Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**261**
Land:	Aserbajdsjan
Kilde:	Europarådet
Titel:	Comments of the Government of Azerbaijan on the report of the Commissioner for Human Rights of the Council of Europe following her visit to Azerbaijan
Udgivet:	2019
Optaget på baggrundsmaterialet:	30. januar 2020

Comments of the authorities of Azerbaijan on the report of Ms. Dunja Mijatović, Commissioner for Human Rights of the Council of Europe following her visit to the Republic of Azerbaijan

(8-12 July 2019)

The visit of Ms. Dunja Mijatović, Commissioner for Human Rights of the Council of Europe to Azerbaijan in July 2019 offered an opportunity to have open and detailed discussions with the respective authorities of the Republic of Azerbaijan on human rights developments in the country. This visit had to enable the Commissioner to get first-hand information through her contacts with various stakeholders. The Azerbaijani authorities have provided all necessary conditions for smooth running of the mission and facilitated the official meetings requested by the Office of the Commissioner. Moreover, during the meetings with the authorities the Commissioner received an extensive update on consistent and comprehensive measures undertaken by the Government in the field of protection and promotion of human rights, democracy and the rule of the law in Azerbaijan.

In view of the authorities of Azerbaijan, this report contains a number of assessments, which fall short of reflecting genuine situation of human rights in Azerbaijan. Some allegations made in the report create rather inaccurate picture, thereby downplaying importance of the Government's undertakings in respective fields. It raises even more concern when the report takes isolated or particular cases and issues potentially existing in some areas as basis to give a generalized negative assessment of the overall situation in the country.

The authorities of Azerbaijan wish to present the following comments and clarifications to the final report of the Commissioner. These comments are not exhaustive and therefore, the matters that are left beyond their coverage should not be considered as receiving the approval or confirmation of the authorities.

Azerbaijan looks forward to continuation of constructive interaction with the Commissioner and her Office through respectful dialogue and meaningful cooperation in the future.

1. FREEDOM OF EXPRESSION

Ensuring the freedom of expression and information is one of the essential elements in building a democratic society based on the respect for human rights and the rule of law. The Government of Azerbaijan has been undertaking consistent measures to protect the freedom of media and put in place necessary conditions for free and unhindered operation of mass media outlets. The freedom of expression is guaranteed by the Constitution of Azerbaijan and respective legal acts. The Government has initiated various measures to strengthen financial sustainability of the media and they include, among others, reduced taxation, provision of loans, payment of their debt from the State budget and direct financial support.

There are currently more than 5100 media outlets freely operating in Azerbaijan. Around 20 news agencies, 10 nation-wide, 14 regional and 17 cable TV channels, as well as 14 radio channels are functioning in the country. The majority of mass media outlets represent independent and opposition leaning media. Furthermore, Internet segment has been rapidly

growing, as the overall number of Internet users has exceeded 80% of the Azerbaijani population. It would be fair to state that this segment is quite dynamic and vibrant as attested by active social media users.

Journalists, human rights defenders and civil society representatives are able to fully enjoy their rights and freedoms. No one is brought into justice because of her or his journalistic or human rights related activities, but for committing concrete criminal or administrative offences. It should be repeated here that the principle of equality of all before the law is fully respected, and only persons suspected of having committed a specific offence may be charged irrespective of their position or type of activity. All offences, including against journalists and human rights defenders are fully investigated and all necessary measures are put in place to ensure that the perpetrators are prosecuted.

Specific comments

1.1 The Arbitrary application of criminal legislation to restrict freedom of expression

Paragraph 11

On 29 August 2014, a criminal case was initiated and arrest warrant was issued under Article 221.3 of the Criminal Code against Seymur Hazi, who committed hooliganism by applying an item that could have been used as an offensive weapon. S.Hazi was sentenced to up to five year imprisonment and released at the end of his sentence on 29 August 2019.

On 17 October 2019, S.Hazi continued his illegal actions, by violating public order in Baku and intentionally disobeying lawful request of police officers. Subsequently, he was brought to the Police Department and report of administrative offences was drawn up against him under Article 535.1 (persistent insubordination of legal request of policeman) of the Code of Administrative Offences. Under court`s decision, S.Hazi was sentenced to 15 days of administrative detention. However, given the complaint filed by the Khatai District Police Department on the same decision, duration of the relevant administrative arrest was extended to 30 days. S.Hazi was released at the end of his administrative detention on 15 November 2019.

