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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 23 to 30 October 2017

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) 38.

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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EXECUTIVE SUMMARY

The main objective of the seventh ad hoc visit to Azerbaijan was to examine the treatment and conditions of detention of persons in the custody of law enforcement agencies and in penitentiary establishments and to review the measures taken by the Azerbaijani authorities in response to recommendations made by the Committee after previous visits.

Co-operation at the places of deprivation of liberty visited by the delegation was excellent; however, as during the CPT's previous visits, the delegation encountered a major failure by the Prosecutor General's Office. Despite repeated requests, the delegation was neither enabled to meet with the prosecutors directly in charge of investigations into cases raised by the CPT, nor to have access to the relevant investigation files. The Committee wishes to stress that such a persistent refusal to co-operate in the assessment of the effectiveness of investigations into the allegations of ill-treatment/torture is totally unacceptable.

Law enforcement agencies

The delegation received numerous and very widespread allegations of severe physical ill-treatment of persons detained by the police as criminal suspects (or who had recently been in police custody), including juveniles as young as 15. The alleged police ill-treatment appeared to follow a very consistent pattern throughout the different regions visited: it was said to have occurred mostly in police establishments during initial interviews by operational police officers (in some cases, also by investigators and senior officers in charge of police establishments), with the aim to force the persons to sign a confession, provide other information or accept additional charges.

The types of ill-treatment alleged included slaps, punches, kicks, truncheon blows, blows inflicted with a wooden stick, a chair leg, a baseball bat, a plastic bottle filled with water or with a thick book, but there were also many allegations of more severe forms of ill-treatment, including torture, such as truncheon blows on the soles of the feet (often while the person was suspended) and infliction of electric shocks (including with the use of electric discharge weapons).

An additional reason for grave concern is the fact that, unlike on previous visits, the delegation has received allegations of severe ill-treatment/torture by staff of other law enforcement agencies, such as the State Customs Committee, the State Border Service and the Armed Forces.

In the report, the Committee cites a number of cases where persons made complaints to competent investigative and/or prosecutorial authorities and authorised the CPT to mention their names in the context of on-going dialogue with the Azerbaijani authorities. The Committee asks to be informed about the outcome of investigations carried out into these complaints.

As regards the legal safeguards against ill-treatment, especially notification of custody, access to a lawyer, access to a doctor and information on rights, the CPT's conclusion after the 2017 ad hoc visit is exactly the same as after the 2016 periodic visit, namely those safeguards remain largely a dead letter and are mostly inoperative in practice.

Furthermore, medical examinations, if and when performed, continued to be mostly superficial and the confidentiality of such examinations was still never observed in temporary detention centres and frequently violated in pre-trial detention facilities (with custodial officers – and on occasion police convoy staff – being present). As previously, health-care professionals made no attempts to assess the consistency between statements made by detained persons and medical findings.

The material conditions in police establishments visited were on the whole acceptable for the 72-hour custody period. The only issue of concern was that, as previously, toilets in multi-occupancy cells in all police establishments (including those recently refurbished) were only partially partitioned.

More generally, the findings of the 2017 ad hoc visit suggest that, apart from the generally good material conditions in police detention facilities, all other long-standing recommendations concerning law enforcement agencies remain unimplemented and the situation has actually worsened.

Consequently, at its 95th meeting (5 to 9 March 2018), the CPT decided to keep the Article 10 (2) procedure open and to decide at its 96th meeting, in July 2018, whether to issue a public statement concerning Azerbaijan.

Penitentiary establishments

The delegation carried out follow-up visits to pre-trial detention facilities in Baku (Zabrat), Ganja and Shuvalan. Further, for the first time, the delegation visited mixed-regime prisons in Sheki and Nakhchivan.

The delegation noted some positive results of the Executive Order by the President of the Republic of Azerbaijan "On improvement of operation of the prison system, humanisation of criminal policies and extension of application of alternative sanctions and non-custodial preventive measures", mainly as regards reducing prison overcrowding, although the national as well as international standards of 4 m² of living space per prisoner were still not observed in pre-trial detention facilities visited, especially in Shuvalan and Ganja.

The Committee is also concerned by the lack of any progress in fighting corruption at Pre-Trial Detention Facility No. 2 in Ganja. As observed during the visit in 2016, inmates continued to be obliged to pay for a majority of basic services (such as visits, telephone calls, receiving parcels, and receiving food from the prison shop) to which they were entitled by law.

The delegation heard no allegations of ill-treatment of prisoners by staff at pre-trial detention facilities in Baku (Zabrat) and Shuvalan, and in prisons in Sheki and Nakhchivan. However, at Pre-Trial Detention Facility No. 2 in Ganja, as during the 2016 visit, the delegation received a number of allegations of deliberate physical ill-treatment by custodial staff. The ill-treatment alleged consisted mostly of punches, kicks and blows with truncheons.

Material conditions of detention were found to be generally acceptable at the pre-trial detention facility in Baku (Zabrat) and in prisons in Sheki and Nakhchivan; by contrast, conditions were extremely poor at Pre-trial Detention Facilities No. 2 in Ganja and No. 3 Shuvalan, where the cells were dilapidated, dirty, poorly lit and ventilated (in addition to being severely overcrowded). The latter two establishments should be closed as soon as possible. The CPT reiterates its long-standing recommendation that the Azerbaijani authorities take decisive steps to complete the construction of all the new prisons.

Only Nakhchivan and Sheki Prisons offered some vocational training, to limited numbers of sentenced prisoners. Despite the Committee's repeated previous recommendations, none of the other establishments visited had anything even remotely resembling a regime of activities in place. Work continued to be offered only to a small number of sentenced prisoners assigned to perform various housekeeping and maintenance tasks.

As regards access to health-care, the penitentiary establishments visited employed enough doctors but were (except in Nakhchivan) severely understaffed as regards feldshers (moreover, none of the establishments visited employed nurses), especially at Pre-trial Detention Facility No. 3 in Shuvalan.

The numbers and attendance patterns of custodial staff were also grossly inadequate in all the penitentiary establishments visited, except for Nakhchivan Prison. Further, no progress had been made to increase the number of female custodial staff.

The CPT has noted with regret that the flawed system under which the extent of a sentenced prisoner's contact with the outside world is determined by the (court-imposed) regime under which he/she serves his/her sentence continues to exist in Azerbaijan. Further, the Committee criticised the fact that short-term visits in penitentiary establishments visited (all except in Nakhchivan) continued to routinely take place under closed conditions (through glass or bars, preventing any physical contact between prisoners and their visitors).

Formal disciplinary punishments (including placements in a disciplinary punishment cell i.e. a "kartzer") were not applied excessively in the establishments visited. However, the delegation's findings suggest that a number of the previous CPT's recommendations concerning disciplinary punishment remained unimplemented. In particular, the delegation observed at Pre-trial Detention Facility No. 2 in Ganja and Nakhchivan Prison that prison doctors continued to certify that an inmate was fit for punishment prior to a decision on placement in a disciplinary punishment cell. The Committee recommended that this practice be stopped.

I. INTRODUCTION

A. Dates of the visit and composition of the delegation, context of the visit and establishments 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 23 to 30 October 2017. The visit was one which appeared to the Committee "to be required in the circumstances" (cf. Article 7, paragraph 1, of the Convention) and was the CPT's eleventh visit to Azerbaijan.[1]

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

- Mykola Gnatovskyy, President of the CPT (Head of delegation)
- Djordje Alempijević
- Davor Strinović
- George Tugushi.

They were supported by Borys Wódz (Head of Division) and Dalia Žukauskienė of the CPT's Secretariat, and assisted by Maïté De Rue, Deputy to the Prosecutor-General, Liège, Belgium (expert) and four interpreters, Fakhri Abbasov, Mehriban Aliyeva, Mahammad Guluzadeh and Rashad Shirinov.

3. In the light of the grave findings of the 2016 periodic visit,[2] the Committee had felt obliged to set in motion – in the course of the CPT's 91st plenary meeting in November 2016 – the procedure under Article 10, paragraph 2, of the Convention establishing the Committee[3] in respect of Azerbaijan.

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1 The CPT has so far carried out four periodic visits to Azerbaijan: in November/December 2002, November 2006, December 2011 and March/April 2016. Further, the Committee has carried out six visits of an ad hoc nature: in January 2004, May 2005, December 2008, December 2012, November 2013 and June 2015. To date, only the reports on the 2002, 2005, 2006 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 https://www.coe.int/en/web/cpt/azerbaijan.

2 https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-visits-azerbaij-7.

3 "If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter."

The high-level talks with the Azerbaijani authorities, held in Baku in February 2017,[4] as well as the authorities' response to the CPT's report on the 2016 visit, gave grounds for some cautious optimism, including as concerns the potential effects of the Executive Order by the President of the Republic of Azerbaijan "On improvement of operation of the prison system, humanisation of criminal policies and extension of application of alternative sanctions and non-custodial preventive measures", dated 10 February 2017.[5]

4. In this context, the Committee has decided to return to Azerbaijan in order to examine the actual treatment and conditions of detention of persons in the custody of law enforcement agencies and in penitentiary establishments and to review the measures taken by the Azerbaijani authorities in response to the relevant recommendations made by the Committee after previous visits.

To this end, the delegation visited eight establishments under the authority of the Ministry of Internal Affairs (mainly Temporary Detention Centres, TDCs) in Baku, Ganja, Nakhchivan and Sheki.[6] Further, visits were carried out to five penitentiary establishments under the authority of the Ministry of Justice – two remand prisons in Baku (Baku Pre-trial Detention Facility in Zabrat and Pre-trial Detention Facility No.3 in Shuvalan), one remand prison in Ganja (Pre-trial Detention Facility No.2) and two mixed-regime prisons, in Nakhchivan and Sheki.[7] In addition, the delegation carried out a brief follow-up visit to the Investigative Isolator and Temporary Detention Facility of the State Security Service in Baku (hereafter, the SSS Isolator).[8]

B. The report and the follow-up

5. The report on this visit was adopted by the CPT at its 95th meeting, held from 5 to 9 March 2018, and transmitted to the Azerbaijani authorities on 26 March 2018. The various recommendations, comments and requests for information made by the Committee are set out in bold type in the present report.

The CPT requests the Azerbaijani authorities to provide within three months a response containing a full account of action taken by them to implement the Committee's recommendations and replies to the comments and requests for information formulated in this report.

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4 https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-holds-high-level-talks-in-azerbaijan.

5 See paragraph 50 below.

6 The full list of establishments visited by the CPT's delegation can be found in Appendix I.

7 The latter two establishments were visited for the first time, while the three remand prisons had been visited previously on several occasions (Ganja Pre-Trial Detention Facility in 2002, 2011 and 2016, Shuvalan Pre-trial Detention Facility in 2006 and 2012, Zabrat Pre-trial Detention Facility in 2011, 2012 and 2016), see e.g. paragraphs 96 – 97 and 103 – 104 of the report on 2016 visit (CPT/Inf (2018) 35) as regards Ganja; paragraphs 67 to 77 of the report on 2006 visit (CPT/Inf (2017) 12, https://rm.coe.int/168070c2eb) as regards Shuvalan; and paragraphs 93 – 95 and 103 – 104 of the report on 2016 visit (CPT/Inf (2018) 35) as regards Zabrat.

