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REPORT

by Thomas Hammarberg
Commissioner for Human Rights of the Council of Europe

Following his visit to Azerbaijan
from 1 to 5 March 2010

Issues reviewed:

Freedom of expression; freedom of association; conduct of law enforcement officials; administration of justice; observations on the visit to the Autonomous Republic of Nakhchivan.

Executive Summary

Commissioner Thomas Hammarberg and his delegation visited Azerbaijan from 1 to 5 March 2010. In the course of the visit, the Commissioner held discussions on the human rights situation, with a particular focus on issues which require pressing attention, with national and local authorities, as well as representatives of civil society.

The present report focuses on the following major issues:

1. Freedom of expression: Over the past years, a number of media workers have been sentenced under defamation provisions, including Eynulla Fatullayev. In a judgment of 22 April 2010, the European Court of Human Rights called upon the Azerbaijani authorities to secure Mr Fatullayev's immediate release. The Commissioner urged the authorities to do so without delay and stressed that all journalists and any other persons imprisoned because of views or opinions expressed should be released immediately. Furthermore, decriminalisation of defamation is an essential step for the protection of freedom of expression, and any reform should follow the standards established by the European Court of Human Rights.

The Commissioner is particularly concerned by reports of threats, harassment, and violence against journalists or human rights activists which have not been investigated. The Commissioner noted that in certain instances resort has been made to various provisions in the Criminal Code - such as incitement to racial, national and religious hatred, hooliganism, tax evasion, drug possession and terrorism - to prosecute journalists. As a result, certain journalists or other persons who have expressed critical views have been targeted. This appeared to be the case in the trial against the two youth activists from Baku, Emin (Milli) Abdullayev and Adnan Hajizadeh.

Recent legislative amendments could have a negative impact on journalists' activities, notably on their right to impart information, and might contravene Article 10 of the European Convention on Human Rights and the related case-law of the European Court of Human Rights.

The Commissioner's attention was drawn to the existence of a "black list of racketeering newspapers", published by the Press Council. This list contains the names of 90 newspapers which allegedly have breached ethical rules of journalism and have been accused of resorting to blackmail. While acknowledging the need to ensure professionalism of journalists, the Commissioner expressed strong reservations about this approach, which entails a risk of partial decisions.

2. Freedom of association: The deficiencies in the practice relating to registration of NGOs in Azerbaijan have been a long-standing source of concern to the Commissioner. Moreover, difficulties have reportedly been faced by some religious communities in obtaining re-registration. The Azerbaijani authorities acknowledged that processing of requests for registration should take place in a prompt and efficient manner. The Commissioner appreciates the willingness of the authorities to take steps to facilitate the registration of NGOs.

Furthermore, the Commissioner expressed concerns about recent legislative changes which could limit the freedom of association in Azerbaijan. The Commissioner cautioned against attempts to control activities of NGOs in an unduly strict manner, and urged the authorities to strengthen their efforts to guarantee freedom of association.

3. Conduct of law enforcement officials: The European Court of Human Rights found violations of Article 3 (prohibition of torture) in three of its judgments relating to Azerbaijan, and there continue to be concerns about ill-treatment by law enforcement officials. The Commissioner was informed about measures taken to punish police officials who have breached the law. The Commissioner invites the authorities to reform the existing system of internal disciplinary investigations of police ill-treatment and introduce an independent police complaint body.

4. Administration of justice: The Commissioner visited the newly-built pre-trial detention centre in Kurdakhani, where he talked to some detainees. The Commissioner was informed of efforts aimed at remedying the excessive resort to pre-trial detention, notably by way of a decision of the Plenum of the Azerbaijani Supreme Court, instructing all courts to consider alternatives to pre-trial detention.

Further reforms should be envisaged to avoid the repetition of violations of the right to a fair trial, found by the European Court of Human Rights in several cases against Azerbaijan. The non-enforcement of domestic court judgments remains an issue of concern. The Commissioner recommends that the authorities take the necessary steps to ensure that final judgments are executed within a reasonable time.

5. Observations on the visit to the Autonomous Republic of Nakhchivan: The visit to the Autonomous Republic of Nakhchivan was the Commissioner's first to this part of Azerbaijan and provided an opportunity for initiating a dialogue on human rights issues with the authorities of Nakhchivan, particularly on the need to remove any obstacles to the free functioning of civil society, which is a crucial element of pluralist democracy.

In the context of a brief visit to the psychiatric hospital in Nakhchivan City, the Commissioner recalled that involuntary placement in psychiatric institutions always requires a court decision, issued on the basis of a medical assessment.

The Commissioner also visited the village of Bananyar. The main purpose of the visit was to discuss the recent incidents in the village, where a clash reportedly occurred between the villagers and the police during the celebration of the Ashura religious ceremony in December 2009. The Commissioner received contradictory information on the events, which generates many unanswered questions. An independent and transparent investigation should be undertaken into ill-treatment allegations.

The Report ends with the Commissioner's conclusions and recommendations.

The Azerbaijani authorities' comments are appended to the Report.

Introduction

1. The Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, visited Azerbaijan from 1 to 5 March 2010. The main aim of the visit was to review certain human rights issues in Azerbaijan, including freedom of expression, situation of non-governmental organisations (NGOs), conduct of law enforcement officials, and the administration of justice. In the course of the visit, the Commissioner held talks in Baku with the authorities, civil society representatives and media professionals. In addition, Commissioner Hammarberg visited for the first time the Autonomous Republic of Nakhchivan.[1]

2. In Baku, the Commissioner met with President Ilham Aliyev, the Minister of Internal Affairs, Ramil Usubov, the Minister of Justice, Fikrat Mammadov, the Deputy Minister for Foreign Affairs, Mahmud Mammad-Guliyev, the Prosecutor General, Zakir Garalov, and the Head of the Azerbaijani delegation to the Parliamentary Assembly of the Council of Europe, Samed Seyidov. He also held discussions with the Ombudsman, Elmira Suleymanova, and representatives of the international community and civil society.

3. In the course of the visit, the Commissioner went to detention centres in the Baku area where he talked with the journalists Ganimat Zahidov and Eynulla Fatullayev, and the two youth activists Emin (Mili) Abdullayev and Adnan Hajizadeh.

4. In the Nakhchivan Autonomous Republic, the Commissioner met the Chairman of the Supreme Council, Vasif Talibov, as well as the Ombudsman, Ulkar Bayramova, and civil society representatives.

5. The Commissioner wishes to thank the Azerbaijani authorities, and in particular the Ministry of Foreign Affairs in Baku and the Permanent Representation of Azerbaijan to the Council of Europe in Strasbourg, for their valuable assistance in organising the visit. He would also like to extend his appreciation to the authorities of the Nakhchivan Autonomous Republic for their welcome and help in facilitating the visit. The Commissioner is also very grateful to Veronika Kotek, Special Representative of the Secretary General of the Council of Europe in Azerbaijan, and the staff in the Council of Europe Office in Baku for their valuable support throughout the visit.

6. The Commissioner engaged in a fruitful dialogue with the authorities, as well as civil society representatives, in order to better understand and address the situation of human rights in Azerbaijan. He wishes to thank all his interlocutors for their availability and willingness to share their knowledge and insights with him. In particular, he would like to underscore his appreciation for the constructive discussions he had in Baku with the Minister of Justice, who conveyed the readiness of the Government of Azerbaijan to take determined steps to implement the Commissioner's recommendations.

7. In the present Report, the Commissioner focuses on the following major issues: Freedom of expression (Section I); Freedom of association (Section II); Conduct of law enforcement officials (Section III); Administration of justice (Section IV); Observations on the visit to the Autonomous Republic of Nakhchivan (Section V); followed by Conclusions and recommendations (Section VI).

[1] During the visit to Azerbaijan, the Commissioner was accompanied by Bojana Urumova, Deputy to the Director of the Commissioner's Office, and Anne Weber, Legal Adviser.

I. Freedom of expression

8. Freedom of expression is one of the priority themes in the Commissioner's work. Ensuring a free, independent and pluralistic media based on freedom of information and expression, within the limitations defined in paragraph 2 of Article 10 of the European Convention on Human Rights, is a core element for any healthy democracy.

1. Defamation

9. In his 2008 report on Azerbaijan,[2] the Commissioner recommended that the decriminalisation of defamation should be considered as a matter of urgency: he encouraged the work on a draft law to modify the legislation on defamation, to take away the possibility of depriving anyone of his or her liberty on account of opinions expressed, and to release those who have been criminally prosecuted under the criminal law on defamation. Regrettably, little progress towards decriminalisation of defamation has been made to date. Articles 147 (defamation) and 148 (insult) of the Criminal Code, which provide respectively up to three years and up to six months of imprisonment, continue to be used to prosecute journalists. According to representatives of civil society, the number of lawsuits initiated against journalists under defamation provisions has actually increased.[3]

10. Over the past years, a number of media workers have been sentenced under these provisions, including Eynulla Fatullayev, editor-in-chief of the (now defunct) newspapers *Gündelik Azerbaycan* and *Realniy Azerbaijan*, who has been imprisoned since April 2007. Initially he was sentenced to two and a half years of imprisonment on defamation charges in relation to an internet posting on the 1992 Khojali massacre in Nagorno-Karabakh. Furthermore, in October 2007, the Grave Crimes Court in Baku sentenced him for terrorism and incitement to racial hatred. Appeals against the April and October 2007 decisions were dismissed by both the Court of Appeal and the Supreme Court. Around the same time, tax evasion charges were filed against Mr Fatullayev. On 29 December 2009, during a search in the prison, 0.22 grams of heroin were found in Mr Fatullayev's clothes and footwear, according to the penitentiary service. A criminal investigation into Mr Fatullayev's alleged drug possession was initiated. These new criminal charges could lead to up to an additional three-year prison sentence. In a statement released on 30 December 2009, the OSCE Representative on Freedom of the Media referred to the allegations of heroin smuggling and possession as "highly improbable".[4] The Commissioner agrees that the new case against Mr Fatullayev lacks credibility. He shares the concerns of many who regard his imprisonment and the new charges against him as an attempt to silence his reporting, which was critical of the Government. Concerns have also been raised about serious threats which reportedly have been made against Mr Fatullayev and his family.

11. During his visit, the Commissioner met with Mr Fatullayev in the pre-trial detention centre in Kurdakhani, near Baku, where he is currently being held. Once again, the Commissioner raised this case with the authorities and called for the release of Mr Fatullayev. Regrettably, Mr Fatullayev was not included in the pardoning Decree issued by the President on the occasion of Novruz.

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[2] CommDH(2008)2, Report by the Commissioner for Human Rights on his visit to Azerbaijan (3-7 September 2007), paragraphs 69 to 73.