Paragraphs 12-13

Regarding the case of Mr. Afgan Mukhtarli, it should be mentioned that on 29 May 2017, after having smuggled 10,000 Euros and illegally crossed from Georgia to the Republic of Azerbaijan outside the checkpoints of the state border of the Republic of Azerbaijan, he disobeyed the lawful orders of the State Border Service officers and escaped by inflicting in the process some minor damage to health of the squad commander of the Rapid Response Unit of the Border Service, who was trying to detain him.

By 12 January 2018 judgment of the Balakan District Court, Mr. Mukhtarli was found guilty under Articles 206.1 (Smuggling), 315.2 (Resistance or application of force to a representative of authority), and 318.1 (Illegal crossing of the state border of the Republic of Azerbaijan) of the Criminal Code and was sentenced to 6 years of imprisonment.

Mr. Mukhtarli has been exercising his rights under the legislation on execution of punishments and has been provided with appropriate material and living conditions.

He has been allowed to meet his defence lawyers without restriction and in private. Moreover, he has not been subjected to any pressures, and without any restrictions he has enjoyed his rights to meet close relatives, to receive parcels and packages, to hold telephone conversations, and also to make use of the library available at the facility. During his imprisonment, guided by humane principles, Mr. Mukhtarli's relevant application was satisfied and on 8 February 2018, and he was released for two days in order to attend the funeral of his close relatives.

During his detention at penitentiary facility his health condition has been kept in check, medical service has been accessible to him, he has repeatedly undergone laboratory examinations, has been consulted by specialists of various fields, supporting prescriptions have been fulfilled, and dental care has been provided. No condition requiring emergency medical assistance has been observed in his health status. Mr. Mukhtarli has not made any complaints regarding detention condition and medical care.

On 23 September 2019, Mr. Mukhtarli has filed an application before the administration of the penitentiary facility informing that he refuses to eat, without providing any justified reason, and after one day he began eating. During his refusal to eat, no severe health disorders and no life threatening conditions have been observed, as his health was stable.

During his detention at penitentiary facility Mr. Mukhtarli has not been subjected to any unlawful actions, nor to torture and other cruel, inhuman or degrading treatment, and during this period he has been visited by the Commissioner for Human Rights of the Republic of Azerbaijan (the Ombudsman), representatives of the International Committee of the Red Cross, diplomatic missions of foreign countries accredited in the Republic of Azerbaijan, as well as the delegations headed by Ms. Thorhildur Sunna Ævarsdóttir, Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, and by Ms. Dunja Mijatović, Commissioner for Human Rights of the Council of Europe.

As to the issue of providing legal aid to persons held at penitentiary establishments, it shall be noted that confidential meetings between sentenced and detained persons and their lawyers are granted without any restriction on their quantity and duration.

In accordance with requirements of Article 75.5 of the Code on Execution of Punishments, the Internal Disciplinary Rules of Penitentiary Establishments, and the "Procedure of admission to establishments executing imprisonment and life imprisonment sentences", a search may be conducted on the persons entering and exiting penitentiary establishments, as well as on their items. This is reflected in the practice of other countries too.

Advocate Mr. Nemat Karimli, in his professional capacity, has repeatedly visited Mr. Mukhtarli, as well as other sentenced and detained persons whose rights he defended; during such visits he was regularly informed about the entrance and exit rules of penitentiary establishments and pre-trial detention facilities.

Mr. Karimli, despite being aware of the rules on entering penitentiary establishments and the requirements of legislation, on 20 September 2019, before and after meeting Mr. Mukhtarli, he failed to comply with the respective rules in place, disobeyed the lawful demands of the staff, claimed to have been supposedly subjected to illegal actions, and tried to create a conflict situation by deliberately prolonging the search procedure.

Paragraph 17

Regarding Mr. Ilkin Rustamzade, it should be stated that he was released from serving sentence in accordance with 16 March 2019 Presidential Order on “Pardoning a number of sentenced persons”.

Paragraph 18

It is noted that in its Resolution adopted in 2016 the Committee of Ministers of the Council of Europe called for "strengthening judicial independence *vis-à-vis* the executive and prosecutors".