8 Last visited in 2016, see paragraphs 61 – 71 of CPT/Inf (2018) 35.

C. Consultations held by the delegation and co-operation received

6. In the course of the visit, the delegation held consultations with Fikrat Mammadov, Minister of Justice, Ramil Usubov, Minister of Internal Affairs, as well as with senior officials from these Ministries. During the visit to Nakhchivan Autonomous Republic, the delegation had meetings with Suliddin Aliyev, Minister of Justice of Nakhchivan Autonomous Republic and Fazil Alakbarov, Minister of Internal Affairs of Nakhchivan Autonomous Republic. The delegation also met Elmira Süleymanova, Commissioner for Human Rights (Ombudsperson), and staff of the National Preventive Mechanism Department of her Office.

A full list of the persons consulted during the visit is set out in Appendix II to this report.

7. Co-operation at the places of deprivation of liberty visited by the delegation was excellent, as was the assistance provided by the Ministry of Justice. However, as during the CPT's previous visits, the delegation has encountered a major failure to co-operate from the side of the Prosecutor General's Office. Despite repeated requests, the delegation was neither enabled to meet with the prosecutors directly in charge of investigations into cases raised by the CPT,[9] nor to have access to the relevant investigation files. **This persistent refusal to co-operate with the Committee in the assessment of the effectiveness of investigations into the allegations of ill-treatment/torture is totally unacceptable.**

More generally, the findings of the 2017 ad hoc visit suggest that, apart from the generally good material conditions in police detention facilities,[10] all other long-standing recommendations concerning law enforcement agencies remain unimplemented and the situation has actually worsened.

D. The ongoing Article 10, paragraph 2, procedure

8. The CPT discussed the delegation's preliminary findings during the Committee's 94th meeting and decided to keep open the Article 10, paragraph 2, procedure concerning Azerbaijan and to re-examine the situation at its following meeting, in March 2018. By a letter dated 27 November 2017, the Committee's President informed the Azerbaijani authorities of the CPT's decision.

9. While welcoming the Azerbaijani authorities' decision to authorise publication of reports on the visits carried out by the Committee in 2005 and 2006,[11] the CPT's President noted with regret, in the aforementioned letter, that more recent reports (concerning visits carried out in 2011 and thereafter) remained unpublished. The CPT's President reiterated the Committee's long-held view that transparency about its findings and recommendations was indicative of the strength of the commitment to ensure protection of the rights of persons deprived of their liberty and willingness to address shortcomings.

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9 See paragraph 11 below.
10 See paragraph 43 below.
11 https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-reports-on-azerbaijan

In this context, it was important to stress that publication of all the still-confidential reports (and in particular those concerning the visits as from 2011)[12] prior to the CPT's 95th meeting in early March 2018, would no doubt play an important role in the consideration of whether a public statement concerning Azerbaijan should be issued.

10. Pending this, and as already recommended by the Committee in the report on its 2016 visit, there were some measures that were urgently needed, starting from an unequivocal "zero tolerance for torture and other forms of ill-treatment" message from the highest possible level, i.e. the President of the Republic of Azerbaijan, addressed to all law enforcement officials of the country.

11. The CPT also wished to see, prior to its 95th meeting, clear evidence of effective investigation and prosecution. To assess whether this was the case, the lack of co-operation from the Prosecutor General's Office so far would have to end and the Committee would have to receive, without further delay, full access to the investigation files and meet the prosecutors directly in charge of the case of alleged ill-treatment/torture of a group of some *twenty military servicemen* arrested in the end of April 2017 at the military unit in Terter (see paragraph 23 below), as well as the cases of R. S. H., R. S. B., A. Y. K. and K. I. M. (see paragraph 25 below).

12. In addition to the above-mentioned cases, the CPT reiterated its wish to discuss a number of older cases referred to in the report on the 2016 visit and in the letter notifying the 2017 ad hoc visit, namely the cases mentioned in paragraph 19 of the report on the Committee's 2016 periodic visit to Azerbaijan[13] (i.e. the cases of R. A., G. I. and B. M.), those enumerated in paragraph 21 of the report (B. A., A. A. and S. M.) and those referred to in paragraph 87 of the report (E. B., N. I.. and I.M.).

13. The CPT requested confirmation of the meeting at the Prosecutor General's Office as well as, more generally, a positive response to the points raised in paragraphs 9 to 12 above, before 1 February 2018.

In their letter dated 12 February 2018, the Azerbaijani authorities responded to the aforementioned points. In particular, the authorities requested publication of the report on the Committee's 2011 periodic visit to Azerbaijan (together with the authorities' response) and invited the CPT's representatives to a meeting at the Prosecutor General's Office in Baku.

The Committee expects to examine, in the course of this meeting, the progress of investigations into all the cases enumerated in paragraphs 11 and 12 above, as well as the cases of A. E., R. G., E. M., Z. A., N. G. M., S. R. K. and M. T. A., mentioned in paragraph 25 below.

The Committee expects to have a detailed discussion of each and every case with prosecutors directly in charge of every investigation, with the full investigation file available for consultation (including any forensic medical reports and relevant appendices such as photographs, body diagrams, etc.). It can be reasonably expected that the meeting at the Prosecutor General's Office may last several hours.

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12 I.e. reports on visits carried out in 2011, 2012, 2013, 2015 and 2016.

13 CPT/Inf (2018) 35.

14. The aforementioned letter by the Azerbaijani authorities, dated 12 February 2018, refers to public "zero tolerance for torture and other forms of ill-treatment" messages recently issued by the Ministers of Internal Affairs and Justice, and by the Prosecutor General. This is a positive development. However, the CPT regrets that no mention is made in the letter of such a message having been issued by the President of the Republic of Azerbaijan. Further, the Azerbaijani authorities have still not authorised the Committee to publish the reports on its 2012, 2013, 2015 and 2016 visits, the issue apparently still "being considered" by the authorities. Thus, the authorities' response to the CPT President's letter of 27 November 2017 clearly falls short of fully addressing the Committee's concerns.

In this context, and based on the findings set out further in this report, the CPT decided, at its 95th meeting, to keep the Article 10 (2) procedure open and to decide at its 96th meeting, in July 2018, whether to issue a public statement concerning Azerbaijan.

15. The Committee also decided to propose to the Azerbaijani authorities to take the opportunity of the meeting in Baku to present orally its report on the 2017 ad hoc visit and discuss the implementation of the Committee's recommendations with the Ministers of Internal Affairs and Justice. In addition, the CPT wishes to discuss the state of the ongoing dialogue between the Azerbaijani authorities and the Committee (including the publication of CPT reports) with Mr Fuad Aleskerov, Head of Department for Work with Law Enforcement Bodies and Military Issues of the Administration of the President of the Republic of Azerbaijan.

The outcome of the aforementioned talks in Baku will be taken into consideration by the Committee in reaching its decision on whether to issue a public statement concerning Azerbaijan in July 2018.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Law enforcement agencies

1. Preliminary remarks

16. The legal framework governing the custody of criminal suspects by law enforcement agencies (up to 72 hours) has remained virtually unchanged since the 2016 visit.[14]

Likewise, there had been no changes to the provisions concerning the detention of persons suspected of administrative offences (up to 3 hours), those suspected of an offence punishable by administrative arrest (up to 48 hours) and those sentenced to administrative arrest (up to 90 days). The Committee must again expresses its concern about the last-mentioned provision, first of all because conditions of TDCs are not adapted for such prolonged stays, *inter alia* because of the total lack of activities.[15] More generally, the extension of administrative arrest to 90 days goes against the trend (observed by the Committee in several countries) of either shortening the maximum term of administrative arrest or abolishing that type of sanction altogether. **The CPT recommends that the Azerbaijani authorities amend the Code of Administrative Offences accordingly.**

17. The delegation observed, once again, the practice of frequent returns of remand prisoners to the custody of law enforcement agencies,[16] where persons were exposed to the risk of renewed ill-treatment and even torture. For example, in Sheki the delegation observed that persons would sometimes be brought to the remand section of the prison, registered there and immediately taken back to a TDC for periods of up to 10 days. In a few of such cases, allegations were heard that the reason for such practice had been that the persons who arrived with visible injuries indicative of ill-treatment/torture were brought back to a TDC for the time needed for their injuries to disappear.

The Committee has repeatedly criticised this practice in the past and recommended that the return of prisoners to law enforcement agencies is sought and authorised only very exceptionally (as required by law), for specific reasons and for the shortest possible time.

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14 See paragraph 15 of CPT/Inf (2018) 35. Pursuant to the Code of Criminal Procedure (CCP), criminal suspects may be held by the police or another law enforcement agency on their own authority for up to 48 hours. Within 12 hours from the time of deprivation of liberty, the competent prosecutor must be notified of the fact of detention. Within 24 hours from the start of detention, an operational 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. Persons remanded in custody may not be held in a law enforcement detention facility for longer than 24 hours after the judge's decision and should be transferred to a pre-trial detention facility before the expiry of this period (which does not include the time spent transporting the person to the remand facility). Consequently, a criminal suspect may spend up to 72 hours in the custody of law enforcement agencies.

15 See paragraph 44 below.

16 E.g. the police, the State Security Service, the State Customs Committee, the State Border Service and the Armed Forces.

More specifically, the CPT had recommended that steps be taken to end completely the practice of returning remand prisoners to law enforcement agencies for further questioning (which should only take place in pre-trial detention facilities run by the Ministry of Justice). It is most regrettable that this negative practice continues.

The Committee calls upon the Azerbaijani authorities to take resolute action, without further delay, to implement the aforementioned long-standing recommendations by the CPT.

18. The Committee is deeply concerned by the persistent allegations of unrecorded detentions and/or (less frequently) detentions in locations which are not official places of deprivation of liberty.[17] During these periods, which could last several days, persons were reportedly interviewed on the subject of a criminal offence (the purpose being to elicit confessions and/or collect evidence before the apprehended person was formally declared a criminal suspect) and subjected to torture and/or other forms of ill-treatment, without any formal safeguards being applicable.[18]

The CPT calls upon the Azerbaijani authorities to stop immediately these unacceptable practices. Persons apprehended by law enforcement agencies must never be held on locations other than official places of detention, and their whereabouts while in the hands of those agencies (for whatever reason, including for interviews with operational officers) must always be duly recorded. In particular, the records should specify who was brought in or summoned, by whom, upon whose order, at what time, for what reason, in which capacity (suspect, witness, etc.), to whom the person concerned was handed over, where the person was physically placed and when the person left the premises of a law enforcement agency.[19]

2. Torture and other forms of ill-treatment

19. The delegation received numerous and very widespread allegations of severe physical ill-treatment of persons detained by the police (or who had recently been in police custody) as criminal suspects, including juveniles as young as 15. The police ill-treatment appeared to follow a very consistent pattern throughout the different regions visited: it was said to have occurred mostly in police establishments during initial interviews by operational police officers (in some cases also investigators and senior officers in charge of police establishments) and with the aim to force the persons to sign a confession, provide other information or accept additional charges. The few criminal suspects and remand prisoners who told the delegation that they had not been ill-treated had reportedly immediately co-operated with or confessed to the police.

20. The types of alleged ill-treatment included slaps, punches, kicks, truncheon blows, blows inflicted with a wooden stick, a chair leg, a baseball bat, a plastic bottle filled with water or with a thick book, but there were also many allegations of more severe forms of ill-treatment, including torture, such as truncheon blows on the soles of the feet (often while the person was suspended) and infliction of electric shocks (including with the use of electric discharge weapons).

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17 See, for example, the allegations concerning prolonged detention in disused former army barracks mentioned in paragraph 23 below.

18 See also paragraphs 23, 25 and 41 below.

19 See also paragraph 41 below.

In many cases, the physical ill-treatment/torture was said to be inflicted while the person concerned was handcuffed and/or attached to an object or a piece of furniture.