[3] 14 in 2005, 29 in 2006, 103 in 2007, 63 in 2008, and 32 in 2009 (according to the annual reports of the Media Rights Institute). See also subsection 2 on violence, harassment and intimidation against journalists and activists.

[4] Statement available at: http://www.osce.org/fom/item_1_42272.html.

12. On 22 April 2010, the European Court of Human Rights (the Court) issued a judgment[5] concluding that there have been two violations of Article 10 of the European Convention on Human Rights (the Convention) in respect of the first two criminal convictions of Eynulla Fatullayev, as well as a violation of Articles 6 §1, as his case was not heard by an independent tribunal, and 6 §2 (violation of the presumption of innocence). Moreover, the Court found it not acceptable that he still remains imprisoned and called upon the Azerbaijani authorities to secure his immediate release, in order to put an end to the violations of Article 10 of the Convention. While the Commissioner is aware that another set of criminal proceedings against Mr Fatullayev is underway and that the Court's judgment is not yet final, he nevertheless is of the opinion that, given the particular circumstances of the case, a full and prompt execution of this judgment would require the immediate release of Eynulla Fatullayev.

13. Other journalists sentenced to imprisonment as a result of defamation charges included the editor-in-chief of *Nota*, Sardar Alibeyli, and the reporter of the same paper, Faramaz Novruzoglu. The two men were sentenced to three months imprisonment on 8 October 2009, and released, respectively, on 8 February 2010 and 8 January 2010.

14. In February 2010, the Yasamal District (first-instance) court in Baku issued a sentence of 18 months of corrective labour and a monetary fine in a defamation case initiated by the Minister of Internal Affairs against Eyyub Karimov, the editor-in-chief of *Femida 007*, over certain articles published in the newspapers *Azadliq* and *Femida 007*. An appeal against the decision of the first-instance court is currently pending. The Nizami District court in Baku rejected in February 2010 on procedural grounds the criminal complaint initiated by Jalal Aliyev, Member of Parliament, where the latter asked that two journalists of the *Yeni Musavat* newspaper be convicted of defamation. The Commissioner is greatly concerned about the continuing resort to criminal proceedings against journalists on grounds of defamation.

15. The Commissioner was pleased, however, to note that a number of journalists were released from prison, in some cases following a Presidential pardon: Mirza Sakit (Sakit Zahidov), a satirist, poet, and reporter of the *Azadlıq* newspaper, Ali Hasanov, editor of the *Ideal* newspaper, and Mushvig Huseynov, a correspondent of the *Bizim Yol* newspaper who was pardoned on 25 December 2009, as well as - more recently - Ganimat Zahidov, whom the Commissioner met in the prison hospital during his visit and who was pardoned on the occasion of Novruz. Regrettably, against the background of other developments, these releases do not appear to reflect a general trend or change of attitude of the authorities when dealing with persons expressing or disseminating information and views which are considered as sensitive, incorrect, offensive or unprofessional by the government.

16. During their discussions with the Commissioner, the Azerbaijani authorities denied that any criminal charges against journalists have ever been applied in connection to their reporting. Furthermore, the view was expressed that defamation provisions serve to deter journalists from making irresponsible statements.

17. However, there have been occasions where the Azerbaijani authorities have taken a stance against the use of imprisonment in defamation cases. For example, in April 2009, President Ilham Aliyev made a statement in which he criticised the sentencing of Asif Marzili, editor-in-chief of the *Tezadlar* newspaper, to a one-year prison term on charges of defaming managers and professors of the Azerbaijan International University. Asif Marzili was released from prison the same month.

18. On 13 October 2009, a draft Law on Defamation was submitted to the Parliament with the aim of decriminalising defamation, following earlier drafts along the same line. As already

[5] Fatullayev v. Azerbaijan, Appl. No. 40984/07, judgment of 22/04/2010. This judgment will become final in the circumstances set out in Article 44 §2 of the Convention.

mentioned, modifying the relevant provisions of the Criminal Code so as to decriminalise defamation is urgently needed. In addition, these modifications are necessary following another judgment[6] issued by the European Court of Human Rights, concerning a breach of the applicants' right to freedom of expression (Article 10 of the Convention) on account of their conviction and sentencing to a five-month prison term for defamation and insult. The Court found that, although the interference with the applicants' right to freedom of expression may have been justified, the criminal sanction imposed was disproportionate to the legitimate aim pursued by the applicants' conviction for defamation and insult. By sentencing the applicants to imprisonment, the domestic courts contravened the principle that the press must be able to perform the role of a public watchdog in a democratic society.

19. In this context, the Court reiterated that, although sentencing is in principle a matter for the national courts, the imposition of a prison sentence for a press offence will be compatible with journalists' freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, particularly where other fundamental rights have been seriously impaired, as, for example, in cases of hate speech or incitement to violence.

20. In the Commissioner's view, decriminalisation of defamation is an essential step for the protection of freedom of expression, and any reform should follow the standards established by the European Court of Human Rights.

2. Violence, harassment and intimidation against journalists and activists

21. The Commissioner has been especially concerned by reports of threats, harassment, and violence against journalists or human rights activists which have not been investigated.[7] Moreover, a number of media professionals expressed concerns that, in view of the forthcoming parliamentary elections in Azerbaijan in 2010, this repression could increase against journalists linked to the opposition.

22. The Commissioner's visit coincided with the commemoration of the five-year anniversary of the death of the journalist Elmar Huseynov, who was killed in Baku on 2 March 2005. Whereas the official investigation into Mr Huseynov's killing has concluded that two suspects who are regarded by the Azerbaijani authorities as the "main actors" of the murder are in hiding in Georgia,[8] various media professionals and non-governmental organisations have expressed the view that this case has not been properly investigated. The Commissioner appeals to the authorities to promptly bring the perpetrators, as well as those who ordered this murder, to justice.

23. The Commissioner was deeply saddened to learn of the death of the 68-year-old Professor Novruzali Mammadov, whose case he had been following closely, both due to concerns about the reasons behind his imprisonment and about his conditions of detention, having regard to his advanced age and poor state of health. Novruzali Mammadov, the editor of the Talysh-language newspaper *Tolishi Sedo*, was charged with high treason and began serving a ten-year prison sentence in February 2007, following court proceedings held behind closed doors.

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[6] Mahmudov and Agazade v. Azerbaijan, Appl. No. 35877/04, judgment of 18/12/2008. See also the decision concerning this case adopted during the 1078th DH meeting on 4 March 2010 by the Ministers' Deputies and inviting "the authorities to bring the relevant provisions of Azerbaijani legislation into conformity with [the Court's] case-law, making use where appropriate of expertise available in the Council of Europe, in particular when reviewing the issue of proportionality of sanctions."

[7] See for instance the report of the Council of Europe Parliamentary Assembly on Respect for media freedom (January 2010).

[8] See the quotes by the Azerbaijani Minister for National Security, Eldar Mahmudov, reported by the Azerbaijani Press Agency APA on 19 March 2010 (http://en.apa.az/news.php?id=118301).

24. The Commissioner wrote to the Azerbaijani authorities to ask for information about the manner in which events leading to his death occurred, including the diagnosis of his condition and the treatment provided to him, as well as the cause of his death. In their written response, the authorities informed the Commissioner that Novruzali Mammadov had been transferred to the prison hospital on 28 July 2009, following the deterioration of his state of health. He was examined by several doctors there and "relevant treatment was prescribed to him in accordance with the diagnosis." On 17 August 2009, his health suddenly deteriorated and in spite of urgent medical intervention he deceased at 6 pm. The cause of death was identified as "acute disorder of cerebral circulation as a result of cerebral thrombosis".

25. Mr Mammadov's wife and son have initiated a lawsuit against the Finance Ministry, the Penitentiary Service, the Chief Medical Office of the Justice Ministry, Prison No. 15 and the prison hospital for the journalist's death. On 27 January 2010, a local court rejected the lawsuit. Having regard, *inter alia*, to the concerns which have been raised that Novruzali Mammadov may not have been given adequate medical attention, the authorities should ensure that an effective and independent investigation is conducted into his death and share information about it with his relatives, in accordance with the case-law of the European Court of Human Rights.[9]

26. The Commissioner has noted that in certain instances resort has been made to various provisions in the Criminal Code, such as incitement to racial, national and religious hatred, hooliganism, tax evasion, drug possession and terrorism, to prosecute journalists, or - more generally - to silence undesired voices. This appeared to be the case in the trial against Ganimat Zahidov, who was sentenced to a four-year prison term for hooliganism, as well as in the criminal proceedings against the two youth activists from Baku, Emin (Milli) Abdullayev and Adnan Hajizadeh, often referred to as "the bloggers", whose situation presents many similarities with the case of Ganimat Zahidov.

27. The Commissioner met Emin Abdullayev, co-founder of the *Alumni Network*, and Adnan Hajizadeh, coordinator of the OL! youth movement, in the Kurdakhani pre-trial detention centre on 4 March 2010. Both are known for having expressed and disseminated critical views about the political situation in Azerbaijan. They presented to the Commissioner their version of what happened during the night of 8 July 2009, indicating that they went to the police to report a physical assault against them which occurred in a Baku restaurant. However, they were then arrested themselves and charged with 'hooliganism' and 'inflicting minor bodily harm'. On 11 November 2009, Mr Abdullayev received a sentence of two and a half years in prison, and Mr Hajizadeh a two-year sentence. Their convictions and sentences were upheld by a judgment of the Baku Appeal Court of 10 March 2010. There has been widespread concern about deficiencies in the investigation and proceedings, including as regards the court's refusal to take into account some photographic and video evidence provided by the two defendants.

28. During the discussion with the Commissioner, the two youth activists stated that they were being treated correctly in the Kurdakhani detention centre, where they shared a cell. However, the Commissioner was concerned to learn that, as a result of the dismissal of their appeal, both persons were transferred in April 2010 to other establishments, Mr Hajizade to

[9] The Court has in several cases stressed that the failure to conduct an independent and effective investigation into deaths which occurred in detention constitutes a violation of the right to life (Article 2 of the Convention). According to the Court, the mere fact that the authorities are informed of a death in custody gave rise *ipso* facto to an obligation under Article 2 to carry out an effective investigation into the circumstances surrounding the death; this involves, where appropriate, an autopsy which provides a complete and accurate record of possible signs of ill-treatment and injury and an objective analysis of clinical findings, including the cause of death (Salman v. Turkey, Appl. No. 21986/93, judgment of 27/06/2000, paragraph 105).