In this regard it shall be taken into consideration that in a short period of time legislative, institutional and practical measures have been undertaken within the framework of implementation of 3 April 2019 Presidential Decree “On Deepening Reforms in the Judicial and Legal System”, aimed at enhancing the quality and efficiency of justice. Up to 40 regulatory acts on the organization of commercial courts, humanization of penal policy and decriminalization of offences, improving the enforcement of judicial decisions and the work of forensic examination, as well as the application of alternative enforcement and private examination, formation of a single judicial practice, and other issues were drafted. Furthermore, a number of laws aimed at improving judicial activity, strengthening independence of judges have already been adopted, the number of judgeship staff positions has been increased by 200 in order to reduce the caseload of judges, to ensure timely and high-quality examination of cases, new specialized courts have been established, and the salary of judges has been raised significantly.

In accordance with the recommendations contained in this Decree, in order to ensure the independence of judges and to eliminate interference in the work of courts and other negative circumstances a “hotline” was set up at the Judicial-Legal Council, the direct and unrestricted access to the Council was enabled and new draft laws were prepared on strengthening independence of judges.

1.1.2 Restrictions on the right to leave the country

Paragraphs 20-22

Paragraph 20 claims that a number of journalists, lawyers, political activists and human rights defenders are banned from leaving the country, in circumstances which give rise to justifiable doubts about the lawfulness of such travel bans.

In this regard, it shall be noted that temporary restriction of a person’s right to leave the country shall be applied in accordance with the requirements of Article 9 of the Migration Code and Article 84-1 of the Law “On Enforcement”.

Thus, if an execution document issued based on a judicial decision, order and administrative act of tax authorities on funds payment demand is not executed by the debtor voluntarily in due time without good reason, the debtor's right to leave the country may be temporarily restricted by a judicial decision based on the justified presentation of the enforcement officer. Upon elimination of reasons giving rise to temporary restriction of the right to leave the country, within 24 hours the enforcement officer shall adopt a decision lifting the said restriction, subject to approval by the head of the enforcement body.

At the same time, it shall be mentioned that according to statistical data at present, there is a significant decrease in the number of judicial decisions on temporary restriction of the right to leave the country. Thus, in comparison with last year, in 9 months of 2019 the number of persons imposed with travel bans decreased by approximately 5 times.

2. SITUATION OF LAWYERS

Existence of efficient bar institution is important in providing high quality legal aid to citizens, as well as in ensuring credible human rights protection system and effective operation of judiciary. The support and assistance to strengthening the capacity of provision of efficient and comprehensive legal services to population has therefore been an integral part of overall reform efforts in improvement and modernization of judicial-legal system in Azerbaijan.

In this context, it should be underlined that the Ministry of Justice envisages implementation of the project entitled "Enhancing institutional capacity of the Ministry of Justice of the Republic of Azerbaijan in application of alternative dispute resolution mechanisms and in provision of legal aid services to the population". It is also envisaged to draft, with the involvement of international experts, the Law "On Free Legal Aid". The adoption of this Law is aimed at improving the provision of free legal aid to law-income segment of population in accordance with the Action Plan on implementation of the "2019-2023 State Program for the Development of Azerbaijani Justice", approved by 18 December 2018 Presidential Order.

It should be added that since 2013 the Legal Clinic operates at the Academy of Justice under the Ministry of Justice with the aim of providing legal aid to the law-income segment of population. During elapsed period, free legal aid has been provided to about 2100 citizens.

Specific comments

2.1 The profession of lawyer

Paragraph 58

This paragraph makes the reference to the statement of the co-rapporteurs of the Parliamentary Assembly of the Council of Europe, which claimed that the new legislation on lawyers would harm the profession of lawyer. It is to be noted however that since the adoption of the said legislation in January 2018, no cases have been brought before the Azerbaijani Bar Association (ABA) on the deficiency of lawyers or on any other instance. Such a reference therefore in the Report is outdated, as it does not seem relevant given the recent developments in lawyer profession, where no institutional problems have been raised.

Paragraph 62

It is claimed that lawyers who deal with sensitive human rights issues have not been admitted to the Bar. In fact, there are several human rights lawyers in Azerbaijan who have been admitted to the Bar. For instance, Emin Isayev is currently a member of the ABA. Moreover, to be a human rights lawyer the person must have a right to represent the defendant in criminal cases and courts. However, in accordance with the laws of the Republic of Azerbaijan only members of the ABA may represent/defend someone in criminal cases. Therefore, to assume those people as human rights lawyers is incorrect by the nature of lawyer profession.

