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AZERBAIJAN

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
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Political context

The human rights situation in Azerbaijan did not improve in 2009. The democratic functioning of the country remained an illusion, and attacks on freedom of expression increased. The March 18, 2009 referendum on several amendments to the Constitution, the preparation and conduct of which were seriously challenged, permanently lifted the ban for a president to be re-elected for a third time, opening the possibility for Mr. Ilham Alyev to remain in power for life¹. The local elections on December 23, 2009 also demonstrated the limits of democratic progress in the country. According to the Institute for Peace and Democracy (IDP), as of December 2, 2009, only 8% of candidates in local elections were members of the opposition². Civil society explained the excessive representation of the Government party “United Azerbaijan” by the obstacles the other candidates faced in officially filing their candidacy³. Similarly, the Election Monitoring and Democracy Studies Centre (EMDSC) recorded serious breaches of the electoral process⁴. The Council of Europe meanwhile has called for a revival of multiparty democracy in Azerbaijan⁵.

Furthermore, in 2009, independent journalists again paid the price for their freedom of speech, with assaults and physical intimidation against them

1/ The European Commission for Democracy, through the Peace Council of Europe (Venice Commission), expressed concern about this amendment that is very negative in terms of democratic practice, although it also noted significant improvements (such as measures conducive to greater transparency in governance and the introduction of a popular legislative initiative). The amendment to Article 32 also raised concerns from the Council of Europe and civil society in that it could restrict the right to freedom of expression and information in framing the law regarding journalists photographing, filming or recording of public events on behalf of the protection of privacy and family. See Opinion on the draft amendment to the Constitution of the Republic of Azerbaijan, adopted by the Venice Commission at its 78th plenary session, March 19, 2009.

2/ See Conclusions of the discussion on human rights in Azerbaijan led by the IDP on December 2, 2009.

3/ See Statement from the news information agency *Turan*, December 17, 2009.

4/ See Faik Medjid, *CEM&TD: Azerbaijan has no conditions for democratic elections*, *Kavkaz Uzel* (*Caucasian Knot*), November 27, 2009.

5/ The international delegation of the Congress of Local and Regional Authorities of the Council of Europe, which observed the local elections on December 23, 2009, regretted the absence of a pluralistic political landscape in Azerbaijan and pointed to irregularities in the polling stations. It particularly regretted the lack of independence in the media coverage of the elections, which focused on the majority party as well as incidents surrounding the counting of turnout in polling stations, the role and origin of local observers, the readability of ballots, and the consistency of the vote count.

constantly increasing⁶. On October 8, 2009, Mr. Ravil Mammadov, owner of the Internet website *Poligon*, was abducted by plainclothes police officers after posting on the site, on October 6, 2009, an article on dismissals in the Ministry of Interior⁷. The fact that defamation is considered an offence punishable by imprisonment in Azerbaijan is also a concern for independent journalists, as well as for human rights defenders, and hampers their freedom of expression⁸. Other journalists were also prosecuted and convicted for “hooliganism”, such as bloggers Mr. Adnan Hajizade and Mr. Emin Milli Abdullayev. The situation for local media, especially in regions where the presence of civil society is very limited, is also problematic. In the southern Azerbaijan, those responsible for distributing free copies of the newspaper *Djanur Khiabiarliar*⁹ were subjected to acts of intimidation by regional authorities. Moreover, amendments to the Media Act that were adopted on March 6, 2009 only increased the pressure on journalists since they provide in particular for the possibility of suspending a publication for “abuse of power,” with the use of anonymous sources considered to be such an abuse.

Finally, despite the ratification by Azerbaijan of the Optional Protocol to the UN Convention Against Torture on January 28, 2009 and the adoption of a presidential decree on January 13, 2009 designating the Azerbaijani Ombudsman as the national mechanism for the prevention of torture, torture remains a known practice in the country¹⁰. In addition, although the Government specifically committed to prosecuting officials and law enforcement officers responsible for acts of torture when Azerbaijan joined the Council of Europe in 2001, so far not one officer has been criminally prosecuted¹¹.