21. One method of torture repeatedly referred to by persons with whom the delegation spoke and who had been apprehended by the police in different parts of the country consisted of a detained person's hands and legs being tied together (usually with packing tape but sometimes with a rope, with leather belts or handcuffs), forcing the person to bend tightly, passing a metal pipe or a thick wooden stick between the person's elbows and knees so as to immobilise the person in such a bent position, suspending the person using the pipe or stick, and then administering blows over the whole body (including the soles of the feet) while suspended. Some persons interviewed by the delegation referred to this method of torture as the "turbine".

22. In addition to the aforementioned, the delegation received numerous allegations of excessive use of force at the time of apprehension, after the person concerned had been brought under control, as well as physical ill-treatment inflicted while the persons concerned were being transported to a law enforcement facility in a service vehicle.

23. An additional reason for grave concern is the fact that, unlike on previous visits, the delegation has received allegations of severe ill-treatment/torture by staff of other law enforcement agencies, such as the State Customs Committee, the State Border Service and the Armed Forces.[20]

Regarding the latter, several allegations were received according to which approximately twenty military servicemen from Terter barracks, arrested in the end of April 2017, had been taken to a disused army base near Terter, blindfolded, their hands and legs tied with a rope or cuffed, made to undress completely except for their underwear and brutally interrogated for periods ranging from two to twelve days, using various methods of torture (electric shocks,[21] pulling out nails, burning,[22] waterboarding,[23] sleep deprivation,[24] deprivation of food and water[25]) albeit to varying extents depending on how long particular soldiers could resist before confessing. In a few cases, persons were also reportedly made to lie for prolonged periods directly on a cold concrete floor. Further, some of the men were allegedly taken blindfolded, even after confessing, to another disused former military unit (in Mingachevir) where they were held for approximately two days and repeatedly ill-treated (punched, kicked and struck with truncheons) by members of the military police, for what appeared to be a purely punitive purpose.

It is noteworthy that the demeanour of some of the military servicemen interviewed by the delegation at the SSS Isolator was unmistakably characteristic of victims of torture (such as signs of severe emotional distress).

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20 On the positive side, no allegations were heard (as previously) concerning custodial staff working in the TDCs and (unlike previously) State Security Service officials.

21 Using a device for exploding mines, producing a 16 thousand volt current, connected to the person's body with wires attached to the feet, nipples and testicles or penis; reportedly, prior to this torture persons were poured over with water to increase conductivity.

22 With a lighter or a cigarette.

23 Covering the person's mouth and nose with a wet rug and pouring water over his face, causing him to experience the sensation of drowning.

24 Allegedly, whenever a person fell asleep, he was brutally awaken by pouring ice cold water over him.

25 Reportedly, while held at the Terter facility, detained servicemen were only given a quarter of a loaf of bread and a glass of water every morning.

24. The allegations of torture and other forms of ill-treatment received by the delegation, made independently by persons who did not have the possibility to consult each other, were detailed and consistent. Moreover, some of them were supported by medical evidence, in the form of both lesions directly observed by the delegation's forensic medical experts[26] and entries in medical documentation examined in TDCs and (especially) pre-trial detention facilities visited.[27] Some of the latter descriptions were fairly detailed.[28] To sum up, the allegations had a high degree of credibility.

25. In a number of instances, the interviewed persons who alleged ill-treatment/torture had made complaints to competent investigative and/or prosecutorial authorities and authorised the CPT to mention their names in the context of ongoing dialogue with the Azerbaijani authorities (including in the present report). By way of illustration, the following cases may be cited:

- Mr R. S. H.,[29] born on 31 October 1988, a remand prisoner accommodated at Baku Pre-trial Detention Facility (in Zabrat), apprehended by the police on 29 September 2017 and taken to Police Station No. 40 in Binagadi District (Baku), alleged having been subjected to blows to the soles of his feet ("falaka"), his hands and legs being tied with an adhesive tape, and a long and thick metal pipe being pulled through in between his hands and legs. He was reportedly blindfolded and then – in a suspended position – struck during 3 to 4 hours by several operational officers taking turns. He complained about it to the Ministry of Internal Affairs, the prosecutor and the Ombudsperson, and his injuries and allegations were recorded by the doctor at the pre-trial facility upon his arrival on 1 October 2017. Further, he was reportedly interviewed by an investigator and examined by a forensic doctor.

- Mr A. E., interviewed by the delegation at Zabrat Pre-trial Detention Facility on 24 October 2017, alleged having been struck on his head with truncheons upon arrest in the port of the city of Lenkoran on 10 October 2017. He was then taken to Police Station No. 1 in Lenkoran and reportedly punched, kicked and struck with truncheons while he was handcuffed behind his back. He stated that he had been thrown on the ground and struck approximately 50 times with truncheons on the soles of his feet ("falaka") and over his back, as a result of which he had lost consciousness. The purpose of the torture was reportedly to make him confess to a series of additional criminal offences. He told the delegation that he still suffered from constant headaches and impaired vision in his right eye.

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26 For example, such directly observed medical evidence was collected with respect to three of the military servicemen interviewed at the SSS Isolator, see paragraph 23 above.

27 It is e.g. noteworthy that approximately 20% of persons who had arrived at Zabrat Pre-trial Detention Facility between 1 August and 24 October 2017 had borne injuries, and in the case of 12 of them the establishment's health-care staff had recorded that the persons concerned alleged physical ill-treatment by the police or other law enforcement officials.

28 Although such detailed descriptions were far from being the rule, see paragraph 29 below.

29 See also paragraph 11 above.

Mr E. complained about his treatment to the doctor at Zabrat Pre-trial Detention Facility and to the prosecutor. Upon examination by one of the delegation's forensic medical experts, Mr E. displayed: in the parietal region of his head, a pink linear scar measuring 2 cm; in the parieto-occipital region, a pink scar measuring 1 cm; a swelling of the sole of his left foot (towards the heel), very painful on palpation, and a very tender sole of his right foot. Mr E. experienced visible difficulties when walking. The above-mentioned lesions were consistent with his allegations.

- Mr R. G., interviewed by the delegation at Zabrat Pre-trial Detention Facility on 24 October 2017, alleged having been ill-treated at Police Station No. 4 in Binagadi District (Baku) on 20 August 2017. Reportedly, he was punched and struck several times with truncheons and a metal chain by a group of eight plainclothes operative officers, while his hands were cuffed behind his back and his head was held down. His hands and feet were then tied with adhesive tape and he was punched, kicked and struck with truncheons over his whole body including the soles of his feet ("falaka"), during approximately 4 hours. He said he had fainted a few times but the police poured cold water over his head to make him recover. Mr G. was then reportedly subjected to electric shocks using electrodes attached to his fingers. This torture reportedly lasted for approximately half an hour and was stopped after foam started coming out of his mouth. He was then allegedly struck again with truncheons, on his back, so strong that he could not breathe. His hands were allegedly tied so tightly that they became blue and swollen, and police officers had to untie them. The torture allegedly stopped when he agreed to co-operate, he was then taken to an investigator and signed the confession.

  Mr G. complained about his treatment to the investigator and to the doctor at Zabrat Pre-trial Detention Facility (where he was brought after three days), who wrote down the following: "a wound on the right side of the back; a yellow-green haematoma on the left buttock; an excoriation on the left upper leg; excoriations on the right side of the chest, left side of the back and upper left arm".

- Mr E. M., interviewed by the delegation at Zabrat Pre-trial Detention Facility on 24 October 2017, alleged that he had been physically ill-treated upon apprehension on 8 October 2017 (handcuffed behind his back, violently thrown on the floor, kicked and struck with truncheons) and then beaten again during interview at Police Station No. 13 in Sabunçu District (Baku). Two operative officers allegedly kicked him and punched him several times (including in his face) during approximately an hour, while he was made to sit on a chair with his hands cuffed behind his back. He complained about his treatment to the prosecutor who reportedly ordered a forensic medical examination including an X-ray; he stated that he had seen the forensic doctor but had not received a copy of the forensic medical report and did not know about the follow-up to the procedure.

- Mr Z. A., interviewed by the delegation at Zabrat Pre-trial Detention Facility on 24 October 2017, alleged ill-treatment (slaps and punches while handcuffed) upon his arrest in the city of Yardymli in June 2017; subsequently, he had allegedly been slapped, punched and kicked at the police station, by the station's chief and his deputy, in order to make him confess to an offence. Mr A. had told about his ill-treatment to the doctor who examined him upon arrival at Zabrat Pre-trial Detention Facility, and was later seen by one of the establishment's operational officers and (approximately a month later) examined by a forensic doctor. He reportedly repeated his allegations before the judge and prosecutor; however, he told the delegation that after he had met (at the prosecutor's office) the incriminated police officers, he had refused to testify any longer because he feared possible reprisals.

- Mr K. I. M.,[30] interviewed by the delegation at Pre-trial Detention Facility No.3 in Shuvalan on 25 October 2017, alleged having been subjected to "falaka" (in the way described in paragraph 21 above) and, additionally, struck with truncheons and wooden sticks in the region of kidneys on 19 and 20 October 2017 at Imishli City Police Department; he had complained about this torture to the prosecutor and the Ombudsperson.

- Mr A. Y. K.,[31] interviewed at Pre-trial Detention Facility No.3 in Shuvalan on 25 October 2017, told the delegation that he had complained to Sumgayit prosecutor about torture ("falaka" and truncheon blows all over the body, resulting in three broken ribs and a ruptured ear drum) while suspended; it was said to have happened at Police Station No. 2 in Sumgayit on 17 August 2017, between 2 a.m. and 8 a.m. His injuries were recorded at Pre-trial Detention Facility No.3 in Shuvalan.

- Mr N. G. M., interviewed by the delegation at Pre-trial Detention Facility No.3 in Shuvalan on 25 October 2017, alleged repeated physical ill-treatment inflicted by officers from Shirvan City Police Department on 27 July 2017: punches and kicks upon arrest, truncheon blows during transfer in a police car and then truncheon blows inflicted at the police facility, during several hours, by a group of 10 – 15 operational officers taking turns. Mr G. complained about his treatment to the Ministry of Internal Affairs and the Ombudsperson, and his injuries were described by the doctor who examined him upon arrival at the pre-trial detention facility.

- Mr R. S. B.,[32] interviewed at Pre-trial Detention Facility No.3 in Shuvalan on 25 October 2017, told the delegation that he had complained to the prosecutor and Ombudsperson of severe beating (including on genitals) with a white plastic pipe by three operational officers at Police Station No. 1 of Khazar District (Baku) on 10 – 12 May 2017; his injuries were described by the doctor at Pre-trial Detention Facility No.3 in Shuvalan on 12 May 2017.

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30 See also paragraph 11 above.
31 See also paragraph 11 above.
32 See also paragraph 11 above.

- Mr S. R. K., interviewed at Pre-trial Detention Facility No.3 in Shuvalan on 25 October 2017, alleged physical ill-treatment (punches, truncheon blows and blows with iron bars) by seven uniformed policemen accompanied by several plainclothes officers upon his arrest on 31 May 2017. He was then taken to Surakhani District Police Department (in Baku), where he was reportedly thrown on the floor, kicked, punched and struck with chair legs for approximately 30 minutes. He complained about his ill-treatment to the prosecutor and the judge. Upon examination by one of the delegation's forensic medical experts, some 5 months after the alleged facts, Mr R. displayed: a small scar on the back side of his head, measuring 0.5 cm and pale grey in colour, and a scar on the right side of his nose, in the same colour, measuring 1.5 cm.