Prison No. 14 in Gizildash, 40 kilometres from Baku, and Mr Abdullayev to Prison No. 5 in Salyan, 120 kilometres from Baku. During his previous visit to Azerbaijan in 2007, the Commissioner had received a number of allegations of inhumane treatment and violent abuses by the staff of Prison No. 14, where the most alarming situation seemed to prevail at that time.[10]

29. The Commissioner would like to recall the well-established case-law of the European Court of Human Rights, which has emphasised that, subject to paragraph 2 of Article 10 of the Convention, freedom of expression is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. It is therefore essential to ensure that there is no selective application of criminal law provisions against journalists or other persons due to the views or opinions expressed by them.

3. Freedom of information

Access to information

30. As pointed out in the Commissioner's 2008 report, access to public information retained by public authorities is an important element of freedom of information and, in turn, of freedom of expression. Journalists will only be able to report on issues of interest to the public if access to such information is not overly limited.

31. The Right to Information Law adopted in Azerbaijan in 2005 is widely regarded as a model law reflecting best practices in line with international standards. The implementation of the law, however, has been assessed by civil society representatives as being far from satisfactory, due to the refusal of authorities to respond to requests for information or inadequate responses, the failure to meet procedural requirements set out in the law and the lack of infrastructure for provision of information. Moreover, the 2005 Law also provides for the appointment of an "Information Ombudsperson" within six months of the enactment of the law. At the time of the visit, no one had been appointed, nor did an appointment appear to be forthcoming. The Commissioner thus regrets to note that the lack of access to information remains a structural problem in Azerbaijan.

Right to impart information

32. In the course of the Commissioner's visit, various interlocutors expressed concerns about recent legislative changes which could have a negative impact on journalists' activities, notably on their right to impart information.

33. On 18 March 2009, Article 32 (right to personal immunity) III (protection of a person's private life) of the Azerbaijani Constitution was amended by referendum. A sentence was added which reads: "No one shall be followed, filmed, photographed, recorded, or subjected to any other similar actions without his or her knowledge or despite his or her disapproval, except when such actions are prescribed by law." The Venice Commission was among those who commented critically on the amendments,[11] stressing that this sentence raises a potential problem in that it provides no exception for recordings at public meetings or meetings of public interest, i.e. a journalist would only be entitled to take a photograph or record a video in such meetings with the previous consent or at least knowledge of the person concerned. The Venice Commission added that as a consequence "Article 32 (III) could be used in practice to exclude unwelcome journalists, especially from the electronic media, from reporting on events

[10] CommDH(2008)2, paragraph 53.
[11] CDL(2009)026, Opinion no. 518/2008, 6 March 2009.

of public interest. Also, if a journalist films or records a politician or official in a situation involving the acceptance of a bribe, it would probably lead to the journalist being prosecuted instead of the politician or official. Investigative journalism with respect to corruption allegations could therefore be seriously hampered."

34. Based on the amended Article 32(III) of the Constitution and making use of his Presidential right to initiate legislative changes, President Ilham Aliyev introduced a proposal to the Parliament, which was adopted shortly before the Commissioner's visit, on 12 February 2010. Article 14 of the Law on Freedom of Information, Article 60 of the Law on Mass Media, Article 21 of the Law on Operation-investigation Activities and Article 4.6 of the Law on Intelligence and Counter-intelligence Activity now all contain an additional sentence similar to the sentence added in Article 32(III) of the Constitution.

35. The Commissioner shares the concerns of the Venice Commission in relation to the amended Article 32(III) of the Constitution. The same concerns apply to the other recent legislative amendments. These provisions may well contravene Article 10 of the Convention and the related case-law of the European Court of Human Rights. The Court has often underlined that the press fulfils an essential function in a democratic society. Although the press must not overstep certain bounds, particularly as regards the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart - in a manner consistent with its obligations and responsibilities - information and ideas on all matters of public interest, in particular on political matters. According to the Court, the mere fact that information material has been obtained illegally, without the consent or knowledge of the person concerned, does not deprive the media's broadcasting this information of the protection afforded by Article 10 of the Convention.[12]

4. Ethical journalism and media diversity

36. During his visit, the Commissioner met with Aflatun Amastov, Chairman of the Press Council, a public institution established in 2003 as a self-regulatory body for the press, and was informed about the existence of a "blacklist of racketeering newspapers", published by the Press Council. This list contains the names of 90 newspapers which allegedly have breached ethical rules of journalism and are considered by the Press Council to have resorted to blackmail. The Chairman of the Press Council explained that the aim of the list was to inform the public so that everybody knows which newspapers are reliable and which are not. A number of newspapers that had been included into the blacklist appealed to the Press Council, alleging that this publication contains assertions which are unfounded and which damage their reputation.

37. While acknowledging the need to ensure professionalism of journalists, the Commissioner expressed strong reservations about this approach, which entails a risk of partial decisions, as the Press Council is the only body which can decide to include or exclude a name from the list. Indeed, there are other, more efficient means to ensure quality journalism, including by adopting a code of ethics which is properly implemented, a self-regulation system, and an open and broad debate about the quality of the media among all actors.

38. As regards media diversity in Azerbaijan, the Commissioner has noted with regret that as of 1 January 2009 the local broadcasts of BBC, Radio Liberty/Radio Free Europe (Radio Azadlıq), Voice of America and Europa Plus radio stations were banned from broadcasting on local FM and MW frequencies by the National Television and Radio Council (NTRC).

[12] Radio Twist S.A. v. Slovakia, Appl. No. 62202/00, judgment of 19/12/2006, paragraph 62.

II. Freedom of association

1. Registration procedure

39. The deficiencies in the practice relating to registration of NGOs in Azerbaijan have been a long-standing source of concern to the Commissioner. During his latest visit, several interlocutors complained about the impossibility to obtain registration of their organisations by the Ministry of Justice. As a consequence, they were unable to acquire the status of a legal entity.

40. On several occasions, the European Court of Human Rights has examined cases related to unfulfilled requests for registration of associations in Azerbaijan.[13] The Court has ruled that the failure by the Ministry of Justice to issue a definitive decision on state registration or to respond within the statutory time-limits to such requests amounted to *de facto* refusals to register the association and found Azerbaijan to be in breach of the right of freedom of association, guaranteed by Article 11 of the European Convention on Human Rights. The Court concluded that there had been no basis in domestic law for such significant delays and did not accept as reasonable the government's excuse that the delays were caused by the alleged heavy workload of the Ministry. The Commissioner notes that the execution of these judgments is still pending before the Council of Europe Committee of Ministers.

41. The domestic law in force at the time in question did not provide automatic registration in the event that the Ministry failed to take timely action, nor did it specify a limit on the number of times the Ministry could return documents without issuing a final decision. A new Law on State Registration and State Register of Legal Entities, which has the aim of remedying these shortcomings, entered into force on 9 January 2004. The law now provides that registration shall be carried out within 40 days and specifies that, in case of a failure to reply within 40 days, the organisation is deemed to be registered by the State.

42. The Commissioner raised the issue of registration during his talks with the Minister of Justice. According to the Minister, 162 NGOs were registered with the Ministry of Justice in 2009, as well as 314 media outlets. Overall, there are 3352 NGOs, 4100 media outlets and 54 political parties registered in Azerbaijan. The Minister underlined that his services are trying to respond to requests for registration in advance of the 40-day time limit foreseen by the law. He indicated that delays in registration are usually due to the necessity to conduct additional inquiries or to correct shortcomings in the documents submitted for completing the registration process. He considered that the modification of the legislation did achieve the goal of resolving the main problems and acknowledged that the processing of requests for registration should take place in a prompt and efficient manner, in line with Article 11 of the European Convention on Human Rights. The Commissioner welcomes the Minister's readiness to take determined steps to facilitate the registration of NGOs.

43. Difficulties faced by some religious communities in obtaining re-registration were also discussed. Following the adoption by the Parliament of amendments to the Law on Freedom of Religion which entered into force in May 2009, all religious communities in Azerbaijan were obliged to re-register with the State Committee for Work with Religious Associations before 1 January 2010. However, it is reportedly the case that fewer than half of the 534 previously-registered religious communities have been able to re-register. The Commissioner has also been informed that some communities have even been denied re-registration. In the Commissioner's view, the obligation for all religious communities to re-register – if they wish to continue to legally exist – appears to be quite superfluous and should in any event be less cumbersome.

[13] Ramazanova and others v. Azerbaijan, Appl. No. 44363/02, judgment of 01/02/2007; Nasibova v. Azerbaijan, Appl. No. 4307/04, judgment of 18/10/2007; Aliyev and others v. Azerbaijan, Appl. No. 28736/05, judgment of 18/12/2008; Ismayilov v. Azerbaijan, Appl. No. 4439/04, judgment of 17/01/2008.

2. Amendments to the law on NGOs

44. A "Council of State support for non-governmental organisations under the President of Republic of Azerbaijan" was established in 2007 to develop a close relationship with NGOs and allocate financial resources from the state budget to support NGO initiatives of public importance. In practice, however, some NGOs continue to complain about harassment by the authorities, such as evictions from their offices, inspections etc. In particular, members of NGOs defending LGBT (lesbian, gay, bisexual, transgender) rights have allegedly been subjected to blackmailing using information obtained through the unlawful tapping of telephones.

45. In June 2009, the Commissioner expressed his concerns that the draft proposal to amend the Law on Non-Governmental Organisations (Public Associations and Funds) will limit the freedom of association in Azerbaijan. The Chairman of the Committee of Ministers, the President of the Parliamentary Assembly, and the Secretary General of the Council of Europe have also been among those who have expressed concerns that the proposed amendments may create serious obstacles for the normal functioning of civil society in Azerbaijan. The most critical amendments, which would have prohibited NGOs from operating nationally if they didn't have branches in at least one-third of Azerbaijan's administrative units or if they were receiving more than half of their funding from abroad, were finally removed from the text. However, some restrictive provisions remained in the amendments adopted by the Parliament on 30 June 2009, such as the provision barring foreign NGOs from operating unless their activities are based on a formal international agreement.

46. Furthermore, a Presidential decree adopted on 21 December 2009 introduced the requirement that all grants received and given by NGOs must be registered by the Ministry of Justice, failing which the organisations would be required to pay a fine. The Minister of Justice explained that this was previously a voluntary declaration and that the number of grants declared increased fourfold in two years (2007-2009), which shows that reporting about grants has never been problematic for the majority of NGOs. According to the Minister, the purpose of this measure was to increase transparency and to fight against money-laundering. Even so, the Commissioner remains concerned by attempts to control activities of NGOs in an unduly strict manner, and urges the authorities to strengthen their efforts to guarantee freedom of association.