Control over NGOs

As human rights organisations were often seen as opponents of the regime and potential enemies, the Government of Azerbaijan continued

6 / According to IDP, 150 acts of violence were committed against journalists during the first five years of the presidency of Mr. Ilham Aliyev. Of these 150 cases, only two were investigated and those responsible prosecuted and convicted.

7 / An employee of the Institute for Reporters' Freedom and Security (IRFS), Mr. Elnur Mammadov, who was filming the abduction, was also arrested. Both were released in the evening of the same day.

8 / The offence of defamation is punishable by three years' imprisonment under Article 147 of the Criminal Code.

9 / This newspaper is known for its sharp criticism and in-depth analysis of problems in the region.

10 / See UN Committee Against Torture in Azerbaijan, *Concluding Observations of the Committee Against Torture, Azerbaijan*, UN Document CAT/C/AZE/CO/3, December 8, 2009. According to the Committee, 110 people were tortured in 2009; six died following acts of torture. The practice of torture in Azerbaijan also raised criticism from the UN parting the framework of the Universal Periodic Review on February 4, 2009, and during the 96th session of the UN Human Rights Committee held from July 13 to 31, 2009.

11 / See IDP.

to deploy various strategies to impede the activities of these organisations. In June 2009, the Azerbaijani Parliament considered amendments to the Law on NGOs, Public Associations and Foundations. Denounced by civil society, these amendments seriously threatened freedom of association. They prohibited NGOs from receiving more than half their funds from abroad, they banned non-registered associations and restricted the activities of foreign NGOs since it was anticipated that their activities in Azerbaijan would depend on intergovernmental agreements. Thanks to strong national and international mobilisation, the most restrictive amendments were not adopted. Only one provision of the text adopted on June 30, 2009, by which the Government is authorised to collect information on NGOs without any legal foundation, continues to alarm human rights organisations¹². In addition, on December 25, 2009, the Government adopted a decree that allows the authorities to prohibit NGOs from receiving subsidies¹³. The decree stipulates in particular that an NGO will not be allowed to work on a project funded by a donor without the consent of the Ministry of Justice, which represents a serious barrier to NGOs activities.

Organisations were also still subjected to random and unjustified inspections¹⁴. On October 29, 2009 for example, officials of the Ministry of Justice conducted an inspection of the offices of the Institute for Reporters' Freedom and Safety (IRFS) to "determine whether IRFS activities complied with the law and charter of organisations". The inspection was carried out in the absence of the Director of the organisation, Mr. **Emin Huseynov**. Inspectors gathered information relating to personal data of members of the organisation and its founders¹⁵. According to Azerbaijani law, the dissolution of the organisation is the only sanction provided for, regardless of the infraction committed¹⁶.

12/ See Letter to the Ministry of Justice by a collective of human rights associations, November 6, 2009.

13/ See Decree of the President of the Republic of Azerbaijan on December 21, 2009 on changes and amendments of certain decrees of the President of the Republic of Azerbaijan about the Law of the Republic of Azerbaijan "on Changes and Amendments of Some Legislative Acts of the Republic of Azerbaijan", June 30, 2009.

14/ Since 2002, the European Court of Human Rights (ECHR) has adopted eleven decisions or judgments in response to requests from NGOs against decisions by the Ministry of Justice to refuse registrations. On five occasions, it condemned and demanded the annulment of the decisions of the Ministry of Justice, after which four of the five organisations were registered. Five other organisations were registered following a joint agreement of both parties. The last complainant died before the Court reached its decision.

15/ See South Caucasus Network of Human Rights Defenders.

16/ The ECHR ruled in its Decision No. 37083/03 (*Tebieti Muhafiz Cemiyeti and Israfilov v. Azerbaijan*) of October 8, 2009 that the measure was disproportionate to the seriousness of the misconduct.

Moreover, the practice of denying NGOs their applications for registration was still a major obstacle to freedom of association. According to EMDSC, at the end of 2009 nearly 300 non-registered, but nevertheless active, organisations functioned in Azerbaijan¹⁷. In 2009, the Ministry of Justice continued to reject applications for registration without serious grounds. For example, it refused to register EMDSC on April 29, 2009 on the grounds that the title of the Law on NGOs, Public Organisations and Foundations was referred to incorrectly in the association's statute. The complaint that the organisation filed with the District Court of Assamalski in Baku was rejected on September 2, 2009¹⁸. It is no accident that the refusal to register an association specialising in election monitoring was issued in the same year as the municipal elections. This same association, operating under the name "Election Monitoring Centre", was dissolved in May 2008, before the presidential elections of 2008.