- Mr M. T. A., interviewed by the delegation at Pre-trial Detention Facility No.2 in Ganja on 26 October 2017, alleged having had his hands and legs tied and having been subjected to electric shocks and "falaka" on 14 January 2017, inflicted by three operational police officers at the Main City Police Department in Ganja. His father introduced an official complaint to the prosecutor and he was seen by a forensic doctor. He had no information on the follow-up to this procedure.

The CPT wishes to be informed about the outcome of investigations carried out into the above-mentioned complaints. This should include information about the concrete investigative steps taken[33] and copies of all procedural decisions and forensic medical reports (together with relevant appendices such as photographs, body diagrams, etc.) drawn up in the context of these cases. The Committee expects to have a detailed discussion of these cases during its meeting at the Prosecutor General's Office, together with the other cases mentioned in paragraph 12 above.

26. The delegation also received many allegations of threats and verbal abuse, as well as threats of reprisals against the persons' relatives. Further, as had been the case in the past, it was clear that the ill-treatment/torture was in numerous cases related to corruption e.g. demanding payments in exchange for dropping or reducing charges.

27. The CPT's overall impression is that torture and other forms of physical ill-treatment by the police and other law enforcement agencies, corruption in the whole law enforcement system (e.g. demanding payments in exchange for dropping or reducing charges, or even releasing persons from unrecorded custody[34]) and impunity remain systemic and endemic. Moreover, the findings of the 2017 ad hoc visit suggest the existence of a generalised culture of violence among the staff of various law enforcement agencies.

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33 E.g. whether and when exactly the complainants were interviewed, whether and when exactly any third parties who could shed light on the veracity of the complaints were questioned, etc.

34 See paragraph 41 below.

The Committee wishes to add that its delegation has encountered, among the persons deprived of their liberty it has interviewed, a prevalent belief that there is no point in complaining about the ill-treatment/torture suffered, as well as a fear to do so. Furthermore, once again many interviewed persons alleged that they had complained about ill-treatment to prosecutors and/or judges but their complaints were ignored despite visible injuries. This is why the real extent of the phenomenon of torture and other forms of ill-treatment by law enforcement agencies is likely to be much larger than that based on the allegations actually heard by the delegation.

The CPT finds it disturbing to the highest degree that, almost 16 years after the Committee's first visit to Azerbaijan, such findings continue to be made.

In the light of the above, **the CPT calls upon the Azerbaijani authorities to finally implement its long-standing recommendations on this subject, including those made in paragraphs 23, 25, 26 (on the role of investigators) and 27 (on the role of judges) of the report on the 2016 visit.**[35]

28. As the Committee has stressed many times in the past, the credibility of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions. During its visits to all Member States of the Council of Europe, the CPT routinely assesses the activities of the authorities empowered to conduct official investigations and bring criminal and/or disciplinary charges in cases involving allegations of ill-treatment/torture.

Taking into account the findings of this visit, the CPT deeply regrets to conclude that, at present, such activities are absolutely ineffective. Official statistics communicated by the Azerbaijani authorities at the outset of the visit suggest that there have been no recent convictions of law enforcement officials for torture and other forms of ill-treatment,[36] which renders the situation in the country exceptional in the entire Council of Europe and very worrying when compared with the number of credible allegations received by the Committee, this time and in the past.

The CPT once again calls upon the Azerbaijani authorities to take long overdue effective measures to combat impunity amongst members of law enforcement agencies, taking into account the criteria which an investigation into cases of possible ill-treatment/torture must meet in order to be qualified as "effective", established through an abundant case-law of the European Court of Human Rights and highlighted in the CPT's 14th General Report.[37]

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35 CPT/Inf (2018) 35. Recommendations concerned are reproduced in Appendix III.

36 According to the information provided by senior officials from the Ministry of Internal Affairs, there had been 341 disciplinary sanctions vis-à-vis police officers in the first 9 months of 2017 for various "human rights violations" but no criminal investigations and convictions. Furthermore, data presented by the Prosecutor General's Office suggests a fall in the number of received complaints (212 in 2016, 125 until the end of October 2017) which presents a clear dissonance with the delegation's findings.

37 See paragraphs 25 to 42 of CPT/Inf (2004) 28, https://rm.coe.int/16806cd08c. 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 of those implicated in the events. Further, there should be a sufficient element of public scrutiny of the investigation or its results, including the involvement of the alleged victims in the procedures and the provision of information to the public on the status of ongoing investigations, to secure accountability in practice as well as in theory. In this regard, it is well-established through the case-law of the European Court of Human Rights that whenever a person was injured while in the hands of public officials, there is a strong presumption that the person concerned was ill-treated and the authorities' duty is to provide a satisfactory and convincing explanation of how the injuries were caused.

The Committee also reiterates its recommendation that the Azerbaijani authorities take steps to establish trust in law enforcement agencies by providing information to the public on the outcome of investigations into complaints of ill-treatment by law enforcement officials.

In this context, **the attention of the Azerbaijani authorities is once again drawn to the importance of enabling the CPT's delegations to discuss ongoing investigations with prosecutors in charge of those, and granting the CPT full access to investigation files (including forensic medical reports).[38] It is very important for the Committee to work closely with the Prosecutor General's Office to look into the way prosecutors investigate such allegations and to provide assistance and advice on how to make those investigations effective. The CPT expects that the meeting in Baku, referred to in paragraph 13 above, will represent a real breakthrough in this respect.**

29. On numerous previous occasions, the Committee has stressed the important contribution which health-care professionals working in temporary detention centres and pre-trial detention facilities can and should make to combating ill-treatment of detained persons, notably through a thorough examination of detained persons, methodical recording of injuries and the provision of information to the relevant authorities.

Unfortunately, the information gathered during the 2017 ad hoc visit shows that there had been no improvement in this area. Medical examinations, if and when performed,[39] continued to be mostly superficial[40] and the confidentiality of such examinations was still never observed in temporary detention centres[41] and frequently violated in pre-trial detention facilities (with custodial officers – and on occasion police convoy staff – being present).[42]

Furthermore, the delegation again observed that the medical documentation[43] was generally far from being satisfactory; it was most often incomplete and even contradictory, with the description of injuries being frequently scant[44] and on occasion inaccurate. Moreover, several persons interviewed by the delegation stated that doctors/feldshers (whether employed in the TDCs, pre-trial detention facilities or elsewhere e.g. the SSS Polyclinic or the Military Hospital) ignored or dismissed their explanations as to the origin of their injuries, or even refused to record the injuries and/or explanations.[45]

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38 See also paragraph 13 above.

39 E.g. staff at the TDC of the Main Department for Combating Organised Crime in Baku acknowledged that this was not done routinely.

40 Persons were merely asked whether they had a health-related problem or were just asked to remove the upper clothes without fully undressing

41 Premises used for medical examinations were frequently covered by CCTV e.g. at the TDCs of Nizami and Surakhani Districts in Baku.

42 See also paragraph 65 below. Furthermore, the delegation noted that non-medical custodial staff at Nakhchivan Prison had access to medical files and other medical documentation.

43 Including the journals kept at temporary detention centres, inmates' individual medical records at pre-trial detention facilities and administrative "acts" drawn up upon arrival to the latter, describing any injuries observed by health-care staff.

44 Limited to mentioning the type of injury (e.g. "bruise", "haematoma", "scratch", "swelling") but with no further detail as to the precise location, size, colour, etc.

45 This was, in particular, reportedly the case of most of the military servicemen detained in the Terter "espionage" case, see paragraph 23 above.

In several establishments visited, the injury registers were (virtually) empty (e.g. at the SSS Isolator and the TDC in Sheki) or there was simply no such register (e.g. at the TDC in Nakhchivan), which lent additional credence to these allegations.

As previously, health-care professionals made no attempts to assess the consistency between statements made by detained persons and medical findings. This was the case even when statements made were manifestly inconsistent with the injuries observed (e.g. an affirmation made by the detained persons that injuries were "old" when in fact they were evidently fresh). In short, the medical documentation seen in temporary detention centres and pre-trial detention facilities visited was to a great extent unreliable and insufficient for forensic purposes.

30. In the light of the above, **the CPT feels compelled to strongly reiterate all its long-standing recommendations on this subject, namely those set out in paragraphs 31 and 34 of the report on the 2016 periodic visit.[46] The Committee must also reiterate its recommendations regarding access to forensic medical expertise.[47]**

More generally, given the obvious absence of any real progress in this area since the previous visit, **the CPT calls upon the Azerbaijani authorities to place health-care staff working in TDCs under the authority of the Ministry of Health. Regarding the health-care staff working in penitentiary establishments, reference is made to the comments in paragraph 66 below.**

3. Safeguards against ill-treatment

31. As regards the legal safeguards against ill-treatment, especially notification of custody, access to a lawyer, access to a doctor and information on rights, the CPT's conclusion after the 2017 ad hoc visit is exactly the same as after the 2016 periodic visit, namely those safeguards remain largely a dead letter and are mostly inoperative in practice.

32. Notification of custody was often seriously delayed, by up to a few days (and sometimes even longer, until the person's arrival at a pre-trial detention facility) and generally until after the person had been interviewed and signed a statement/confession. **The Committee once again calls upon the Azerbaijani authorities to take effective steps to implement its long-standing recommendation that persons deprived of their liberty by the police (and other law enforcement agencies) 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/another law enforcement agency). The exercise of this right should always be recorded in writing**.

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46 Recommendations concerned are reproduced in Appendix III.

47 See paragraph 36 of CPT/Inf (2018) 35. Persons who are, or have been, detained, or their lawyers, must be formally entitled to directly obtain an examination by a recognised forensic medical expert and to be issued with a certificate which has legal value in court. Naturally, the recommendation concerning the need to ensure confidentiality of medical examinations applies *a fortiori* to forensic medical examinations.

Furthermore, as in the past, many detained persons interviewed by the delegation were not sure whether their relatives had been notified at all of their deprivation of liberty. **The CPT reiterates its long-standing recommendation that steps be taken to ensure that detained persons are systematically provided with feedback on whether it has been possible to notify a close relative or another person of the fact of their detention.**

33. Access to a lawyer (almost always an *ex officio* lawyer) was again systematically delayed until after the person had confessed; in this context, the lawyer's presence amounted to a mere formality aimed at providing legitimacy for the confession (by having the lawyer sign under the detained person's statement). It is also noteworthy that, similar to what had been observed in the past, many detained persons stated that they had only been able to meet their lawyer for the first (and frequently last) time at the court hearing on the issue of remand in custody. This highly regrettable state of affairs, which is clearly contrary to the Azerbaijani law and international standards, becomes even more of concern when seen in the context of the allegations of torture and other forms of ill-treatment referred to in paragraphs 19 to 26 above. **The Committee calls upon the Azerbaijani authorities to immediately take measures to ensure that the right of access to a lawyer is effectively guaranteed to all persons as from the very outset of their deprivation of liberty.**

34. As on previous visits, the delegation was inundated with complaints about the role and attitude of *ex officio* lawyers; apparently, the lawyers mostly remained silent during the proceedings (both on the premises of law enforcement agencies and in court) and sometimes would not even speak to the detained persons (or tried to dissuade them from making any complaints). The delegation also received allegations that *ex officio* lawyers had demanded undue payments for any effective assistance to be provided.

Clearly, the Azerbaijani system of *ex officio* legal aid to persons deprived of their liberty continues to fail to operate as a safeguard against ill-treatment by law enforcement officials. **The CPT strongly reiterates its recommendation that a comprehensive review of the system of *ex officio* legal assistance be carried out, in co-operation with the Bar Association. *Ex officio* lawyers 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**.