III. Conduct of law enforcement officials

47. The Commissioner continues to receive reports indicating that ill-treatment by law enforcement officials persists in Azerbaijan. The European Court of Human Rights found violations of Article 3 (prohibition of torture) in three of its judgments concerning Azerbaijan, notably in a recent case[14] in which violations of Article 3 were found in both its substantive and procedural aspects. The case concerned inhuman and degrading treatment inflicted on the applicant during the dispersal of a demonstration on 16 October 2003, which resulted in the loss of the applicant's sight in one eye (substantive violation of Article 3). The case also concerned the absence of an effective investigation, following the applicant's complaint, leading to the identification and charging of the policemen who struck the applicant (procedural violation of Article 3). The Commissioner discussed the concerns about the

[14] Muradova v. Azerbaijan, Appl. No. 22684/05, judgment of 02/04/2009. See also Mammadov (Jalaloglu) v. Azerbaijan, Appl. No. 34445/04, judgment of 11/01/2007, concerning ill-treatment in police custody, and Hummatov v. Azerbaijan, Appl. No. 9852/03, judgment of 29/11/2007, concerning a prisoner who had been denied adequate medical treatment of the tuberculosis he had contracted in detention.

conduct of law enforcement officials and the need to establish an independent police complaints mechanism during his meetings with the authorities.

48. The Minister of Internal Affairs informed the Commissioner about measures taken to punish police officials who have breached the law. Once a complaint is received, either from an individual directly or through the Ombudsman's Office,[15] it is dealt with by an Internal Investigation Office, within the Ministry of Internal Affairs. Cases with a criminal element are then referred to and investigated by the Prosecutor General, while disciplinary sanctions are decided by the Minister himself. Over the period 2007-2009, more than 800 individual complaints were received by the Ministry of Internal Affairs and 614 police officers were subjected to criminal investigations or disciplinary measures for human rights violations. Of those cases, 16 have been brought to domestic courts (criminal cases), 85 officers have been dismissed from the Ministry, 66 relieved from their position, five downgraded and 442 subjected to other disciplinary measures. Out of the 16 cases which led to the initiation of criminal proceedings, 12 police officers have been sentenced to imprisonment ranging from six months to 13 years and four have been sentenced to pay a fine.

49. The Commissioner commends the practical steps taken by the authorities to improve the conduct of the police and prosecute perpetrators of ill-treatment. At the same time, the Commissioner wishes to underline that the institutional and practical independence of the mechanism for dealing with complaints against the police and the adequacy of its investigation powers are key to the effective determination of these complaints. The Commissioner therefore invites the authorities to reform the existing system of internal disciplinary investigations of police ill-treatment and introduce an independent police complaints body, such as a specialised institution or a standing commission structure. The Commissioner's Opinion concerning Independent and Effective Determination of Complaints against the Police[16] may be a source of inspiration in this regard.

50. The Azerbaijani authorities also informed the Commissioner of various initiatives to enhance the human rights training of law enforcement officials, such as the organisation of seminars on the European Convention on Human Rights. The Commissioner stressed that training should be part of a comprehensive and ongoing strategy to instil a solid foundation of human rights values throughout the law enforcement profession and eliminate any remaining vestiges of a culture of impunity.

51. Prevention of torture and ill-treatment in places of detention is best ensured through regular visits by independent experts, such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). In this connection, the Commissioner welcomes the ratification of the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT) on 28 January 2009. Following this ratification, the Ombudsman of the Republic of Azerbaijan was designated as the national preventive mechanism and continued to visit places of detention regularly. However, the Ombudsman's office is not permitted by its founding documents to monitor all State organs.[17] The Commissioner is also concerned that the Public Committee, established in 2006 to monitor places of detention, and composed of NGOs representatives, is unable to conduct a visit to a prison without prior notification and has not been granted access to pre-trial detention centres. Representatives of NGOs have also indicated that, since April 2009, they have not been able to visit prisoners any more.

[15] The Ombudsman's annual report revealed that in 2009, 16,8% of the complaints received were relating to complaints against the police.
[16] CommDH(2009)4, 12 March 2009.
[17] Concluding observations of the Committee against torture, Azerbaijan, CAT/C/AZE/CO/3, 8 December 2009, paragraph 10.

52. A set of safeguards is also critical to prevent torture and ill-treatment against persons deprived of their liberty: detained people should be granted access to a lawyer and to a doctor at the outset of custody, as well as the possibility to inform a relative or other third-party of their whereabouts. The Commissioner noted that although these safeguards may be provided for in the Azerbaijani legislation, an effective enforcement of these rights should be better ensured.

53. It was also reported that there are very few forensic doctors in Azerbaijan; a person might therefore be examined only months after the alleged ill-treatment has occurred and when marks have disappeared.

54. Finally, the Commissioner's attention was drawn to several cases of ill prisoners. The Commissioner calls upon the authorities to ensure that adequate medical treatment is provided to any person in detention, that conditions of detention are always kept to a decent standard and that prisoners are transferred to the prison hospital when necessary and in a timely manner.

IV. Administration of justice

1. Pre-trial detention

55. The Commissioner went to the newly-built pre-trial detention centre in Kurdakhani,[18] a facility under the authority of the Ministry of Justice which opened in summer 2009. The Commissioner saw in particular some cells, the prison health care service, the kitchen as well as one of the libraries. The detention centre has the capacity to hold 500 prisoners. The prisoners are detained in two-, four- and six-person cells or living units, each with a small balcony or patio and thus a direct access to fresh air and day light; however, the possibility to have outdoor exercise in sufficiently large spaces did not appear to be given. Special rooms have been installed for consultation with lawyers and for family visits. At the time of the visit, only men were detained in Kurdakhani, but a separate wing for women was planned and it was also envisaged to receive juvenile inmates as from June 2010.

56. During his brief visit to Kurdakhani, the Commissioner formed the impression that the overall atmosphere in the establishment appeared to be rather good and that the standards were generally satisfactory. However, the Commissioner highlights the importance of the provision of outdoor physical activities to detainees in a space sufficiently large to permit physical exertion. Moreover, some detainees complained of the fact that that they did not receive letters sent by their relatives and had no possibility to make any phone calls. According to the European Prison Rules, prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations, and to receive visits from these persons.[19] The Commissioner urges the authorities to ensure that there is no restriction on contact with relatives via letter or phone.

57. During his visit, the Commissioner was also informed of an important decision of the Plenum of the Azerbaijani Supreme Court of 3 November 2009 on "the practice of the application of the law by courts when submissions to order the restrictive measures of arrest in respect of

[18] The literal translation from Azerbaijani for this establishment is "Investigative Isolator".

[19] Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (Appendix), adopted by the Committee of Ministers on 11 January 2006, paragraph 24-1. Under paragraph 24-2, "Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact."

the accused are considered", instructing all courts to consider alternatives to detention on remand. Since 2000 and the adoption of the new Criminal Procedure Code of Azerbaijan, the power to order pre-trial detention of a person suspected or accused of a crime has been transferred from the Prosecutor General to judges. According to the Criminal Procedure Code, detention during the pre-trial stage of criminal proceedings may only be ordered by the court in strictly limited circumstances prescribed by law, and only where other restrictive measures are not regarded as adequate. While the provisions of the Code in this regard are in accordance with European standards, judges have in practice ordered detention on remand in the vast majority of criminal proceedings without proper or adequate consideration for the grounds or whether less restrictive measures, such as house arrest or release on bail, would be sufficient. The decision of the Plenum of the Supreme Court aims at changing this practice. The Commissioner welcomes these initial steps taken to remedy the excessive resort to pre-trial detention.

2. Right to a fair trial

58. Proper administration of justice and the right to a fair trial were also raised during the Commissioner's discussions, having regard to the fact that the European Court of Human Rights has found several violations of Article 6 of the Convention in respect of Azerbaijan, in cases relating to lack of access to court, non-respect of the principle of equality of arms or excessive length of certain civil or criminal proceedings. Further reforms should be envisaged to avoid the repetition of such violations, such as the introduction of an effective remedy to complain about the length of judicial proceedings, pursuant to the Recommendation Rec(2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies.

59. The Commissioner welcomes the establishment of an Academy of Justice to improve training of judges, prosecutors and lawyers, but regrets that the problem of lack of independence of the judiciary from the executive branch and its susceptibility to political pressure, which was already pointed out in his 2008 report, has yet to be resolved in Azerbaijan. Some interlocutors indicated that the number of acquittals was quite low and that the courts have the tendency to impose systematically the sentences requested by the prosecutor.

60. Another issue which burdens the Azerbaijani judicial system is the non-enforcement of domestic court judgments. There are currently four cases being supervised by the Council of Europe Committee of Ministers relating to a breach of the applicant's right to a fair trial on account of the failure to enforce or delay in enforcing final judgments, following judgments of the European Court of Human Rights finding Azerbaijan to have violated Article 6 §1, in some cases coupled with Article 1 of Protocol No. 1 to the Convention (protection of property). This problem concerns reinstatement after a wrongful dismissal[20] and the right to use a plot of land,[21] as well as the non-execution or delay in execution of eviction orders from flats occupied by internally displaced persons who have fled the Nagorno-Karabakh region.[22]

61. The Commissioner urges the authorities to ensure that final judgments are executed within a reasonable time and to provide information on effective remedies available to complain and obtain compensation in case of delays in the enforcement of domestic court decisions.

[20] Tarverdiyev v. Azerbaijan, Appl. No. 33343/03, judgment of 26/07/2007, and Efendiyeva v. Azerbaijan, Appl. No. 31556/03, judgment of 25/10/2007.
[21] Humbatov v. Azerbaijan, Appl. No. 13652/06, judgment of 03/12/2009.
[22] Mirzayev v. Azerbaijan, Appl. No. 50187/06, judgment of 03/12/2009. The Court issued recently three more judgments on the same issue: Jafarov v. Azerbaijan, Appl. No. 17276/07, judgment of 11/02/2010; Gulmammadova v. Azerbaijan, Appl. No. 38798/07, judgment of 22 April 2010, and Hasanov v. Azerbaijan, Appl. No. 50757/07, judgment of 22 April 2010. See also, for a similar problem: Akimova v. Azerbaijan, Appl. No. 19853/03, judgment of 27/09/2007.

V. Observations on the visit to the Autonomous Republic of Nakhchivan

1. General remarks

62. The visit to the Autonomous Republic of Nakhchivan was the first visit of the Commissioner and provided an opportunity for initiating a dialogue on human rights issues with the authorities of Nakhchivan.

63. Nakhchivan is "an Autonomous state within the Republic of Azerbaijan", since the International agreements concluded in Moscow and Kars in 1921, with 398,000 inhabitants. It is an exclave separated from the rest of Azerbaijan, bordered by Armenia, Iran and Turkey. It has its own Constitution, adopted by its Supreme Council in 1998 following an opinion of the Venice Commission.[23] Both Azerbaijani national legislation and the Autonomous Republic's own legislation are applicable on the territory of the Autonomous Republic of Nakhchivan. While the Autonomous Republic's powers are determined solely by the Constitution of the Republic of Azerbaijan,[24] relatively important areas are within the exclusive competence of the Nakhchivani Supreme Council. An Ombudsman institution was established in 2006, following the adoption of the Law on the Ombudsman Institution in Nakhchivan by the Supreme Council. This law is based on the corresponding legislation from the Republic of Azerbaijan.