Paragraphs 63, 67 and 68

The assertion that reforms affecting the profession of lawyer left many people without access to legal aid is inaccurate. In reality, citizens of Azerbaijan do not suffer from a lack of lawyers or a lack of access to legal aid.

Paragraph 64

It has been stated in this paragraph, that after the reforms in lawyer profession more than 8000 lawyers were left jobless. However, this assertion was made without any reference to a source with statistical data. Firstly, such reforms in court representation are not new phenomena for the European continent. So called “lawyers’ monopoly” is in fact a common and unavoidable element of the administration of justice not only throughout Europe, but also well beyond it.

In 2012, the Project Report entitled “Profession of Lawyer” developed under the project of Enhancing Judicial Reform in the Eastern Partnership Countries, Azerbaijan was advised to establish a lawyer monopoly in court representation. Admittedly, it is a fact that in comparison to other member states the number of lawyers per capita in Azerbaijan is low. However, increasing the number of a lawyers and legal workers was particularly emphasized in several orders signed by the President of Azerbaijan.

After the election of the new board of the Association in December 2018, a decision was made to announce a new application process within a month, to overcome possible challenges generated by the amendments to the laws. By the deadline of the application period, on 11 January 2019, the total number of the applicants was close to 2000, hitting a record number in the history of entrance examination for legal professionals in Azerbaijan. One of the concerns regarding the application procedure was related to the requirement of at least three years of work experience (under an employment agreement), where many non-Bar members were practicing their profession without being employed anywhere by registering themselves as individual taxpayers (self-employed). The “3-year work experience” issue is stipulated in the Law on "Lawyers and Lawyers Activity" (Article 8.I.). In order to give a chance to those legal practitioners to take part in the exam, the Ministry of Labour and Social Protection of Population was seized with an opinion on whether the individual legal practicing could be considered as a work experience. The response of the Ministry was affirmative, and as such applications of the legal practitioners who were individual taxpayers and practiced the legal profession were also accepted.

On 28 January 2019, more than 1873 candidates out of 1966 applicants took the exam and as a result, 607 candidates were successful in passing the examination. Furthermore, starting from April 2018, the ABA launched a submission of applications on permanent basis. Henceforth, anyone who wishes to become a lawyer may submit his or her application electronically and once the number of candidates who have completed their application process reaches 250, an examination is announced.

Therefore, claims about estimated 8000 non-bar members that practice legal profession does not reflect the reality. Otherwise, the number of applicants for admission to the bar would be higher than 2000.

Paragraph 78

As to the concerns on lack of legislative mechanism on free legal aid, it should be noted that on 18 December 2018, an Executive Order was issued by the Head of the State on this issue, whereas the adoption of the "Law on Free Legal Aid" is also expected in the near future.

Paragraph 84

The Report asserts that most of the lawyers recently disbarred are persons who are working on cases considered to be politically sensitive. This assertion is not correct. 11 lawyers have been disbarred throughout 2018-2019. None of those disbarred is considered to be affiliated with politically sensitive cases. The disbarments were made as such and for the following reasons:

1. Six lawyers – for consecutive non-payment of membership fee for 6 months (Zeynalov Ramiz, Rzayev Gubadali, Gadirov Sabir, Hajili Rashid, Shabanov Mammadali, Isgandarov Eldaniz);
2. Five lawyers – for violations of provisions of legislation (Nuriyev Mais, Muradov Sahib, Irada Javadova, Ahmadov Radig, Poladov Vugar).

Paragraphs 85 - 86

It is claimed in the report that the lawyers whose cases are under review of the Lawyers Disciplinary Commission are not given access to relevant documents. This claim is not accurate. According to Article 5 of the Charter of the Disciplinary Commission, a lawyer who is under scrutiny of the Commission has a right to access to all documentation on his/her case, obtain the copy of the opinion of the Commission, etc. Therefore, the claims that lawyers are hindered in accessing the documents do not reflect reality.