35. Many detained persons alleged that, while in the custody of a law enforcement agency, they had not been able to meet their lawyer in private; furthermore, in a few cases such meetings had reportedly taken place in the presence of the very officers who had ill-treated the detained persons concerned. The delegation also noted that rooms set aside for meetings with lawyers in some of the police establishments visited did not guarantee confidentiality of such meetings.[48] **The Committee reiterates its recommendation that the confidentiality of all client-lawyer consultations be ensured in all law enforcement establishments in Azerbaijan.**

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[48] It was e.g. still technically possible to video and audio record lawyer-client conversations at the TDC of the Main Department for Combating Organised Crime in Baku.

36. The situation with respect to notification of custody and access to a lawyer appeared particularly grave as regards the military servicemen involved in the Terter "espionage" case (see paragraph 23 above). All of them seemed to have been held in *de facto* incommunicado detention for periods of up to 2 months, unable to inform their relatives of their whereabouts. What is of even greater concern, all of them alleged that access to lawyers (exclusively *ex officio* ones) had only been granted to them with a very considerable delay, as late as a month after actual apprehension (and, invariably, only after they had agreed to sign the confession); furthermore, they could only see their lawyers in the presence of the prosecutor or investigator.

The CPT wishes to receive clarification from the Azerbaijani authorities of legal grounds for such excessively long delays in notification of custody and access to a lawyer (and for the lack of confidentiality of client-lawyer conversations) in the above-mentioned case. Needless to add, the Committee is of the firm view that its recommendations in paragraphs 32 to 35 above apply with equal force to the detained military servicemen.

37. As regards access to a doctor in TDCs, reference is made to the comments and recommendations in paragraph 29 above.

As for the access to a doctor for persons in the custody of law enforcement agencies during the period prior to placement in a TDC, despite the Committee's numerous and repeated recommendations in the past, the current practice[49] continues to be perceived primarily as a means to protect police officers (and other law enforcement officials) against possibly unfounded allegations of ill-treatment, rather than as a fundamental right of the person detained. Consequently, **the CPT reiterates once again its long-standing recommendation that persons deprived of their liberty by the police (and other law enforcement agencies) be expressly guaranteed the right of access to a doctor from the very outset of their deprivation of liberty.** The legal obligation upon law enforcement officials to provide access to medical assistance to detained persons who require it does not remove the need for such a right.

The relevant provisions should make clear that:

- **a request by a detained person to see a doctor should always be granted; it is not for law enforcement officials, nor for any other authority, to filter such requests;**

- **a person taken into the custody of a law enforcement agency has the right to be examined, if he/she so wishes, by a doctor of his/her own choice, in addition to any medical examination carried out by a doctor called by the law enforcement officials (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his/her own expense);**

- **the exercise of the right of access to a doctor is to be recorded in the custody records.**

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49 Described *inter alia* in paragraph 25 of the report on the 2011 periodic visit (CPT/Inf (2018) 9).

38. As had been the case in the past, information on rights was still as a rule provided only by the investigators at the moment when the protocol of detention was drawn up, which frequently happened hours (or even days, see paragraph 18) 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,[50] as distinct from being told to sign a procedural document, enclosed with the criminal case file, which reproduced Section 90 of the CPC and which referred to some of those rights,[51] but which they had had no time to read. Others had reportedly been informed about their rights only after they had made a statement/confession.

The Committee once again calls upon the Azerbaijani authorities to ensure that persons detained by law enforcement officials are fully informed of their rights as from the very outset of their deprivation of liberty. This should be ensured by the provision of clear verbal information at the moment of apprehension, to be supplemented at the earliest opportunity (i.e. immediately upon entry into the premises of a law enforcement agency) by the provision of a written form setting out the detained person's rights in a straightforward manner. This form should be available in an appropriate range of languages. The persons concerned must be asked to sign a statement attesting that they have been informed of their rights and be allowed to keep a copy of the information sheet. If necessary, the absence of a signature should be duly accounted for. Moreover, particular care should be taken to ensure that detained persons are actually able to understand their rights; it is incumbent on law enforcement officials to ascertain that this is the case.

39. Similar to the situation observed during previous visits to Azerbaijan, the delegation received several allegations from detained juveniles, according to which they had been interviewed and made to sign documents (confessions or other statements) without the presence of a lawyer and/or another trusted person. This was of particular concern given that some of the juveniles had alleged having been subjected to physical ill-treatment in the course of the interviews (see paragraph 19 above).

The CPT once again calls upon the Azerbaijani authorities to ensure that detained juveniles are not questioned and, in particular, do not make any statements or sign any documents related to the offence of which they are suspected without the benefit of a lawyer and, in principle, of another trusted adult being present and assisting the juvenile. The Committee also reiterates its recommendation that a specific information form, setting out the particular position of detained juveniles and including a reference to the presence of a lawyer/another trusted adult, be developed and given to all such persons taken into custody. Special care should be taken to explain the information carefully to ensure comprehension.

40. The delegation once again heard several detained foreign nationals complain that they had been made to sign documents in the Azeri language without knowing their content. No written information on rights was available in languages other than Azeri and some foreign nationals alleged that they had not been provided with any information (even verbal) in a language they understood. Even more of concern were the few allegations according to which detained persons had not been provided with an interpreter before the first court hearing.

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50 Or in the custody of another law enforcement agency e.g. the State Customs Committee, the State Border Service and the Armed Forces.

51 In particular, notification of custody and access to a lawyer.

The CPT reiterates its recommendation that effective measures be taken to ensure that detained foreign nationals who do not understand Azeri are promptly provided with the services of an interpreter and are not requested to sign any statements or other documents without this assistance. Reference is also made to the recommendation in paragraph 38 above. Further, steps must be taken to systematically inform detained foreign nationals of their right of access to a consular/diplomatic representative (which is reportedly frequently not the case at present)**.**

41. The CPT has stressed in the past that the requirement to properly record the fact of a person's deprivation of liberty is one of the most fundamental legal safeguards against ill-treatment. In this context, **reference is made to the comments and recommendation in paragraph 18 above, concerning the phenomenon of unrecorded detentions**.

From the moment at which a detained person was formally apprehended, the various custody records tended to be generally well kept in the police establishments visited.

42. The Committee has stressed on several occasions that electronic (i.e. audio and/or video) recording of interviews represents an important additional safeguard against the ill-treatment of detainees.[52]

In the light of all the allegations and other information gathered on torture and other forms of ill-treatment by law enforcement officials (see paragraphs 19 to 26 above), **the CPT reiterates its recommendation that the Azerbaijani authorities introduce systematic electronic recording of all interviews (including initial questioning by operative officers). Needless to add, audio and video recording devices should be functioning at all times, recorded material preserved for reasonable periods of time and made available to appropriate persons (including those responsible for monitoring and inspecting detention facilities and those charged with investigating allegations of ill-treatment as well as the detained person and/or his/her lawyer).**

4. Conditions of detention

43. As had generally been the case on recent visits to Azerbaijan, the CPT's delegation found the material conditions in police establishments visited to be on the whole acceptable for the 72-hour custody period and even very good in a few of the establishments (e.g. the TDC of the Main Department for Combating Organised Crime in Baku and the TDC in Sheki). The only issues of concern were that, as previously, toilets in multi-occupancy cells in all police establishments (including those recently refurbished) were only partially partitioned. Further, cells at the Surakhani District TDC in Baku were in need of refurbishment and were poorly lit. **The Committee recommends that the above-mentioned deficiencies be eliminated in the course of the ongoing TDC renovation programme.[53]**

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52 Such a facility can provide a complete and authentic record of the interview process, thereby greatly facilitating the investigation of any allegations of ill-treatment. This is in the interest both of persons who have been ill-treated and of law enforcement officials confronted with unfounded allegations that they have engaged in physical ill-treatment or psychological pressure. Electronic recording of interviews also reduces the opportunity for defendants to later falsely deny that they have made certain statements.

53 At the outset of the visit, the delegation was informed by senior officials from the Ministry of Internal Affairs that all the existing 72 TDCs in Azerbaijan would be entirely refurbished (or replaced by new establishments) by 2020.

In addition, the delegation noted improper use (for overnight detention, on occasion up to 48 hours) of the 3-hour holding cells at the Main City Police Department of Ganja (Kapaz), where detained persons had to sleep on narrow benches, without a mattress and/or a blanket, and where no provision was made for food and outdoor exercise. **The CPT recommends that steps be taken to ensure that anyone obliged to stay at the establishment in excess of a few hours is placed in the adjoining TDC cells, which are adapted for this purpose.**

44. As already mentioned,[54] persons remanded in custody and administrative detainees could still be held for prolonged periods in temporary detention centres. In this context, the Committee wishes to stress once again that conditions of detention in the TDCs are not suitable for such prolonged stays, first of all because of the nearly total absence of any activities (including access to radio, TV and board games).[55] It is also noteworthy that persons detained in TDCs have no right to receive visits and make telephone calls, which is an issue of concern in case of detention period exceeding a few days.

Regarding the practice of returning remand prisoners to law enforcement facilities, **reference is made to the recommendation in paragraph 17 above**. As regards administrative detainees,[56] **the CPT reiterates its recommendation that steps be taken throughout Azerbaijan to ensure that they are accommodated in establishments specifically designed for this category of persons deprived of their liberty. The Committee also reiterates its recommendation that measures be taken to ensure, for as long as these two categories of detainees continue to be held in TDCs, that they are offered some activities and enabled to receive visits and make telephone calls.**

45. Information gathered by the delegation in the course of the 2017 ad hoc visit suggests that persons continued to be frequently held in police establishments, in offices or in corridors, for periods of hours, including overnight (sleeping on chairs and sometimes handcuffed to objects such as radiators or to the furniture) and occasionally for up to several days, usually without being offered anything to eat[57] and with only limited access to a toilet.[58] **The CPT calls upon the Azerbaijani authorities to take immediate measures to ensure that offices or corridors are not used as a substitute for proper detention facilities. Urgent steps are also required to ensure that all persons in police custody have ready access to a toilet at all times and are offered food at appropriate times, including at least one full meal every day.**

46. The delegation paid a brief follow-up visit to the SSS Isolator and found some improvements in the conditions of detention: cells had been redecorated and in-cell sanitary annexes modified so as to provide more privacy, TVs had been installed in more cells, exercise yards had been equipped with small shelters against inclement weather, the health-care service had recently been reinforced by a full-time nurse and a psychologist, the two "kartzer" cells had been definitively withdrawn from use, six additional custodial officers had been recruited and the visiting entitlement and access to a telephone had been increased.

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54 See paragraphs 16 and 17 above.
55 Some books and newspapers were available, most of them brought by detainees' families.
56 See paragraph 16 above.
57 Unless relatives brought some food.
58 See also paragraph 18 above, regarding unrecorded detentions.

However, all the other deficiencies had not been addressed, concerning in particular the access to a shower (once a week), the total lack of organised activities, the small size of exercise yards, and the lack of open visits. Consequently, **the Committee must reiterate its recommendations on these subjects made in paragraphs 64, 65 and 70 of the report on the CPT's 2016 periodic visit**.[59]

47. Furthermore, the CPT remains of the view that, due to infrastructural constraints (such as the lack of any space for association and out-of-cell activities, small exercise yards, etc.) and the aforementioned absence of any organised activities, the SSS Isolator should never be used for prolonged detention periods (i.e. in excess of a few weeks).[60] **The Committee reiterates its recommendation that the Azerbaijani authorities ensure that no one is held at the SSS Isolator for periods exceeding a few weeks. If it is necessary to continue a person's detention on remand in excess of this period, he/she should be transferred to a proper pre-trial detention facility.**

More generally, the CPT is still convinced that the current lack of adequate separation between the detention facility and the SSS Investigative Department[61] can only be remedied by transferring the responsibility for the SSS Isolator (which *de facto* operates as a remand prison) to the Ministry of Justice. **The Committee calls upon the Azerbaijani authorities to undertake concrete steps in this direction.**

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59 CPT/Inf (2018) 35.