64. Several cases of human rights violations in Nakhchivan have been reported, including attacks on journalists, harassment and arrests of human rights defenders.[25] The Chairman of the Supreme Council underlined that, given its unique geographical situation, security and development issues were a priority, but several projects were also implemented in collaboration with international organisations to improve the human rights situation. According to the Chairman of the Supreme Council, approximately 40 NGOs are registered in Nakhchivan and can freely operate. The Commissioner encourages the Nakhchivani authorities to remove any obstacles to the free functioning of civil society, which is a crucial element of pluralist democracy.

2. Psychiatric hospital

65. Mental health care in Azerbaijan is regulated through the Law on Psychiatric Assistance (LPA) adopted in 2001. This Law provides for a number of rights for persons with mental illness and deals with issues such as informed consent to treatment and procedure for involuntary placement.

66. The Commissioner was shown the psychiatric hospital in Nakhchivan City, consisting of four separate units: two closed wards for persons with mental disorders (one for men, one for women), one closed ward for drug addicts, and one open unit for outpatients. The psychiatric hospital was built in 1962 and originally had the capacity to accommodate 30 to 40 patients, which then increased to 50. The construction of a new building has been started to accommodate a total of 110 to 120 patients. On the day of the visit, further renovation work was being undertaken to provide more space and facilities and was due to be completed within a month. The hospital appeared in general to be in a satisfactory state of repair and cleanliness.

[23] CDL-INF(1997)006, Opinion on the draft Constitution of the Nakhchivan Autonomous Republic (Republic of Azerbaijan), 18 December 1997.
[24] See Chapter VIII of the Constitution.
[25] See for instance the report by the Norwegian Helsinki Committee, “Azerbaijan’s Dark Island: Human rights violations in Nakhchivan”, 2009.

67. At the time of the visit, 76 patients were treated in the hospital, under the supervision of three psychiatrists. Several rooms were shown to the Commissioner, accommodating between four and eight persons, with basic equipment consisting in beds and chairs. Two vacant rooms could be used for seclusion if necessary. The patients had the possibility to go to another room equipped with tables and a television, but otherwise spent their time in their rooms. The Commissioner recommended that patients be offered therapeutic activities as well as outdoor exercise.

68. During his discussion with the Commissioner, the Director of the hospital stated that all patients were formally considered as "voluntary" and had given their written consents. He also stressed that, according to the LPA, an involuntary placement can only take place if three conditions are met, once a written request to admit a person to a psychiatric hospital against his/her will has been made: 1) if the person cannot take care of him or herself, or if his or her condition may deteriorate without treatment; 2) an examination should be undertaken by three psychiatrists, including one from the hospital, who should, within 48 hours from the moment of the initial admission, reach a conclusion on the need for further hospitalisation and, as appropriate, either recommend that the patient be discharged or make a reasoned request to the competent court to confirm the placement in the psychiatric hospital; 3) finally, the court should confirm the placement in a judicial decision, with the possibility of an appeal to a higher court. The LPA also stipulates that a review of hospitalisation of each involuntary patient should be carried out on a regular basis in order to evaluate the necessity to maintain the person in the hospital.

69. In some circumstances, a forensic psychiatric assessment can be requested by an investigator, prosecutor or court with a view to establishing the criminal responsibility of a person. Such an assessment is performed by a commission of psychiatrists, who decide whether a person should be treated in the psychiatric hospital or remain in prison, and generally takes place in the Centre for forensic psychiatric assessment, located on the grounds of the Psychiatric Hospital No. 1 near Baku, which had been visited by the CPT in 2002.[26]

70. Noting that there have been some allegations about forced placement in psychiatric hospitals, without a psychiatric evaluation, in the Autonomous Republic of Nakhchivan, the Commissioner reiterates the CPT recommendations made following the 2008 visit to Azerbaijan[27] that steps be taken to ensure that the provisions of the LPA on involuntary civil hospitalisation are fully implemented in practice. In particular, the Commissioner recalls that involuntary placement in psychiatric institutions always requires a court decision, issued on the basis of a medical assessment.

3. Recent events in Bananyar

71. With a population of 3500 inhabitants, Bananyar is one of the largest villages of the Nakhchivan Autonomous Republic, situated in Julfa district. On 27 and 28 December 2009, when the religious ceremony of Ashura was being observed, a clash reportedly occurred between the villagers and the police, who allegedly arrested several people. Civil society representatives claimed that the police detained several Bananyar residents and that these persons were taken to the police station in a neighbouring village and subjected to

[26] See CPT/Inf (2004)36, 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 24 November to 6 December 2002.

[27] CPT/Inf (2009)28, 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 8 to 12 December 2008.

questioning and ill-treatment. Civil society representatives further claimed that on 5 January 2010, several hundred police officers, including special forces, entered the village, detaining dozens of villagers. On 13 January 2010, two diplomats based in Baku tried to go to Bananyar in order to collect information on the alleged incidents, but were prevented from obtaining access to the village by a crowd of 50-60 people. The crowd reportedly behaved threateningly and abusively towards the diplomats. Subsequently, the Azerbaijani Ministry of Foreign Affairs expressed dissatisfaction regarding the visit to Bananyar by the diplomats, maintaining that their actions did not comply with the 1961 Vienna Convention on Diplomatic Relations.

72. The Commissioner visited the village of Bananyar on 3 March 2010. The main purpose of the visit was to discuss the recent incidents in the village. The Commissioner met the Mayor (Head of the executive authority in the village), Shahbaz Askerov, as well as the Imam (Mullah of local mosque), Ali Askerov. They confirmed that a clash occurred and that the police had to intervene on the occasion of the Ashura religious ceremony, but denied that any unrest had occurred in the village, nor that anyone had been arrested or ill-treated. In their opinion, the police intervention aimed at preventing people participating in the ceremony from injuring themselves with chains and sharp knifes. A whip which had been confiscated during the incident was shown to the Commissioner. This whip was reportedly imported from Iran and used during the religious ceremony. The Mayor stressed that 200 such objects had been collected in recent years in the village. He considered that the police intervention was necessary in the interest of protection of public order and public safety, as at least 1000 inhabitants were taking part in the ceremony.

73. It has also been reported that a young villager set himself on fire on 28 December 2009 and was taken to the hospital in Nakhchivan, then later over the border to Iran for medical treatment. According to the authorities of Nakhchivan, who issued a statement,[28] this person, who was mentally ill, was instigated to drink alcohol and commit illegal actions; eventually, he doused himself in petrol in an attempt to immolate himself. The authorities have also indicated that since the events, the person recovered and returned to the village.

74. Furthermore, allegations have been made that four people died as a result of police violence. The authorities maintained that, while it had indeed been the case that four persons born in Bananyar village died between January and February 2010, there was absolutely no link with the above-mentioned ceremony and police intervention; according to them, one of those persons was not even in Azerbaijan during the events in question. The authorities criticised what they called a “misleading campaign” by some newspapers and NGOs. However, the Ombudsman in Baku mentioned that her office received several complaints relating to these incidents from relatives of villagers residing in Baku, and expressed her determination to look into the matter.

75. The information received by the Commissioner regarding the December 2009-January 2010 events in Bananyar was contradictory. Obviously, there had been a clash and a police intervention. The different versions give rise to a number of questions which have not yet been answered. It is essential that an independent and transparent investigation be undertaken into all allegations of ill-treatment.

[28] Reported by the Azerbaijani Press Agency APA on 8 January 2010: http://en.apa.az/news.php?id=113604.

VI. Conclusions and recommendations

General

76. Azerbaijan has ratified the main human rights treaties, except Protocols No. 12 and No. 13 to the European Convention on Human Rights. The Commissioner recommends the ratification of Protocol No. 12, containing a general prohibition of discrimination, which Azerbaijan has signed already, as well as the signature and ratification of Protocol No. 13, concerning the abolition of the death penalty in all circumstances. The Commissioner also recommends the acceptance of the collective complaints procedure under the European Social Charter.

77. Although some efforts have been made to tackle the issues mentioned in the last report of the Commissioner, notably through the organisation of seminars and training courses on the implementation of the European Convention on Human Rights, the situation is in many respects far from satisfactory. The Commissioner wishes to stress that a good legislative framework and messages or pledges that human rights violations will be addressed are necessary – but not sufficient – steps. Instead, the commitment to upholding fundamental freedoms and other agreed-upon standards should be demonstrated in practice, through concrete, decisive, and sustained actions.

78. The Commissioner encourages the authorities to give immediate attention to the implementation of the following recommendations.

Freedom of expression

79. In a society which values human rights and the rule of law, there is no room for harassment of journalists or others who may express critical opinions through the unjustified or selective resort to criminal proceedings against them. The Commissioner calls upon the Azerbaijani authorities to end such practices of unjustified or selective criminal prosecution and imprisonment of journalists and urges the Parliament to speedily adopt a law in line with international standards, in particular Article 10 of the European Convention on Human Rights, with the purpose of decriminalising defamation. In this context, the Commissioner welcomes and encourages the public discussion under way in Azerbaijan on decriminalisation of defamation.

80. The Commissioner also calls upon the judiciary to take decisions in line with Article 10 of the Convention and the case-law of the European Court of Human Rights and recommends that judges refrain from sentencing journalists based on defamation provisions in the Criminal Code.

81. The authorities should immediately release all journalists and any other persons imprisoned because of views or opinions expressed. The Commissioner reiterates in particular his call for the immediate release of Eynulla Fatullayev, Emin (Milli) Abdullayev and Adnan Hajizadeh.

82. The Commissioner urges the authorities to improve the implementation of the Law on Right to Information, namely by raising awareness of the right to information among the public and local authorities, by setting up an information strategy and action plan, improving infrastructures and providing for sanctions if requests for information have been unjustly denied. The Commissioner reiterates his recommendation to appoint the Information Ombudsperson, as foreseen by the 2005 Law.

83. Noting that the recent amendments introduced in the Constitution and the legislation may be implemented in a way contrary to Article 10 of the Convention, the Commissioner also recommends that these provisions be repealed, in order to avoid hindering the work of the media.

84. The Commissioner urges the authorities to carry out an effective and independent investigation into journalists' reports of threats or violence against them, with a view to ensuring the criminal accountability and punishment of the perpetrators.

85. The Commissioner invites the Press Council to reconsider its practice of using a "blacklist of racketeering newspapers".

86. Noting the importance of media diversity for a functioning democratic society, the Commissioner considers that BBC, Radio Liberty/Radio Free Europe, Voice of America and Europa Plus radio stations should be allowed to resume broadcasting on FM waves.