Paragraph 89

The Report states that “suspension of licences of the lawyers Asabali Mustafayev and Nemat Karimli is another illustration of disturbing proceedings.” The mere fact that Mr. Mustafayev himself has not disputed reliability of the disciplinary decisions of the Board of the ABA regarding his case means the decision is out of doubt with regard to its substantiality.

Paragraph 91

This paragraph contains following assessment - “Article 2.5 of the Code of Conduct stipulates that lawyers should be objective in their speeches and correspondence. In the Commissioner’s view, these provisions are very vague....” This critical note had been previously submitted to the ABA by the ICJ in March 2019 in order to amend this clause accordingly. The ABA considers the recommendation on amending the “objectivity” concept in the Code of Conduct as acceptable and will try to eliminate the ambiguity and consider it in the next General Meeting of the Association members. Any changes to the Code of Conduct can only be made at the General Meeting, which is held once in every three years.

Paragraph 93

Based on Recommendation (2000)21, the Commissioner calls on the ABA to conduct disciplinary proceedings with participation of the concerned lawyer. According to Article 5 of the Charter of the Disciplinary Commission, a lawyer who is under scrutiny of the Commission has the right to personally attend the meetings of the Commission. In the practice, Secretary of the Commission as usual beforehand informs concerned lawyer about the date, time and venue of the meetings. It is unclear how the Commissioner came to the conclusion that the ABA attempts to evade from ensuring lawyers’ participation at the meetings of the Commission.

Paragraph 96

The Commissioner recommends that the Code of Conduct be reviewed through consultations with lawyers and civil society. It should be noted that the Code of Conduct was adopted in conformity with the CCBE standards (Code of Conduct for European Lawyers) while the initial draft of the Code was disseminated among members of the ABA for their comments. As to conducting consultations with the civil society, ABA considers that taking into account the nature of the Code of Conduct it had to be consulted primarily with lawyers.

3. HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS

It is commendable that the third theme of the report is dedicated to the largest vulnerable group of people in Azerbaijan. The respective chapter of the report is quite comprehensive, in general terms reflecting the activities of the Government of Azerbaijan in addressing human rights issues of IDPs. It also highlights the necessity of finding a soonest political settlement to the long-standing Armenia-Azerbaijan Nagorno-Karabakh conflict, so that to enable IDPs to exercise their fundamental rights, particularly their inalienable right to return, in safety, dignity and on a voluntary basis, to their lands of origin.

It is extremely important to bear in mind that the issue of internal displacement is not a result of the unresolved conflict over the Nagorno-Karabakh region as the report suggests; it is a result of the ongoing military aggression and occupation of the Nagorno-Karabakh region and seven surrounding districts of Azerbaijan by Armenia, and expelling of all Azerbaijani population from these territories. The UN Security Council Resolutions 822, 853, 874 and 884 adopted in 1993 clearly condemned the occupation of Azerbaijani lands and expressed the Council’s grave concern at the displacement of large number of civilians in the Republic of Azerbaijan. The occupation of the Azerbaijani territories is also condemned by the PACE resolution 1416 of

2005, the European Parliament Resolution of 20 May 2010 on “the Need for an EU Strategy for the South Caucasus” and other documents of international organizations. The unresolved character of the conflict results in the protraction of the internal displacement emerged as a result of the occupation. The European Court of Human Rights in its judgment on the case of *Chiragov and others v. Armenia* stressed that the ongoing negotiations within the OSCE Minsk Group (i.e. the resolution process) do not provide a legal justification for the interference with the rights of the Azerbaijani IDPs and recalled Armenia’s obligations towards Azerbaijanis who had to flee during the conflict. The Court indicates the continued presence of Armenian and Armenian-backed troops in the occupied territories of Azerbaijan as a factor making return of IDPs to their lands unrealistic. In this regard, the Commissioner is expected to send a clear message for the liberation of occupied lands and enabling voluntary safe return of IDPs in her report which would contribute to the solution of the large-scale and protracted IDP issue.

During last 25 years, more than 7 billion AZN (more than 4 billion USD) were spent for the solution of social problems of refugees and IDPs, mainly from the state budget and oil revenues of the country. In total, 106 settlements provided with all social infrastructures were established for IDPs. In 2019, the Government allocated 200 million AZN for the construction of new houses.