60 Some of the persons interviewed by the delegation had been there for much longer, up to 9 months.

61 Investigators from the SSS Investigative Department worked on the same floor of the SSS Headquarters, the Isolator only being separated from the Department by two doors on its two opposite ends. It appeared that they had easy, almost unrestricted access to detainees and remand prisoners (bypassing the official reception area) – something that (in addition to the geographical layout) was facilitated by the fact that the Isolator and the Investigative Department belonged to the very same agency.

B. Penitentiary establishments

1. Preliminary remarks

48. As already mentioned in paragraph 4 above, the delegation carried out follow-up visits to pre-trial detention facilities in Baku (Zabrat), Ganja and Shuvalan. Further, for the first time, the delegation visited mixed-regime prisons in Sheki and Nakhchivan.

49. Baku Pre-trial Detention Facility (located in the district of Zabrat) had been visited by the CPT in 2011 and 2016.[62] With an official capacity of 2,500 places, it was accommodating 2,000 prisoners (including 89 women and 22 juveniles) at the time of the 2017 ad hoc visit;[63] among them, 87 sentenced prisoners were employed in maintenance tasks.

Pre-Trial Detention Facility No. 2 in Ganja had been visited by the CPT in 2002, 2011 and 2016.[64] At the time of the 2017 ad hoc visit, the establishment – with an official capacity of 700 places – was accommodating 498 inmates, including 12 women and five juveniles;[65] 59 of the sentenced prisoners had been assigned to work at the establishment.

Pre-Trial Detention Facility No. 3 in Shuvalan had been visited by the CPT in 2006 and 2012.[66] With an official capacity of 1,050 places, at the time of the visit the prison was accommodating 980 adult male inmates, including 85 sentenced prisoners assigned to work at the establishment.

Nakhchivan Prison, located some 20 km from the city of Nakhchivan and in service since 2008, is a mixed-regime penitentiary establishment with an official capacity of 500 places. At the time of the visit, the prison was accommodating 113 inmates (two of them women), including 15 remand prisoners.

Sheki Prison is another relatively recent mixed-regime penitentiary establishment, in service since 2013. With an official capacity of 900 places, at the time of the visit, the prison was accommodating 882 inmates, including 129 remand prisoners (among them, two women and two juveniles).

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62 See, in particular, paragraphs 48 – 49, 53 and 58 of CPT/Inf (2018) 9 and paragraphs 93 – 95, and 103 of CPT/Inf (2018) 35.

63 As compared with 2,713 prisoners at the time of the 2016 visit.

64 See, in particular, paragraphs 88 to 102 of CPT/Inf (2004) 36, https://rm.coe.int/1680684b80; paragraphs 54 – 55 of CPT/Inf (2018) 9, and paragraphs 96 – 97 and 104 of CPT/Inf (2018) 35.

65 As compared with 735 prisoners at the time of the 2016 visit. According to the Director, at one point during the summer of 2017, the prison had accommodated up to 900 prisoners.

66 Regarding the 2006 visit, see in particular paragraphs 68 to 77 of CPT/Inf (2017) 12, https://rm.coe.int/168070c2eb. The establishment was only briefly visited during the 2012 ad hoc visit, exclusively with the purpose of interviewing newly-arrived remand prisoners about their experience while in police custody.

50. During the 2017 ad hoc visit, the CPT's delegation noted some positive results of the Executive Order by the President of the Republic of Azerbaijan "On improvement of operation of the prison system, humanisation of criminal policies and extension of application of alternative sanctions and non-custodial preventive measures",[67] mainly as regards reducing prison overcrowding, although the national as well as international standards of 4 m² of living space per prisoner were still not observed in pre-trial detention facilities visited, especially in Shuvalan and Ganja (see paragraphs 59 and 58 below).

The Committee recommends that the Azerbaijani authorities continue their efforts to maintain the positive trend of reducing the prison population and lowering the number of persons entering pre-trial facilities. Necessary measures must be taken to ensure that the minimum standard of 4 m² of living space per prisoner in multi-occupancy cells (not counting the area taken up by any in-cell toilet facility) is duly respected in all penitentiary establishments, including pre-trial detention facilities.

51. By contrast with the above-mentioned positive development, the delegation was concerned to note that the Azerbaijani authorities provided even less clarity as to the prospects of implementation of their ambitious prison construction programme than during the 2016 visit. The Ministry of Justice's senior representatives were not in a position to communicate to the delegation any precise deadlines for the completion of a number of penitentiary establishments under construction; indeed, it appeared that the construction works had been *de facto* suspended *sine die*.

The CPT reiterates its long-standing recommendation that the Azerbaijani authorities take decisive steps to complete the construction of all the new prisons, in particular in the light of the Committee's findings concerning the conditions of detention in a number of existing establishments.[68]

52. The CPT is also concerned by the lack of any progress in fighting corruption *at Pre-Trial Detention Facility No. 2 in Ganja*. As observed during the visit in 2016, inmates continued to be obliged to pay for a majority of basic services (such as visits, telephone calls, receiving parcels, and receiving food from the prison shop) to which they were entitled by law.

The Committee once again calls upon the Azerbaijani authorities to take decisive action to combat corruption at Pre-Trial Detention Facility No. 2 in Ganja (and, as applicable, in other penitentiary establishments) through prevention, education and the application of appropriate sanctions. In this context, prison staff and officials working with the prison system should receive the clear message that obtaining or demanding advantages from prisoners is illegal and unacceptable and will be duly investigated and punished; this message should be reiterated in an appropriate form, at suitable intervals.

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67 See also paragraph 3 above.

68 See e.g. paragraphs 59 and 58 below.

2. Ill-treatment

53. The delegation heard no allegations of ill-treatment of prisoners by staff at pre-trial detention facilities in Baku (Zabrat) and Shuvalan, and in prisons in Sheki and Nakhchivan.

54. However, at *Pre-Trial Detention Facility No. 2 in Ganja*, as during the 2016 visit,[69] the delegation received a number of allegations of deliberate physical ill-treatment by custodial staff. The ill-treatment alleged consisted mostly of punches, kicks and blows with truncheons.

It has to be added that some inmates interviewed by the delegation stated that with a change of Director,[70] the ill-treatment had become "less sadistic". Indeed, the delegation noted that bars in the prison's underground tunnel to which prisoners used to be handcuffed in a crucifixion position and severely beaten in the past had been dismantled.

According to the inmates, they were now beaten outside, in the yard, or in one of the staff offices for various violations of the regime, e.g. for talking to prisoners from the other cell, or just as a "welcome procedure" upon arrival. Furthermore, many of the inmates said that after the beating the prisoners were taken to the "kartzer" (disciplinary cell), handcuffed to the bed and kept like this for two-three days.

55. In connection with the above-mentioned persistent allegations, the CPT wishes to stress once again that the State is under a duty to provide care for all prisoners, and that custodial officers are at the frontline for providing such care. The authorities must not only undertake a proper investigation into any allegations of ill-treatment in penitentiary establishments, but also institute measures to ensure that all custodial officers and prison managers understand why ill-treatment is unacceptable and unprofessional and that, furthermore, it will result in severe disciplinary sanctions and criminal prosecution.

Effective investigations, capable of leading to the identification and punishment of those responsible for ill-treatment of prisoners, are essential to give practical meaning to the prohibition of torture and inhuman or degrading treatment or punishment in penitentiary establishments. It follows that, whenever there are grounds to believe that an inmate may have been ill-treated, this matter should be brought rapidly to the attention of the relevant investigatory authorities.[71] In order to promote the effectiveness of investigations, it is imperative for a thorough medical examination to be conducted on prisoners following a violent incident or use of force within an establishment. In this context, it is important to recall that all medical examinations of prisoners should be conducted out of the hearing – and unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers.[72]

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69 See paragraph 84 of CPT/Inf (2018) 35.

70 The previous Director had been dismissed in the spring of 2016 following an internal inquiry requested by the CPT's delegation at the end of the 2016 visit, see paragraph 86 of CPT/Inf (2018) 35.

71 See the comments and recommendations in paragraph 28 above, which apply here *mutatis mutandis*. See also paragraph 12 above.

72 See also the recommendation in paragraph 29 above, which applies *mutatis mutandis*.

The Committee once again urges the Azerbaijani authorities to take decisive steps to ensure that there is "zero tolerance" of ill-treatment in penitentiary establishments in the country, taking into consideration the above remarks. It must be reiterated, clearly and frequently, to the custodial staff that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of adequate sanctions commensurate with the gravity of the crime.

56. Furthermore, where it is deemed essential to handcuff a given inmate, the handcuffs should under no circumstances be excessively tight and should be applied only for as long as is strictly necessary. It is axiomatic that handcuffs should never be applied as a punishment. Further, a prisoner should never be handcuffed to fixed objects; in the event of an inmate acting in a highly agitated or violent manner, the person concerned should rather be kept under close supervision in an appropriate setting. In case of agitation brought about by the state of health of a prisoner, prison staff should request medical assistance and follow the instructions of health-care professionals.

The CPT recommends that the Azerbaijani authorities take necessary measures to ensure that these precepts are effectively implemented in practice.

3. Conditions of detention

a. material conditions

57. Material conditions of detention were found to be on the whole acceptable at *Baku Pre-trial Detention Facility (Zabrat)*. Following a significant drop in prisoner population,[73] the establishment was now able to provide every prisoner with his/her own bed and the norm of 4 m² of living space per prisoner was generally respected. The Director informed the delegation that renovation had been carried out in different parts of the establishment and that hot water was now being provided twice a week. However, several prisoners interviewed by the delegation complained that taking a shower was still only possible once a week. **The Committee reiterates its recommendation to ensure that inmates at Baku Pre-trial Detention Facility (Zabrat) have the possibility to take a hot shower at least twice a week.**

58. In the report on 2016 visit, the CPT had concluded that material conditions at *Pre-Trial Detention Facility No. 2 in Ganja* could be seen as amounting to inhuman and degrading treatment.[74] The Committee notes as a positive development that, during the 2017 ad hoc visit, every prisoner in the establishment had his/her own bed. However, virtually all the other CPT's recommendations regarding the improvement of material conditions in the establishment had remained unimplemented.[75] The cells were still seriously overcrowded, dilapidated, dirty, verminous, poorly lit and ventilated.[76]

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73 See paragraph 50 above.
74 See paragraph 85 of CPT/Inf (2018) 35.
75 See paragraph 96 of CPT/Inf (2018) 35.
76 Except for the cells for female inmates which had been recently renovated.

The Committee once again calls upon the Azerbaijani authorities to take all the necessary measures to complete the construction of the new prison in Ganja as a matter of highest priority and to close down the existing establishment.[77] Pending this, urgent steps must be taken to reduce occupancy rates in the existing establishment (so as to meet the minimum standard of 4 m² of living space per prisoner), refurbish the cells, improve lighting and ventilation, and ensure that the prisoner accommodation areas are kept clean.