87. Finally, it will be critical to ensure the ability to freely express opinions and disseminate information in the context of this year's parliamentary elections.

Freedom of association

88. The Commissioner calls upon the authorities not to create obstacles for NGOs wishing to operate in Azerbaijan. As regards registration of NGOs, the Commissioner encourages the Ministry of Justice to fairly consider all registration requests and to deliver its replies in the time prescribed by law. The Commissioner also recommends that requirements and procedures for registration, including re-registration of religious communities, be kept simple in order not to deter associations from registering.

Conduct of law enforcement officials

89. In order to contribute to an environment which is not conducive to an excessive use of force by law enforcement officials, improvements are needed to remedy the shortcomings identified in this report. The Commissioner urges the authorities to guarantee an independent and effective investigation of all allegations of torture and ill-treatment with the imposition of appropriate sanctions. In cases of alleged ill-treatment, the authorities should also secure independent and reliable forensic evidence.

90. As regards persons deprived of their liberty, the CPT reports offer useful guidance on the prevention of ill-treatment and safeguards during detention and should be taken into account by the Parliament in the current discussion on a draft law on detention of suspects or accused. The Commissioner therefore recommends that the authorities authorise the publication of all CPT reports and widely disseminate them among all stakeholders. Only two reports, out of five, have been published so far.

91. The Commissioner reiterates the CPT recommendation that the authorities should send a clear message to law enforcement officials that physical ill-treatment and verbal abuse of persons deprived of their liberty are unacceptable and will be dealt with severely.

Administration of justice

92. The Commissioner encourages the use of alternative measures to detention on remand wherever possible, in line with Recommendation Rec(2006)13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse.

93. Fair trial guarantees should be respected, in accordance with Article 6 of the Convention. In particular, the Commissioner urges the authorities to take prompt measures to ensure a fair hearing in all cases as well as the respect of the principle of equality of arms.

Observations on the visit to the Autonomous Republic of Nakhchivan

94. The Commissioner calls upon the authorities to ensure that no one is involuntarily placed in psychiatric hospitals without a medical assessment. The establishment of an independent body to monitor conditions in psychiatric institutions could contribute to guaranteeing the proper implementation of the Law on Psychiatric Assistance (LPA).

95. In relation to the events that took place in Bananyar, the Commissioner recalls that any allegations of ill-treatment must be effectively investigated, in accordance with the standards for effective investigations contained in the case-law of the European Court of Human Rights.

96. Finally, the Commissioner wishes to stress that he will continue to follow closely the situation in Azerbaijan, including in the Nakhchivan Autonomous Republic, and give his support, in accordance with his mandate as an independent and impartial institution of the Council of Europe, in order to promote the effective implementation of the Council of Europe standards related to human rights protection. The Commissioner stands ready to continue his frank and constructive dialogue with the Azerbaijani authorities to assist them in their efforts to further improve the situation in light of the recommendations made in the present report.

Appendix

Comments of the Azerbaijani authorities on the Report of the visit of the Commissioner for Human Rights of the Council of Europe to Azerbaijan on 1-5 March 2010

General

The Government of Azerbaijan appreciates the work carried our by the Commissioner for Human Rights Mr Thomas Hammarberg during his visit to Azerbaijan on 1-5 March this year and the preparation of this Report and thanks the Commissioner for his observations and recommendations. It would like once again to stress the importance that Azerbaijan attaches to the issue of co-operation with the Office of the Commissioner and expresses its willingness and readiness to continue that co-operation.

At the same time, the Government of Azerbaijan would like to make the following comments and observations regarding several important aspects raised in the Report. It believes that they will help to clarify certain issues and that they will be duly taken into consideration.

Chapter I. Freedom of expression

1. Defamation

Regarding the issue of decriminalisation of defamation raised in **paragraph 9**, it should be underlined that over the passed several years wide public debates have been held on the possibility of removal of Articles 147 and 148 on defamation and insult from the Criminal Code of the Republic of Azerbaijan and the adoption of the "Law on Defamation". Close co-operation has been carried out in this regard with many international organisations, including the Office of the OSCE Representative on the Freedom of Media. In addition, the Press Council of Azerbaijan has declared 2010 the "Year of the Issue of Defamation in Azerbaijan". However, the debates have shown that under current circumstances, when the economic situation of the media remains unsatisfactory and the professionalism of the journalists low, decriminalisation of defamation and the adoption of the "Law on Defamation" would not serve, as it is claimed, to the elimination of existing problems in this area, but on the contrary would rather exacerbate the situation. It is submitted that the freedom of expression should not be understood as the freedom of insult or abuse and it should not violate the rights and freedoms of others. Thus, it is believed that the implementation of the objectives envisaged in the "Concept for the State Support to the Development of Mass Media in Azerbaijan" will help move forward. It should contribute to strengthening of economic independence of the media, raising of professionalism of journalists, fostering of journalist ethics, as well as elimination of other existing problems in this field and creation of conditions for subsequent adoption of the legislation on defamation.

One should also take into consideration the fact that the legislation of a number of countries, including the developed European states, implies a criminal responsibility for defamation. Azerbaijan believes that an equal approach should be applied to all Council of Europe Member States. In the meantime, the government structures in Azerbaijan are warned by the high authorities that they have to be more tolerant towards criticism and restrain from suing journalists, and over the past few years the cases of criminal prosecution of journalists have increasingly become an exception rather than a practice (see below). Numerous media outlets and journalists do indeed freely operate in Azerbaijan and, if necessary, exercise criticism without any restriction or obstacle.

Failure in taking due account of the consistent measures implied by the state in the elimination of problems in the field of media and instead placing a special focus on negative developments, as well as misinterpretation of certain facts negatively affect the balance and partiality of the Report. For example, the Report does not contain references to the measures that have been undertaken during the recent years to improve the legislation and approximate them with international standards, to strengthen the sustainability of the media and their economic independence, as well as the efforts to enhance the professionalism of journalists. Based on information obtained from the civil society, Paragraph 9 claims that "the number of lawsuits initiated against journalists under defamation provisions has actually increased". However, the information provided by the source referred to in the footnote thereto shows that the actual number of such cases in 2009 (32 cases) has indeed decreased in comparison with 2007 (103 cases) and 2008 (63 cases). Thus, the statistics for the last four years show that the majority of cases in this category have been dismissed, and sentencing to imprisonment has been rarely ruled.

Furthermore, it should be noted that despite the fact that there have been 32 citizens complaining of having been insulted or blackmailed by journalists or subjected to dissemination of information of defamatory nature in 2009, the majority of those lawsuits claiming criminal responsibility for journalists have been rejected by the courts. According to independent organisations, plaintiffs were demanding around 3 million AZN from the newspapers and journalists as a compensation for their moral damage incurred as a result of publications. However, in 2009, the courts have ordered the payment of only 20,000 AZN as compensation. In cases where the courts established the facts of insult, blackmailing, defamation or damage to reputation or any other similar violation of the law, they have normally passed judgments demanding only refutation and apology before the plaintiff.

As to the comments made in **paragraph 10** on the "lack of credibility" of E. Fatullayev's new criminal case, it should be mentioned that the court proceedings are currently underway and it is premature to assess or pre-judge the case before the proceedings are completed and the case is adjudicated. Therefore, this allegation is ungrounded. Moreover, we believe that paragraphs 10-12 are, to a certain extent, repetitive referring to the same issue of E. Fatullayev and can therefore be merged and shortened.

Paragraph 12 mentions that the European Court of Human Rights issued a judgement in the case of *Fatullayev* v. *Azerbaijan* on 22 April 2010. This judgement will become final on 22 July 2010 provided that the parties do not appeal to the Grand Chamber of the Court, procedure which is pending.

In **paragraph 14**, it is mentioned that the editor-in-chief of "Femida 007" newspaper Eyyub Karimov was deprived of liberty for 18 months. However, he did not receive any other kind of punishment, as indicated in the Report, except for a correctional labour. He was never fined, as the sanctions implied in Article 147.2 of the Criminal Code applied in this case do not envisage this type of punishment.

2. Violence, harassment and intimidation of journalists and activists

As to the investigation into the death of Elmar Huseynov in March 2005 **(paragraph 22)**, it has to be underlined that the investigation of this case found that the citizens of Georgia Tahir Khubanov and Teymuraz Aliyev had been engaged in committing this crime. International arrest warrant with regard to these two suspects was issued by Interpol in May 2005.

The Azerbaijani side requested the Georgian Prosecutor's Office to provide legal aid and render its assistance in extradition of T. Khubanov and T. Aliyev to Azerbaijan. Notwithstanding six formal requests made by the relevant Azerbaijani bodies, these requests have yet to be met by the Georgian side. The members of the investigation team have visited Georgia for several times in this regard. Investigators have also travelled to Russia and Bulgaria in order to define the origin and the owner of the weapon used in the commission of this crime. More than 600 witnesses have been interrogated, whereas approximately 160 searches and inspections have been carried out in the process of investigation. This testifies the importance that the Azerbaijani authorities attach to the investigation of this case.

As regards **paragraphs 23-25** of the Report, Novruzali Mammadov has been presumed guilty by the Criminal Court for Heavy Crimes of Azerbaijan in accordance with Article 274 of the Criminal Code and sentenced to 10 years' imprisonment. He was convicted for state treason and in no case for his belonging to the national minority or conducting scientific activity. As mentioned in the Report, N. Mammadov was being medically examined and treated on a regular basis. On 17th August 2009 about 6 p.m., despite intensive medical care N. Mammadov died from the acute disorder of cerebral circulation as a result of cerebral thrombosis. This was well testified and documented by the doctors and administration of the medical institution. In addition, all this information was shared with his relatives. The appeal lodged by his wife and son is currently under consideration in the Baku Appeal Court.

As regards **paragraph 26-29** of the Report, the court trial of E. Milli and A. Hajizade was conducted in an objective and impartial manner and through a fair and public hearing within a reasonable time by an independent and impartial court, as prescribed in Article 6

of the European Convention on Human Rights (ECHR). The principle of equality of arms with regard to these two persons has also been duly observed.

The decision of the court of first instance (Sabail district court) was just and lawful and the penalties imposed were proportionate to the nature of the crime. The criminal proceedings against E. Milli and A. Hajizade were related to the concrete criminal acts (i.e. the Criminal Code: Article 221.2.1 – hooliganism by a group of persons, and Article 127.2.3 – intentional serious injury to the health through the act of hooliganism) perpetrated by the persons concerned, and neither the public activities nor public statements by E. Milli and A. Hajizade were the reasons for their criminal prosecution.