Since 1 January 2017, the IDPs have been receiving monthly amount for paying communal fees and allowances for covering their per diem. The amount of allowances for one year of displacement in Azerbaijan (720 AZN - 423 USD per year) is higher than the international average cost per IDP (310 USD). In 2019, the total amount of monthly allowance to IDPs from state budget was 304 million AZN. In 2019, the Government allocated more than 522 million AZN (307 million USD) to IDPs for construction of new houses, monthly allowances and education fees. New schools for IDP children are mainly built in new settlements and areas where IDPs reside compactly. In these cases IDP children attend these schools not because of their status, but due to the proximity of the school and as the representatives of the same community (as the children of same village or same district). In the places where IDPs do not live compactly, IDP children freely attend any school of their choice.

When it comes to the participation of IDPs in political decision-making, Azerbaijani community of Nagorno-Karabakh region of Azerbaijan, which functions since 1992 as an interested party in conflict settlement, has its voice in the settlement process. The community was registered in 2006 as a public association. Its main purpose is to achieve restoration of territorial integrity of Azerbaijan and to help displaced people return to their native lands. Since December 2018 newly elected chairman of the community has been actively representing displaced people from Nagorno-Karabakh region of Azerbaijan. There are also several NGOs dealing with issues of IDPs, including IDP women and youth NGOs.

According to Article 212 of the Election Code of Azerbaijan the citizens of Azerbaijan who permanently reside in the territory of constituency can be elected as members of municipalities. Due to the occupation of their lands IDPs do not have permanent residence in the constituencies where they live. The Venice Commission Code of Good Practice in Electoral Matters (2002) provides that “the freedom of movement of citizens within the country, together

with their right to return at any time, is one of the fundamental rights necessary for truly democratic elections. If persons, in exceptional cases, have been displaced against their will, they should, provisionally, have the possibility of being considered as resident at their former place of residence". Thus, liberation of occupied territories of Azerbaijan is the primary and necessary precondition for the full realization of electoral rights of IDPs in Azerbaijan.

Specific comments

Azerbaijani hostages

It is also worth paying attention to the fate of Mr. Dilgam Asgarov and Mr. Shahbaz Guliyev, two Azerbaijani civilians, whom the Armenian side arbitrarily detained when they were visiting the graves of their relatives in the occupied Kalbajar district of Azerbaijan in July 2014. The Minister of Foreign Affairs of the Republic of Azerbaijan informed Ms. Mijatović about this case in his letter addressed to her in June 2018 to which she replied on 26 September 2018. In her letter, she noted that ensuring the effective observance and full enjoyment of human rights of these persons requires undertaking all necessary efforts aimed towards a satisfactory resolution of their situation, including through their release. Unfortunately, no progress has been recorded in this case and for more than five years these persons are kept as hostages and developed thus numerous health problems in captivity.

It should be recalled that the in the case of '*Chiragov and Others v. Armenia*' the Court concluded, *inter alia*, that '…the "NKR" is not recognized as a State under international law by any countries or international organizations… [and] the invoked laws cannot be considered legally valid…'. So, the "rulings" by so-called "courts" of the unlawful regime are null and void and cannot possibly be used as a justification for abduction of Asgarov and Guliyev. This can only be qualified as arbitrary detention of civilians, which constitute a serious violation of international humanitarian and human rights law, in particular the Fourth Geneva Convention, I Additional Protocol to the Geneva Conventions of 1949 and the European Convention on Human Rights.

Keeping Asgarov and Guliyev in captivity, despite Azerbaijan's proposal on "exchange of all to all" is the manifestation of Armenia's policy aimed at consolidating the results of occupation and preventing hundreds of thousands of Azerbaijanis to exercise their right to voluntary return to their homes. The Azerbaijani society expects from the Commissioner to make a strong call for the release of these civilians, and continue efforts for solving their present situation, which causes ignorance of human rights, family separation and human suffering.

Paragraph 101

There is a contradiction in data. The total number of IDPs in the Republic of Azerbaijan stands at 644,000 persons as referred to by the State Committee for Affairs of Refugees and IDPs; the fact that nearly 300,000 IDPs have been provided with improved temporary housing does not exclude them from IDPs-database, not to mention that settlement in another part of the country should neither be regarded as a measure of last resort, nor perceived as negating the right of the displaced persons to return to their places of origin.

