be viewed only in the context of increase in fines. Such adequate measures are taken in order to prevent substantial breach of rights and lawful interests of citizens and to provide public order. The novelty also includes the division of Article 298 of the Administrative Offences Code into two parts, one of which is related to organizers of illegal meetings and the second to their participants. At the same time, in the section of that Article dealing with sanctions, in addition to fines and administrative offence, the implementation of community service is included, which provides a wider range of sanctions while making a decision.

In general, the main purpose of the amendments made to the legislation is directed towards allowing the Azerbaijani citizens to realize their freedom of assembly in a more civil frame. They are not made in order to limit the freedom of assembly, but to increase the citizens' responsibility while exercising that freedom and to prevent illegal actions while doing so.

It is worth noting that, diverse and more severe sanctions are applied in many countries in order to prevent unlawful actions.

Paragraphs 79, 80, 84, 86:

Legislative acts regulating state registration and activities of NGOs, as well as their relationship with state authorities were developed in cooperation with international experts and passed the legal expertise of the Council of Europe.

Draft Laws on Social Participation, on Professional Unions and on Social Order were prepared and are currently being discussed; these laws provide additional opportunities for the development of the civil society. The draft Law on Social Participation has already passed through the second reading at the Parliament.

Within the measures aimed at development of state-civil society relations, the government officials held a meeting with the NGO leaders in July 2012 upon the order of the head of state. In most state programs ("National Action Plan for increasing efficiency of protection of human rights and freedoms in the Republic of Azerbaijan", "National Strategy for increasing transparency and fight against corruption", "State Program for Development of Justice in Azerbaijan", Development concept "Azerbaijan 2020: a look into future" and etc.) provides for cooperation with NGOs and their active involvement into the public supervision.

As to the registration procedures, same documents are required from all NGOs. Registration of non-commercial legal entities takes no longer than 30 days. According to the legislation, if the registration has not been refused during that period, the legal entity is deemed registered. Groundless refusal of registration is not possible, because the legislation requires that the cases of refusal are recorded in detail and there is sufficient ground for refusal. It should especially be emphasized that, current legislation puts no limits to the work of NGOs by not making state registration of legal entities obligatory.

The analysis of the activities of NGOs shows that currently there is a positive dynamic in Azerbaijan in the field of civil society institutions development. In comparison to 2008, the number of state registered NGOs increased by 19% in 2013 and currently reaches up to 3000. At the same time, branches and representations of 111 foreign NGOs have been registered in Azerbaijan.

300 of the registered NGOs are those specialized in the field of human rights. Besides this, advantageous conditions have been put in place for the NGOs specializing in the fields of prevention of corruption, promotion of local self-government, development of civil society, ethnic minorities, and legal awareness raising with a view to facilitate their effective work.

In order to promote civil society development, grants in the amount of over 50 million USD have been granted to NGOs. In general, a constant increase in the financing of NGOs can be observed every year and with this spirit, in the first half of 2013 the amount of resources granted to NGOs has increased by 10% in comparison with the respective period of 2012.

Paragraphs 81, 83:

On 30 June 2009, a number of amendments were made to the legislation with a view to improving legal basis for the activities of the branches and representations of local and foreign NGOs. These amendments regulate the foundation of NGOs by foreign citizens and persons without citizenship, the amount of budget when establishing foundations, presentation of annual financial reports, use of state authority names and names of prominent persons in the names of NGOs, signing of agreements on state registration of foreign NGO branches and representations.

The registration of branches and representations of foreign NGOs is done through agreements signed with these organizations. This agreement shows the obligations that both parties take on and mainly includes the issues representing special importance to state security. Its signing is decided upon by a collegial decision, thus preventing subjectivity.

The prohibition of “political and religious propaganda” by NGOs in the Republic of Azerbaijan is based on international practice. Similar concepts are represented in legislation of a number of countries.

Besides, another condition dealing with “respect to national moral values of the people of Azerbaijan” which is covered by registration agreements is stemming from requirements set out in Articles 16.2, 40.2, and 48.3 of the Constitution of the Republic of Azerbaijan.

Paragraphs 82:

After the National Democracy Institute on International Affairs (NDI) presented the documents required by the legislation, an agreement has been signed between the Ministry of Justice and NDI; the representation received state registration and is currently operating.

The representation of the Human Rights House Foundation of the Kingdom of Norway in the Republic of Azerbaijan has breached provisions of the Law on State Registration of Legal Entities and it was proposed to the organization to sign an agreement. Currently the documents presented by the representation are being considered.

Paragraphs 88 - 90:

The amendments made to the Law on Grants and the Law on NGOs (social associations and foundations) address the existing legislation's execution, provision of financial discipline and transparency in the work of NGOs, accounting of the funds allocated by the foreign donors for social programs, preference of non-cash operations which is an important element of financial transparency, creating conditions for public awareness about funds received and spent by the organizations, prevention of money laundering and financing of terrorism.

As to recording of grants received by NGOs, this procedure is regulated by the Rules of Registration of Agreements (Decisions) on Grants. As apparent from the Rules, the registration of grants is informative in nature and is very simple. The grant may be made official by simply presenting the request and the notary certified copy of the relevant agreement (decision) to the Ministry of Justice.

Despite the fact that responsibility has been allocated for not presenting grant agreements and decisions within set time-frames, in practice this requirement is not often implemented (during first halves of 2012 and 2013 only 2 organizations were fined).

The fact that responsibility measures in this area are mostly preventive in nature, the existing legislative basis, financial support by the government, annual increase in the amount of funds granted by the donors prove the existence of an advantageous environment for the NGO activity in Azerbaijan.

IV. Right to Property

All citizens whose properties were demolished in accordance with the General City Plan (dating back to 1988) have been compensated the amount of 1,910 USD per square meter or provided with adequate property in other parts of the city. Most citizens remained satisfied. However, a small group of people demanded compensations higher than real market prices. They distorted the facts, exaggerated the matter and tried to attract attention of international organisations.

Facts demonstrate that most of persons who complained have indeed illegally constructed properties on the plot of lands where construction is forbidden for the reason of safety, public health, etc.

Everyone has a right to lodge an application before the court concerning his or her property right.