During the trials, both E. Milli and A. Hajizade attempted to circumvent the justice and distract the public opinion from the crimes they had committed. They changed their initial statements towards claiming that the incident was related to their public activities and political views. Moreover, they claimed that they had not been provided with necessary medical aid and not been granted a lawyer of their own choice. However, the files of the case show that both detainees were provided with proper and quick medical aid after the incident had happened. Moreover, at the time of their detention they were provided with a lawyer, the member of the Bar Association, later to be substituted with a lawyer of their own choice.

Both trials in first instance and appeal courts were open to the public and were observed by representatives of foreign embassies in Azerbaijan (USA, France, Italy, Norway, Germany, etc.) and international organisations, such as the OSCE and Council of Europe, as well as the Radio stations of “Free Europe/Liberty”, “BBC” and “Voice of America”, and other non-government organisations, media and independent human rights defenders. Their cassation appeal is being currently under consideration in the Supreme Court.

3. Freedom of information

Access to information

Regarding paragraph 31 on the Law on the Right to Information, it should be pointed out that since the adoption of this Law in 2005, important steps have been taken to set up departments of public relations and press services in various government bodies. Works have also been carried out to create internet information resources and ensure posting of information on the websites of the government agencies. Over the passed several years, particular attention has been paid to the enhancement of transparency of government institutions and regulation of the capacity of media’s access to information in accordance with the law. According to the surveys conducted by independent organisations, clear progress has been made in the procession by government agencies of the requests from citizens and media. An Action Plan has been drafted in collaboration with the OSCE Baku Office, which, among others, envisages a series of measures for journalists and relevant departments and press-services in government agencies. Some of these measures envisaged for 2009-2010 have already been implemented. The results of the surveys carried out by independent organisations on the access to information are being regularly

studied, and the relevant institutions are being instructed to duly sort out identified problems.

Right to impart information

As to **paragraph 33** of the Report, it should be stressed that the amendments to Article 32 of the Constitution do not restrict the freedom of expression; on the contrary, they aim at strengthening the right to privacy and constitutional guarantees of the rights and freedoms of citizens. Legislation of Azerbaijan does not contain any limitations on obtaining and dissemination of information, which is not prohibited by law or if such information is of public interest. Paragraph 2 of Article 10 of the ECHR stipulates that the right to receive and impart information carries with it duties and responsibilities that may be subject to formalities, conditions, restrictions or penalties in the interest of the protection of the reputation or rights of citizens and for the prevention of the disclosure of confidential information. In the meantime, paragraph 3 of Article 19 of the International Covenant on Civil and Political Rights attaches particular duties and responsibilities to the right to obtain and impart information. This Article implies that the right to obtain and impart information may be subject to restrictions of imperative nature prescribed by law in the interest of the protection of the reputation or rights of others.

Therefore, the amendments to the Constitution and legislation of Azerbaijan aimed at the protection of rights and freedoms of individuals do not contravene the requirements of the international legal instruments.

4. Ethical journalism and media diversity

As to the functioning of the Press Council **(paragraphs 36-37)**, it has to be underlined that the Press Council was established by the press bodies and journalist organisations in 2003 as a public organisation dealing with the regulation of relations between the society and mass media outlets and, in general as the media's self-regulatory body. The members and the head of the Press Council are elected by the media representatives among the renowned public figures at the Assembly of the Council. The Council is composed of the commissions responsible for interaction with the government institutions and dealing with complaints.

One of the tasks of the Council is to ensure the resolution of the problems between the media outlets and citizens before such issues are brought to the court. The relevant commissions of the Council monitor the compliance with the code of ethics of journalists which was adopted at the First Assembly of Azerbaijani journalists. It also settles the disputes between the media outlets and citizens. The Council regularly issues warning to those media outlets that violate the code of ethics and legislation. It also keeps the public updated on the functioning of the media outlets.

During its functioning, the Press Council succeeded in settlement of multiple disputes between citizens, officials, public figures and media outlets on the basis of mutual consent and played an active role in the prevention of a large number of lawsuits to be

initiated against the mass media. The Press Council is not a state institution and its decisions are not binding. However, the functioning of the Press Council contributes to the strengthening of the responsibility of journalists and their professionalism.

The following needs to be stressed with regard to **paragraphs 38 and 86** on the termination of broadcasting of foreign Radio stations in Azerbaijan:

Since its foundation in 2003, the National Television and Radio Council (NTRC) has several times raised the issue of non-conformity of the functioning of foreign TV and Radio broadcasters with the requirements of the legislation of Azerbaijan. The Council pursued consistent policy of stage-by-stage termination of the broadcasting of foreign companies in national frequencies. At the first stage the broadcasting of Russian "ORT", "RTR" and "Radio Russia", Turkish "Kanal D", "Samanyolu" and French "Radio France" were terminated, to be followed by special temporary 1 year license granted to "Radio Liberty/Free Europe", "Voice of America" and "BBC" Radio channels to broadcast on FM frequencies. Upon the completion of the license term of those broadcasters NTRC duly informed latter that their broadcasting in local frequencies runs contrary to the provisions of the legislation, thus their further broadcasting will be terminated.

In accordance with the Law of the Republic of Azerbaijan on Television and Radio Broadcasting only local TV and Radio broadcasters are allowed to function on local frequencies. Article 6 of the Law stipulates that the TV and Radio broadcasting in the Republic of Azerbaijan is being carried out by the state, municipal, private and public broadcasters which in their turn form the very basis of the national broadcasting system. State broadcaster is normally founded by the relevant order of the President of the Republic of Azerbaijan. Municipal broadcaster could be founded by the local authority in accordance with the provisions of the Azerbaijani legislation. Public broadcaster could also be set up in conformity with legislation and financed through subscriptions, whereas private broadcaster could be founded either by the citizens of Azerbaijan residing permanently in Azerbaijan or by the legal entities whose authorized capital belong to Azerbaijani citizens residing in the country. Meanwhile, Article 18.1.4 of the said Law maintains that the applicant's papers' are returned should the authorized capital of the founder contain the share of the foreign legal or physical person. Proceeding from the above-mentioned provisions of the Law, we should underline that the broadcasting of the foreign companies on national frequencies contradicts the provisions of the national legislation. Moreover, this is also in contradiction with the international standards and practice. Notably, none of the CoE Member States authorises foreign companies to broadcast on its national frequency.

On 30 December 2008, at its meeting basing on the provisions of the Law, NTRC passed a decision that recommended relevant government institutions not to extend the special license term to the foreign companies broadcasting on national frequencies ("Free Europe/Liberty", "Voice of America" and "BBC" Radio channels). Thus, their FM broadcasting was terminated as of 1 January 2009, but broadcasting through other technical means (internet, satellite, cable network, etc.) remained available and

unrestricted. Currently, the broadcasting of those channels continues on short-wave frequencies (broadcasting of "Radio Free Europe/Radio Liberty" has never been terminated on the territory of Azerbaijan, since it continues its broadcasting on short-wave frequencies). NTRC is currently taking all necessary measures to ensure the broadcasting of foreign companies through internet, satellite, cable and other networks.

As to the "Europa Plus Baku" Radio station, the special license granted to it was terminated following the court decision which found that the Radio station had violated the provisions of the Law on "Television and Radio Broadcasting".

Chapter II. Freedom of association

1. Registration procedure

The following needs to be clarified regarding the registration of NGOs' **(paragraphs 39-42)**. According to Article 8.2 of the Law on the Registration of Legal Entities and State Register, within 30 days upon receipt of the application and other relevant supporting documents which are required for the registration of non-government organisations, the Ministry of Justice examines their conformity with the Constitution and legislation of the Republic of Azerbaijan and provides the applicant with reply. If within that period the applicant does not receive a response on rejection of its registration from the Ministry, the entity is considered being registered. In that case, the Ministry should provide that legal entity with a certificate of registration no later than 10 days after the expiry of the period of examination. In exceptional cases, if there is a need for extra verification of documents, the term of examination could be extended for another 30-day period. The founders are notified in written about such an extension.

The Ministry of Justice carefully complies with the rule requiring the consideration of registration documents of non-government organisations within the time limits prescribed by law, and no violation of the time limit has lately been recorded. Registration of non-government organisations is declined only in accordance with Article 11.3 of the Law on the Registration of Legal Entities and State Register. The founders of non-government organisations are provided with substantial answers on the reasons for such a decision.

As regards the judgements of the European Court of Human Rights in the cases of *Ramazanova and others*, and *Nasibova*, and *Ismayilov* v. *Azerbaijan*, as well as *Aliyev and others* v. *Azerbaijan* the first two have been executed.

As to the remarks in **paragraph 43**, over the passed 12 months substantial amendments have been introduced to the legislation regulating the relations between state and religion, as well as the issues pertaining to the registration of religious communities. The amendments to the Law of the Republic of Azerbaijan on Freedom of Religion stipulated that before it entered into force, the charters and other founding documents of the religious communities had to be brought in line with the requirements of the Law and all religious communities in Azerbaijan had to submit their documents in order to re-register with the State Committee for Work with Religious Associations before 1 January 2010.

Moreover, registration (re-registration) of all religious communities wishing to operate was necessary to ensure transparency of the functioning of religious communities and to eliminate potential disorder in this field. There had been a number of religious communities operating without state registration.

The amendments introduced to the Law, enabled to implement wide range public awareness raising measures on registration procedures through electronic and printed media and to conduct in collaboration with local authorities trainings and workshops for religious communities in all regions of Azerbaijan. As a result, during the elapsed period since the amendments to the Law, the State Committee has registered 395 religious communities out of 782 which submitted their documents to the Committee. The procedures for registration of religious communities have therefore not been cumbersome or superfluous as indicated in the Report.

The State Committee's refusal to register the religious communities has in all circumstances been in accordance with the provisions of the law. Those communities which have been declined in registration could re-submit their relevant documents to the State Committee once they have addressed the shortcomings identified in their papers. The re-registration of those communities cannot be ruled out.

2. Amendments to the law on NGOs

As to **paragraph 45**, which states that "some restrictive provisions remained in the amendments adopted by the Parliament on 30 June 2009, such as the provision barring foreign NGOs from operating unless their activities are based on a formal international agreement", it should be underlined that the Law on the Amendments to Some Legislative Acts of the Republic of Azerbaijan did not aim at the restriction of the free functioning of non-government organisations, but on the contrary, they were directed at creating favourable conditions for their functioning, state registration, administration and regulation of relations with government institutions.

As the Report indicates, according to the amendments to the Law, registration of the branches and representations of foreign non-government organisations is being carried out on the basis of agreements signed with those organisations. This norm aims at facilitating the broader opportunities for operation of those organisations in Azerbaijan and ensuring additional legal guarantees for their co-operation with government agencies, local authorities, media and other organisations.