59. Conditions of detention were also extremely poor at *Pre-trial Detention Facility No. 3 in Shuvalan*, where the cells were severely overcrowded (e.g. 14 to 20 inmates in cells measuring some 20 to 22 m² each), dirty, dilapidated, poorly lit and ventilated.[78] It has to be noted that more than ten years ago, during the visit in 2006, the Azerbaijani authorities informed the Committee about the planned construction of a new pre-trial facility which would replace Pre-trial Detention Facility No. 3 in Shuvalan.[79] **The CPT calls upon the Azerbaijani authorities to take all the necessary measures to build this new pre-trial facility as a matter of highest priority and to close down the current establishment. Pending this, urgent steps must be taken to reduce occupancy rates in the existing establishment (so as to meet the minimum standard of 4 m² of living space per prisoner), refurbish the cells, improve lighting and ventilation, and ensure that the prisoner accommodation areas are kept clean.**

60. *Nakhchivan Prison* consisted of 14 separate fenced blocks, including a block for juveniles,[80] a block for remand prisoners, a block for female prisoners, a "quarantine" block, a disciplinary punishment (isolation) block, a workshop block, a health care unit, a kitchen block, and blocks for sentenced prisoners on different regimes.

Material conditions of detention in the blocks for sentenced prisoners were on the whole satisfactory. The dormitories (containing six, eight or 12 beds each) were sufficiently spacious,[81] clean, suitably furnished, access to natural light was generally adequate and the artificial lighting and ventilation were sufficient. The delegation noted, however, that in-cell toilets in the block for inmates on "prison" regime were not fully partitioned. Furthermore, a number of inmates complained about insufficient heating during the cold season, allegedly due to the shortage of gas supply.

The conditions for remand prisoners were generally acceptable as regards the state of cleanliness, access to natural light, artificial lighting and ventilation. However, the cells were overcrowded[82] and in-cell toilets were not fully partitioned. Furthermore, exercise yards for remand prisoners (and for inmates on "prison" regime) were too small for genuine physical exertion (measuring between 10 and 20 m²), surrounded by high concrete walls, covered by a metal grille, and devoid of any means of rest, sports equipment or shelters against inclement weather.

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77 See also paragraph 51 above.

78 The recent renovation of the medical unit and the disciplinary ("kartzer") cells could not change the delegation's overall impression of the establishment being on the brink of collapse.

79 See paragraph 43 of CPT/Inf (2017) 12, https://rm.coe.int/168070c2eb.

80 Although, reportedly, juvenile prisoners were never accommodated in the establishment.

81 E.g. eight inmates in a dormitory measuring 33 m², and 12 in a dormitory measuring 53 m². The four inmates on "prison" regime were accommodated in four cells, measuring approximately 14 m² each.

82 E.g. a cell accommodating four inmates measured approximately 14 m² (including the sanitary annexe).

The Committee recommends that the Azerbaijani authorities remedy the aforementioned deficiencies at Nakhchivan Prison, and in particular:

- **reduce occupancy rates in the cells for remand prisoners, with a view to offering a minimum of 4 m² of living space per inmate in multiple occupancy cells (not counting the area taken up by any in-cell toilet facility);**

- **provide all in-cell toilets with a full partition, i.e. up to the ceiling;**

- **ensure that remand prisoners and those on "prison" regime have the possibility to take their daily outdoor exercise in conditions which enable them to physically exert themselves. Further, all exercise yards should be equipped with some protection against inclement weather and with a means of rest;**

- **ensure that all prisoner accommodation areas are properly heated during the cold season.**

61. *Sheki Prison*, located in a large complex occupying 14 hectares of land, consisted of a number of multi-purpose buildings, including accommodation blocks for prisoners on different regimes, a quarantine block, a disciplinary punishment (isolation) block, a health-care unit, and a kitchen block.

Material conditions were overall satisfactory – the cells with two, four or six beds were clean, suitably furnished and sufficiently spacious,[83] access to natural light was generally adequate and the artificial lighting and ventilation were sufficient. However, signs of wear-and-tear were already visible in several areas, mainly due to humidity and water damage (because of leaking pipes). **The CPT trusts the Azerbaijani authorities will take measures to address this problem.**

b. regime

62. Only *Nakhchivan and Sheki Prisons* offered some vocational training, to limited numbers of sentenced prisoners.[84] Despite the Committee's repeated previous recommendations, none of the other establishments visited had anything even remotely resembling a regime of activities in place. Work continued to be offered only to a small number of sentenced prisoners assigned to perform various housekeeping and maintenance tasks. Aside from that, the rest of the inmate population were left in an enforced idleness – sentenced prisoners were roaming the territory around the accommodation blocks[85] and remand prisoners were languishing in their cells, up to 23 hours per day.[86]

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83 E.g. two remand prisoners in a cell measuring 10 m² (including a fully partitioned in-cell toilet), and four sentenced prisoners in a cells measuring 18 m² (including a fully partitioned in-cell toilet).

84 Vocational training activities at Nakhchivan Prison included cooking, hairdressing, woodwork, and computer courses; at Sheki Prison, only computer courses were offered to a few prisoners.

85 Inmates on "prison" regime were only allowed one hour of outdoor exercise per day.

86 Those in Sheki and Zabrat could freely accede to small yards (in fact more terraces or balconies) attached to their cells.

The Committee once again calls upon the Azerbaijani authorities to take decisive steps to develop programmes of activities for both sentenced and remand prisoners. The aim should be to ensure that prisoners are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activities of a varied nature (work, education, sport, etc.) tailored to the needs of each category of prisoner (adult remand or sentenced prisoners, inmates serving life sentences, female prisoners, juveniles, etc.).

Reference is also made to the recommendation in paragraph 79 of the report on the 2016 visit, concerning the flawed design and layout features of recently-built penitentiary establishments, including Sheki Prison and Baku Pre-trial Detention Facility (Zabrat), based on the concept of small-group isolation, and the need to seize the opportunity offered by the construction of new prison establishments to definitively do away with the "isolator" philosophy and the cellular confinement regime.

4. Health-care services

63. The health-care team at *Baku Pre-trial Detention Facility (Zabrat)*[87] comprised 12 full-time doctors (including four general practitioners, a dentist, a psychiatrist, a neurologist, a gynaecologist and a pulmonologist) and eight full-time feldshers. A 24-hour cover by health-care staff was secured, including on holidays and Sundays.

The health-care service of *Pre-trial Detention Facility No. 2 in Ganja*[88] employed five full-time doctors (including a general practitioner, a pulmonologist, a dentist and a psychiatrist) and three full-time feldshers. The delegation was informed that a 24-hour cover was provided by having one doctor or a feldsher on 24-hour shift.

At *Pre-trial Detention Facility No. 3 in Shuvalan,*[89] there were five full-time doctors (a general practitioner, a dentist, a psychiatrist, a pulmonologist and a gastroenterologist) and one full-time feldsher (who worked five days a week). Doctors worked from 9 a.m. to 6 p.m. from Monday to Friday; during weekends doctors were on duty according to a schedule.

The health-care team at *Nakhchivan Prison*[90] comprised a full-time general practitioner (present from 9 a.m. to 6 p.m. on weekdays) and four full-time feldshers working on 12-hour shifts throughout the week; a part-time dentist was contracted by the prison.

At *Sheki Prison*,[91] there were seven full-time doctors (including a general practitioner, a dentist, a pulmonologist and a specialist in infectious diseases) and three full-time feldshers (who worked five days a week from 9 a.m. to 6 p.m.); however, there was no health-care coverage during the night and on weekends.

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87 Capacity 2,500, population 2,000.
88 Capacity 700, population 498.
89 Capacity 1,050, population 980.
90 Capacity 500, population 113.
91 Capacity 900, population 882.

64. To sum up, the penitentiary establishments visited employed enough doctors but were (except in Nakhchivan) severely understaffed as regards feldshers (even more so, none of the establishments visited employed nurses), especially at Pre-trial Detention Facility No. 3 in Shuvalan. As for psychiatric care, the CPT must reiterate its view that a doctor qualified in psychiatry should be made available to the health-care service of each penitentiary establishment.

The Committee calls upon the Azerbaijani authorities to substantially increase the number of feldshers and recruit nurses in pre-trial detention facilities in Baku (Zabrat), Ganja, and Shuvalan, and at Sheki Prison.

Further, **a psychiatrist should be recruited at Nakhchivan and Sheki Prisons (and other establishments where such a post is absent or vacant).**

The CPT also reiterates its recommendation that steps be taken to ensure that someone qualified to provide first aid (which should include being trained in the application of CPR and the use of a defibrillator) is always present at every penitentiary establishment in Azerbaijan, including at night and on weekends.

65. Regarding the medical screening of prisoners on admission (and, in this context, the recording of injuries observed on newly-arrived prisoners), as well as medical confidentiality, **reference is made to the comments and recommendations in paragraphs 29 and 30 above.**

66. More generally, in the light of its delegation's findings during the 2017 ad hoc visit (especially those set out in paragraph 29 above, the Committee remains of the view that a transfer of the responsibility for prison health-care services to the Ministry of Health would help address a major deficiency of the current system, namely the lack of professional independence of prison health-care staff. Therefore, **the CPT calls upon the Azerbaijani authorities to take concrete steps to prepare such a transfer of responsibility.**

5. Other issues of relevance to the CPT's mandate

67. As observed during previous visits, the numbers and attendance patterns of custodial staff were grossly inadequate in all the penitentiary establishments visited, except for *Nakhchivan Prison*.[92] For example, at *Baku Pre-trial Detention Facility*, there were at any given time at most approximately 100 custodial staff on duty for the population of over 2,000 prisoners; at *Shuvalan Pre-trial Detention Facility*, there were up to 25 custodial staff per shift for the population of 980 prisoners. **The Committee once again calls upon the Azerbaijani authorities to take urgent steps to significantly increase custodial staffing levels and presence in accommodation areas of penitentiary establishments.**

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92 At the time of the visit, 82 custodial officers were employed at Nakhchivan Prison, accommodating 113 inmates.

Further, no progress had been made to increase the number of female custodial staff. The numbers were small in all the establishments visited but the situation was of particular concern at *Nakhchivan Prison*, where there was only one female custodial officer, working on day shifts on weekdays and half a day on Saturdays. Thus, in the unit for women, there was no female staff at night and for the most part of the weekend. **The CPT reiterates its long-standing recommendation that steps be taken to increase substantially the proportion of female custodial staff. It is crucial that any unit holding female prisoners has female custodial staff in sufficient numbers at all times.**

68. Despite repeated calls from the Committee, a flawed system under which the extent of a sentenced prisoner's contact with the outside world[93] is determined by the (court-imposed) regime under which he/she serves his/her sentence continues to exist in Azerbaijan.

The CPT once again calls upon the Azerbaijani authorities to amend the relevant legislation so that the regimes under which inmates serve their sentences are determined by the prison administration (and not by the sentencing court) and are subjected to periodic review based on individual risk assessment. Further, all prisoners, irrespective of the category and regime, should have the same possibility for contact with the outside world i.e. at least the equivalent of one visit per week.

69. As for the visiting arrangements, the Committee is concerned by the conditions under which short-term visits took place at *Nakhchivan Prison*. The two rooms were both furnished with a single long table in the middle of the room with a number of chairs of both sides. The delegation received a number of complaints that such arrangements made the visits very noisy and allowed for very little privacy. **The CPT invites the Azerbaijani authorities to improve the conditions under which inmates at Nakhchivan Prison receive short-term visits.**

More generally, the Committee is concerned by the fact that short-term visits in the other penitentiary establishments visited continued to routinely take place under closed conditions (through glass or bars, preventing any physical contact between prisoners and their visitors). The CPT accepts that, in certain cases, it may be justified, for security-related reasons, to prevent physical contact between prisoners and their visitors. However, open visits (e.g. with prisoners and their visitors sitting around a table) should be the rule and closed visits the exception, for all legal categories of prisoners. **The CPT calls upon the Azerbaijani authorities to implement its long-standing recommendation that conditions in the visiting facilities of all penitentiary establishments in Azerbaijan be reviewed so as to ensure that, as a rule, short-term visits take place under open conditions.**

70. At the outset of the visit, senior officials from the Ministry of Justice informed the delegation of recent legislative amendments which had abolished disciplinary solitary confinement of juveniles; the Committee welcomes this positive development.