Paragraphs 117 - 118

These paragraphs and, in particular, the sentence stating that “IDPs are obliged to reside where they have been registered in order to benefit from state assistance” is not true. The state assistance in the form of unified monthly allowance is paid to IDPs through ATMs, and they enjoy their privileges based on their factual residence addresses. At the same time, there is no legal document whatsoever in the current national legislation in relation to IDPs determining that they are obliged to settle only in the authorized areas.

According to Article 5 (provision of residential area for IDPs) of the Law of the Republic of Azerbaijan on “Social protection of IDPs and persons equated to them”, a temporary settlement of IDPs envisages use of residential, administrative and subsidiary buildings or other buildings that are suitable for living or could be made so. At the same time, this article defines IDPs’ rights for free temporary settlement without violating rights and interests of other persons.

The Constitution of the Republic of Azerbaijan envisages for all citizens, including refugees and IDPs, the right of free choice for the place of residence and rights to live. While IDPs are registered in their occupied districts of origin, which they were forced to flee following the Armenian aggression, they should get registered, as per Article 10 of the “Law on Refugees and IDPs” by the executive authorities of the districts (cities) where they are temporarily settled, thus in order to obtain an IDP status. However, a temporary registration of IDP in the executive authorities of districts where they are currently settled, does not pose any restriction for their freedom of movement within the country. There are no cases of artificial problems created with regard to migration or temporary registration of IDPs.

It should also be underlined that since IDPs are the citizens of the Republic of Azerbaijan, they, along with other citizens, enjoy the same rights and possess same duties envisaged by the Constitution and national legislation of the Republic of Azerbaijan. But, taking into consideration their social conditions and special status, the legislation envisages additional immunities and privileges for them. IDPs enjoy immunities and privileges afforded to them according to the legislation not only in places of their temporary registration but also in places of their factual residence. This excludes them from being left out from enjoyment of social rights and provisions.

Paragraph 120

It should be noted that there are no restrictions or exceptions whatsoever with respect to education of IDP-children in any school, including those where indigenous (non-IDP) children study. As an example, in many places of IDPs’ compact temporary residence in administrative buildings (hostels, schools, kindergartens, hotels alike) IDP-children study in mixed schools along with non-IDPs. Some of schools in the new IDP-settlements which are located nearby other residential areas host non-IDP children as well. IDP-children attending secondary schools are provided with school books free of charge. Moreover, in accordance with the Decree of the President of the Republic of Azerbaijan dated 4 August 2003, IDPs receiving paid education in higher and secondary state educational establishments are exempted from tuition fees.

Paragraph 127

When it comes to inability of participation of IDPs in municipal elections, due to the fact that places of permanent registration of IDPs are in the areas currently under occupation – Nagorno-Karabakh region and other seven adjacent districts, holding elections in these areas does not seem feasible at this stage. Political rights of IDPs are recognized in the same manner as non-IDPs in accordance with the national legislation. The Guiding Principles state that IDPs have rights to participate in elections and public and political life of state. While they do not face any restrictions by law on participation in parliamentary and presidential elections, their right to participate in self-governing municipality elections are restricted - since IDPs, whose basic human rights were grossly violated following the occupation and ethnic cleansing policy pursued by Armenia, are displaced and outside the electoral constituency of their permanent residence (including the ones from Nagorno-Karabakh region itself), they cannot comply with the general rule that voters are registered in the constituency of their permanent residence.

Though in transition provisions of the Law on Rules of Municipal Elections, IDPs' rights to participate in municipal election are recognized, the Election Code of the Republic of Azerbaijan reads that citizens of the Republic of Azerbaijan, who live permanently in the relevant election constituency, may be elected as municipality members. It also reads that citizens, who have left their places of permanent residence due to war, armed conflict, public disorder or natural disasters, shall enjoy their right to vote in the manner established by the Central Election Commission. In practice, IDPs' neither active nor passive suffrage is ensured in municipal elections. In this respect, it is important that the international community mobilizes all its efforts for soonest settlement of the Armenia-Azerbaijan Nagorno-Karabakh conflict and return of IDPs to their places of habitual residence so that they can exercise their fundamental right to vote and stand for elections and form self-governing bodies at places of their permanent residence. It is also worth once again referring to *Chiragov and others vs. Armenia* judgment of the Court, where it affirmed the right of displaced persons to return to their homes and called for abiding by the international humanitarian law and human rights law provisions related to property rights.