Regarding **paragraph 46**, it needs to be stressed that the registration of the grant agreements is being carried out by the Ministry of Justice in a simple manner in accordance with the "Rules Pertaining to Registration of Agreements on the Receipt (and Giving) of Grants" endorsed by the Presidential Decree of 12 December, 2004. No obstacles have been created for non-government organisations in this field.

An NGO receiving a grant shall apply to the Ministry of Justice by submitting relevant documents together with a certified copy of the agreement within the month, at the latest, since the signing of such an agreement. Within the following week, the Ministry of Justice shall register the agreement and notify the non-government organisation concerned. No NGO has so far been rejected in registration of a grant agreement. The works are underway to post the information on registered grant agreements on the website of the Ministry of Justice.

Meanwhile, in accordance with the Law on the Prevention of Money Laundering and Financing of Terrorism adopted in 2009, non-government organisations, which are engaged, as part of their functioning, in receiving, collecting, giving or transferring funds, have been defined as parties subject to monitoring. Thus, the legislation contains a provision in accordance with which non-government organisations should provide their financial reports to the Ministry of Finances. All these efforts are aimed at ensuring transparency in the respective field and serve to prevent legalisation of illegally acquired funds.

As to the claims of intimidation of LGBT community **(paragraph 44)**, no such cases have been identified. No NGO dealing with these issues has been subjected to mistreatment. There is no information on the LGBT rights protecting NGO being harassed and no complaint of blackmailing or anything similar is received by the authorities.

Chapter III. Conduct of law enforcement officials

As to the comments reflected in **paragraphs 48, 49, 89** and **91**, there is a need to highlight that the Internal Investigation Unit, which is an independent structure within the Ministry of Interior, conducts prompt, free and impartial investigation into the allegations of police torture, inhuman or degrading treatment and the violations of human rights and freedoms by citizens and NGOs.

In cases when such investigations reveal the violation of the Law on Police and the code of ethics of police and other normative-legal acts, serious administrative measures are taken *vis-à-vis* police officers and those responsible. If the committed act constitutes a criminal element, the case is forwarded to the relevant investigative bodies.

In addition to the points raised in **paragraph 50**, it has to be added that around 1,400 Ministry of Interior's officers have attended various seminars, conferences and training courses organised by the OSCE, CoE, EU, as well as NGOs in 2009. Upon the initiative of the OSCE Baku Office, a number of seminars have been organised within the project of community policing for city-district police bodies in different regions of the country.

As to **paragraph 51**, it has to be mentioned that according to Article 12 of the Law of the Republic of Azerbaijan on Human Rights Commissioner (Ombudsperson), the Ombudsperson, in the process of investigation of complaints on human rights violations, can pay unhindered visits without prior notification to the state institutions and local

authorities, military units, penitentiary institutions, detention facilities and meet and talk privately to the detainees, as well as familiarise himself/herself with the documents certifying legality of detention of such persons. Moreover, as the same paragraph indicates, on the basis of the Presidential Decree, the Office of the Ombudsperson serves as the national preventive mechanism under the Optional Protocol to the UN Convention against Torture. The Group of the "National Prevention Mechanism" set up by the initiative of the Ombudsperson pays regular visits to detention facilities. Besides this, observers from government and non-government institutions are provided with opportunities to monitor detention facilities freely and without any obstacles.

As to issue of prior notification, since its establishment in 2006, all members of the Public Committee have been provided with passes signed by the Minister of Justice which give them unlimited access to places of detention. At the same time, for security reasons the Committee has agreed to inform the penitentiary institution right before visiting it. Since 2009, the Public Committee has paid more than 70 visits to 22 penitentiary institutions. Overall, since its establishment in 2006, the Committee has made roughly 250 visits.

However, it should be noted that the legislation does not provide for monitoring by any public committee of investigation isolators (pre-trial detention centres). Nevertheless, taking due account of suggestions from international organisations including the OSCE Baku Office, a provision stipulating public control of investigation isolators was included in the Draft Law on Ensuring the Rights and Freedoms of Detained Suspects or Accused, which has already passed the second reading in the Parliament.

Moreover, in 2009 the ICRC visited 20 institutions, OSCE Baku Office visited 12 institutions, and the Chairman of Azerbaijani Committee against Torture E. Behbudov visited 25 institutions (he also took part in all visits by OSCE Baku Office). During those visits, the experts monitored the detention conditions of convicts and accused persons and interviewed them in private.

Regarding the comments made in **paragraphs 52-54**, according to the Azerbaijani legislation, at the request of a newly detained person, his/her family, friends and other relevant persons should be immediately informed about his/her detention. If a detainee does not so wish, the administration of that institution cannot on its own inform those persons, except for cases when the detainee is aged, in an abnormal psychical state, etc. This provision of the law is observed strictly and so far no violation has been registered.

Moreover, when persons are admitted to the investigation isolators they undergo preliminary medical examination which is registered in their medical book. Their right for medical care is also ensured throughout their detention. If a detainee complains about ill-treatment, then any injury resulted from that ill-treatment is duly recorded during the preliminary medical examination and the relevant authorities are informed of the case. The accused persons in investigation isolators and inmates in correctional institutions can also receive outpatient medical care in the medical-sanitary units of those institutions. Those accused persons or inmates who need stationary medical care can be transferred to

specialised or ordinary medical institutions upon the instructions by the General Medical Department of the Ministry of Justice. Only in 2009, the General Medical Department ensured extensive medical examination of 8,818 prisoners. More than 200 prisoners with a severe form of tuberculosis were treated in the framework of DOTS-plus programme. As a result of such measures, the number of fatal cases among inmates, including those of tuberculosis has decreased dramatically dropping from 53 in 2008 to 26 in 2009. In comparison with 1995, the slump is 32-fold.

It has to be pointed out that 20 out of 65 police detention facilities have been reconstructed to meet the international standards, whereas another 39 of such facilities have been renovated. New administrative buildings in line with the international standards have been inaugurated, for instance the Baku Head Police Administrative Detention facility and temporary detention centre for juveniles. 54 detention centres have been equipped with alarm and security systems, whereas 48 of them have also been provided with video camera devises in order to strengthen surveillance over the detainees and staff. All persons brought to detention facilities are provided with a medical check-up before being placed in cameras. Those, whose stay in such facilities is deemed inappropriate due to their health conditions, are sent to treatment centres in health institutions.

Despite all this, issues pertaining to ensuring detainee access to a lawyer and if necessary to medical treatment at the outset of custody are further strengthened in the draft Law on Ensuring the Rights and Freedoms of Detained Suspects or Accused.

As regards **paragraph 55**, it has to be mentioned that the capacity of the Baku Investigation Isolator situated in Zabrat is actually 2,500, as opposed to 500 alleged in the Report. A fully equipped gym was put at the disposal of the inmates. It is envisaged that all penitentiary institutions which are being built or planned to be constructed will have such gyms.

Chapter IV. Administration of justice

1. Pre-trail detention

As regards **paragraph 56,** once the detained persons are admitted to the investigation isolators their right for private meeting with their lawyers is ensured without any limitation as to the number and duration of such meetings. According to the law, by the consent of the authority which carries out criminal investigation the detained persons can meet and correspond with their relatives if they so wish, and there is no restriction to the enjoyment of this right. However, the legislation does not provide for making telephone calls by the detained persons except for calls to inform their relatives or employers or other relevant persons of the fact and place of detention at the very moment of being admitted to the detention centre.

2. Right to a fair trial

As regards **paragraphs 58** and **59,** the Azerbaijani Government takes measures to improve the judiciary. As a result, a number of laws which ensure the increase in the efficiency of the administration of justice and further strengthening of the independence of the judiciary have been adopted in consultation with the Council of Europe experts.

There is the Judicial Legal Council functioning in Azerbaijan, which has 15 members, 9 of whom are judges and the rest are the representatives of the Azerbaijani President, Parliament, General Prosecutor's Office and the Bar. It has prerogative authority over assessment and promotion of judges, and making them accountable for disciplinary violations. The principal objective of this institution is to serve as a bridge between the executive and judiciary branches and enhance the independence of the latter. New appellate courts have been established, thus solving the workload of the previously single court of appeal. Furthermore, the Law on Administrative Execution as well as the Code of Administrative Procedure were adopted, and it is envisaged that administrative courts will start functioning in 2011. After being consulted with the Council of Europe experts, revised rules of selection of judges have been adopted by the Judicial Legal Council. A new independent institution – the Committee of Selection of Judges – was established. The selection of judges includes such rounds as test exams and interviews as well as long-term training courses and internship.

Thus, it is obvious that all measures recently taken by the Government of Azerbaijan are aimed at strengthening of the independence of the judiciary and improvement of the protection of human rights.

As regards **paragraph 60,** it has to be mentioned that the judgments of the European Court of Human Rights in the cases of *Tarvediyev*, *Efendiyev* and *Mirzayev* v. *Azerbaijan* have been executed by the Azerbaijani authorities. As regards the judgment of the Court in the case of *Humbatov* v. *Azerbaijan*, its execution is still pending. The Baku City Executive Authority has offered Mr Humbatov a redress in the form of a new plot of land of the same value, but the applicant has yet to respond.

Chapter V. Observations on the visit to the Autonomous Republic of Nakhchivan

1. General remarks

As to **paragraphs 64, 70-75, 94 and 95**, it should be underlined that on 28 December 2009, the resident of Bananyar village of Julfa district Y. Aliyev attempted a suicide which was prevented by the police officers who were on duty nearby. The investigation, which was launched into this case, revealed that Y.Aliyev and some of his relatives had been suffering from mental disorders. Y.Aliyev personally had been registered with the Psychiatric hospital in Nakhchivan.

A group of villagers headed by Rza Nuriyev sought to force Y.Aliyev, by abusing latter's mental status, to commit some illegal activities in the territory of the village. On 28

December, during the religious ceremony held in the village, Y.Aliyev who was drunk at the time was urging the representative of local authorities to meet his demands or otherwise he would commit a suicide by setting himself on fire. YAliyev was eventually stopped from committing a suicide by timely intervention of police and local residents. Afterwards, he was taken to the hospital where he continued to receive his treatment and later was released.

Those who instigated Y.Aliyev to a suicide attempt were later summoned to the Ministry of Interior of Nakhchivan, but they refused to come voluntarily. Subsequently, they were compulsorily taken to the police station for interrogation in accordance with the Criminal Code of Azerbaijan. It has to be stressed that these persons have confessed their committing illegal acts and asked for apology. However, their relatives who reside in Baku gave false allegations on “mass arrests, beating of women and men and massive police intervention into the village of Bananyar”. It should be added that no limitations were placed on the religious ceremonies in Bananyar and on the territory of Nakchivan in general, and the citizens exercise their Constitutional rights and freedoms, including the right to privacy, freedom of assembly and conscience without any restrictions.