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93 The visit entitlement ranging from two long-term (up to three days) and four short-term (up to four hours) visits per year for prisoners on "prison" regime to four long-term and 48 short-term visits per year for prisoners on general regime.

71. Formal disciplinary punishments (including placements in a disciplinary punishment cell i.e. a "kartzer") were not applied excessively in the establishments visited.[94] However, the delegation's findings suggest that a number of the previous CPT's recommendations related to the disciplinary punishment remained unimplemented. In particular, the delegation observed at *Pre-trial Detention Facility No. 2 in Ganja* and *Nakhchivan Prison* that prison doctors continued to certify that an inmate was fit for punishment prior to a decision on placement in a disciplinary punishment cell.

The Committee has repeatedly stressed that obliging prison doctors to certify that prisoners are fit to undergo punishment is scarcely likely to promote a positive doctor-patient relationship; moreover, it is unethical. Medical personnel should never participate in any part of the decision-making process resulting in any type of solitary confinement, except where the measure is applied for medical reasons. **The CPT calls upon the Azerbaijani authorities to abolish this requirement immediately.**

72. On the other hand, health-care staff should be very attentive to the situation of prisoners placed in disciplinary cells (or any other prisoner held under conditions of solitary confinement). Health-care staff should be informed immediately of every such placement and should visit the prisoner without delay after placement and thereafter on a regular basis, at least once per day, and provide him/her with prompt medical assistance and treatment as required. This, unfortunately, was not yet the case at *Nakhchivan Prison*. **The Committee reiterates its recommendation that steps be taken to ensure that the practice in all penitentiary establishments in Azerbaijan is brought into conformity with the aforementioned precepts.**

73. Furthermore, at *Nakhchivan Prison* the delegation noted that some inmates had been subjected to consecutive placements in a "kartzer" without interruption. **The CPT reiterates its recommendation that the relevant provisions be amended so as to ensure that whenever a prisoner has been placed in a "kartzer" for a total of more than 15 days in relation to two or more offences, there should be an interruption of several days in the disciplinary confinement at the 15-day stage.**

Moreover, given the potentially very damaging effects of solitary confinement, the Committee considers that the maximum period for solitary confinement as a punishment should be no more than 14 days for a given offence, and preferably lower. Any offences committed by a prisoner which might call for more severe sanctions should be dealt with through the criminal justice system.

The CPT recommends that the Azerbaijani authorities take the necessary steps to ensure that this precept is effectively implemented in practice and that the relevant legal provisions are amended accordingly.

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[94] That said, see paragraph 54 above about the improper use of "kartzer" cells at Pre-trial Detention Facility No. 2 in Ganja.

APPENDIX I

List of the establishments visited by the CPT's delegation

Establishments under the authority of the Ministry of Internal Affairs

- Temporary Detention Centre of the Main Department for Combating Organised Crime, Baku
- Narimanov District Police Department and Temporary Detention Centre, Baku
- Nizami District Police Department and Temporary Detention Centre, Baku
- Surakhani District Police Department and Temporary Detention Centre, Baku
- Xezer District Police Department and Temporary Detention Centre, Baku
- Main City Police Department and Temporary Detention Centre of Ganja/Kapaz
- Sheki City Police Station and Temporary Detention Centre
- Nakhchivan Temporary Detention Centre, Böyük Düz

Establishments under the authority of the Ministry of Justice

- Sheki Penitentiary Establishment
- Nakhchivan Mixed-Regime Prison
- Baku Pre-Trial Detention Facility, Zabrat
- Pre-Trial Detention Facility No.2, Ganja
- Pre-Trial Detention Facility No.3, Shuvalan

Establishments under the authority of the State Security Service

- Investigative Isolator and Temporary Detention facility, Baku

APPENDIX II

List of the national authorities, other bodies and non-governmental organisations with which the CPT's delegation held consultations

A. National authorities

Ministry of Justice

Fikrat Mammadov	Minister
Faig Gurbanov	Head of Human Rights and Public Relations Department

Ministry of Internal Affairs

Ramil Usubov	Minister
Oruj Zalov	Deputy Minister
Oktay Karimov	Head of Main Public Security Department
Abdul Zagarli	Head of International Co-operation Department
Ehsan Zahidov	Head of Media Service

Ministry of Justice of Nakhchivan Autonomous Republic

Suliddin Aliyev	Minister

Ministry of Internal Affairs of Nakhchivan Autonomous Republic

Fazil Alakbarov	Minister

Prosecutor General's Office

Nazim Abbasov	Director of the Department for Supervision over Investigation

Office of the Human Rights Commissioner

Elmira Süleymanova	Human Rights Commissioner / Chairperson of the NPM

APPENDIX III

Recommendations set out in paragraphs 23, 25, 26, 27, 31 and 34 of the report on the 2016 visit (CPT/Inf (2018) 35)

Paragraph 23:

The CPT recommends that steps be taken to ensure that the Ministry of Internal Affairs and other relevant structures (e.g. the State Security Service, the State Border Service, the Customs, the armed forces and the Prosecutor's Office) adopt detailed instructions from the most senior level reiterating to all staff, in particular operational officers and investigators, of their obligations in relation to the treatment of persons in their custody. These instructions must be guided inter alia by the general principles enshrined in the European Code of Police Ethics. In particular, it should be made clear to all law enforcement officials that:

i) they will be held accountable for having inflicted, instigated or tolerated any act of torture or other form of ill-treatment, irrespective of the circumstances and including when the ill-treatment is ordered by a superior. Every law enforcement official should have a clear understanding that deliberate physical ill-treatment of detained persons, whatever its severity, is a criminal offence.

ii) they should ensure that any person coming under their responsibility is subjected to a forensic medical examination whenever there are grounds (e.g. visible injuries) to believe that ill-treatment may have occurred;

iii) treating persons in custody in a correct manner and reporting any information indicative of ill-treatment by colleagues to the appropriate authorities is their duty and will be positively recognised.

In this context, the Committee reiterates its recommendation to adopt "whistle-blower" protective measures. This implies the development of a clear reporting line to a distinct authority outside of the directorate or agency concerned as well as a framework for the legal protection of individuals who disclose information on ill-treatment and other malpractice.

The CPT also reiterates its long-standing recommendation that the Azerbaijani authorities deliver to police staff and other law enforcement officials the clear message that abusing their position in order to obtain money from detained persons will be the subject of severe sanctions.

Paragraph 25:

The Committee recommends placing more emphasis on a physical evidence-based approach, notably through initial and in-service training of operational officers and investigators. In particular, training in the seizure, retention, packaging, handling and evaluation of forensic exhibits and continuity issues pertaining thereto should be further developed. Investments should also be made to ensure ready access to evidence collection tools, such as DNA technology and automated fingerprint identification systems.

The Committee also recommends that the Azerbaijani authorities take steps to: i) end the practice of operational officers seeking "voluntary" (self-)incriminating statements prior to questioning by investigators; ii) deliver the clear message that the fabrication of evidence is a serious offence and will be punished accordingly; iii) ensure that interviews are as a rule conducted by no more than two interviewers, in rooms specifically equipped and designed for the purpose, for no more than two hours at a time; iv) ensure an accurate recording of all interviews (including any interviews with potential criminal suspects before a protocol of detention is drawn up), which should be conducted with electronic recording equipment (audio- and video recording); v) implement a system of ongoing monitoring and systematic review of interviewing standards and procedures.

Paragraph 26:

The CPT recommends that it be reiterated to investigators that they have a legal obligation to take relevant action whenever they have reason to believe that a person has been subjected to ill-treatment. Even in the absence of an express allegation of ill-treatment, they should ensure that a forensic medical examination is requested whenever there are other grounds (e.g. visible injuries, a person's general 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 27:

The CPT calls upon the Azerbaijani authorities to remind judges in Azerbaijan, by the highest judicial authorities and/or, if necessary, through the adoption of relevant legal provisions, that they should take appropriate action whenever a person brought before them alleges that he or she has been subjected to ill-treatment by law enforcement officials. Even in the absence of an express allegation of ill-treatment, the judge should ensure that a forensic medical examination is promptly carried out whenever there are other grounds (e.g. visible injuries, a person's general appearance or demeanour) to believe that ill-treatment may have occurred.

The Committee also invites the Azerbaijani authorities to consider introducing specific provisions in the Code of Criminal Procedure on the general duties of judges in the prevention of ill-treatment, in particular at the remand-in-custody stage.

Paragraph 31:

The CPT calls upon the Azerbaijani authorities to take steps to ensure that:

- health-care professionals are as a rule not directly involved in the administrative procedure of handover of custody of detained persons to a temporary detention centre or pre-trial detention facility;

- persons found to display injuries on their admission are not questioned by anyone about the origin of those injuries during the above-mentioned handover procedure;

- the record made by the receiving officer, and any photographs taken, of injuries during the handover-of-custody procedures are forwarded without delay to health-care professionals;

- all persons admitted to temporary detention centres and pre-trial detention facilities are properly interviewed and thoroughly examined by qualified health-care staff as soon as possible, and no later than 24 hours after their admission;

- the same approach is adopted each time a person returns to a temporary detention centre or pre-trial detention facility after having been taken back to the custody of a law enforcement agency for investigative purposes (even for a short period of time);

- all medical examinations (whether they are carried out in temporary detention centres or pre-trial detention facilities) are conducted out of the hearing and – unless the health-care professional concerned expressly requests otherwise in a given case – out of the sight of staff not carrying out health-care duties.

Paragraph 34:

The Committee calls upon the Azerbaijani authorities to take further action to ensure that:

- the record drawn up following the medical examination of a detained person in a temporary detention centre and pre-trial detention facility contains: (i) an account of statements made by the person in question which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment), (ii) a full account of objective medical findings based on a thorough examination; (iii) the health-care professional's observations in the light of i) and ii), indicating the consistency between any statements made and the objective medical findings; this record should take fully into account any attestation of injuries observed upon admission during the procedure of handover of custody;

- the record also contains the results of additional examinations performed, detailed conclusions of specialised consultations and a description of treatment given for injuries and of any further procedures performed;

- the recording of the medical examination in cases of traumatic injuries is made on a special form provided for this purpose, with "body charts" for marking traumatic injuries that will be kept in the medical file of the prisoner. If any photographs are made, they should be filed in the medical record of the inmate concerned. This should take place in addition to the recording of injuries in the special trauma register;

- the results of every examination, including the above-mentioned statements and the health-care professional's conclusions, are made available to the prisoner and his/her lawyer;

- special training is provided to health-care professionals working in pre-trial detention facilities (and, whenever relevant, temporary detention centres). In addition to developing the necessary competence in the documentation and interpretation of injuries as well as ensuring full knowledge of reporting obligations and procedures, that training should cover the technique of interviewing persons who may have been ill-treated;

- law enforcement and custodial staff having no health-care duties only have access to medical information strictly on a need-to-know basis, with any information provided being limited to that necessary to prevent a serious risk for the detained person or other persons. There is no justification for giving staff having no health-care duties access to information concerning the diagnoses made or statements concerning the cause of injuries.