A judiciary that discriminates against defenders

Misuse of the criminal justice system against defenders

Government and State officials, unhappy with the criticism of defenders, continued their constant use of the legal machine to pursue the latter abusively and undermine their work. In 2009, prosecutions against defenders for "defamation" or "attacks on dignity and honour" multiplied. For instance, Mr. **Intigam Alyev** and Ms. **Nurlana Alyeva**, respectively President of and a lawyer for the Legal Education Society, were prosecuted by Mr. Gazanfar Karimov, Justice of the Sheky Court of Appeals, for "damaging the honour and dignity of a judge". The complaint concerned a book using information contained on the official website of the Judicial Council of Justice¹⁹, entitled *The Disciplinary Responsibility of Judges*, which placed particular emphasis on the shortcomings of the work of judges, such as the discriminatory and biased nature of their decisions. The contents of the book were also published on the website of the association. On July 15, 2009, the Baku Court of Appeals upheld the decision of the District Court of Nashimi, ordering Mr. Alyev and Ms. Alyeva to pay a fine of 1,000 AZM (about 850 euros) and enjoining them not only to present their apologies but also to demand the return of books distributed and, on their website and in their book, to refute the information that had provoked

17/ See Statement of the news information agency *Turan* postponing the intervention of the participants at the plenary session held in Baku on December 10, 2009, as part of a conference entitled "Solving the problems of democracy in the 21st century", December 10, 2009.

18/ See Human Rights Centre of Azerbaijan (HRCA).

19/ The Judicial Council of Judges is in charge of training the judicial body and of the promotion and enforcement of judges.

the complaint of Judge Karimov, accompanied by a message of apology. The non-execution of this decision by Mr. Alyev would be interpreted as a refusal to enforce a court order, punishable by two years' imprisonment²⁰. Mr. Intigam Alyev and Ms. Nurlan Alyeva challenged this decision before the Supreme Court. Despite their appeal of the decision, which should be suspensive, the Court of Appeal of Nashimi illegally demanded the ruling to be put into effect, which Mr. Intigam Alyev was still refusing to do as of the end of 2009²¹. Similarly, on December 13, 2008, Ms. **Leyla Yunus**, Director of the IDP and member of OMCT General Assembly, was prosecuted for "attacks on dignity and honour" by the Minister of Home Affairs of Azerbaijan, Mr. Ramil Usubov, after she revealed on the very popular news site *www.day.az* a case of child trafficking involving members of the police and denounced the functioning of the Azerbaijani justice system. The first hearing, which was held on January 23, 2009 before the Regional Court of Nashimi, did not bode well: most people wishing to attend the trial were unable to enter the courtroom, in violation of Ms. Yunus' right to a public hearing. In the end, under pressure from local and international organisations, the Minister of the Interior withdrew his complaint on March 2, 2009. Finally, on April 7, 2009, the Editor of the daily *Tazadlar* (Contrast), Mr. **Asif Marzili**, was sentenced to one year in prison for "libel" for having published an article on corruption at the International University of Azerbaijan²².

III-treatments and refusal of the judiciary to investigate into complaints of defenders

One also notes that State officials responsible for acts of harassment and abuse against defenders are never punished, cases of violence against defenders are never investigated and the authorities refuse to solve cases of abuse. On October 14, 2009, the District Court of Nashimi in Baku dismissed the complaint of Mr. Emin Huseynov, who was brutally beaten by police officers from Nashimi No. 22 police station, including the deputy chief of police, Mr. Azer Karimzadeh, on June 14, 2008²³. Mr. Huseynov spent more than one month in the hospital after the beating. Moreover, Mr. **Novruzali Mammadov**, an ardent advocate of the rights of the Talish people who was wrongfully sentenced to ten years in prison on December 26, 2008 for "high treason" and "incitement of racial hatred", died in custody on August 17, 2009. The health of Mr. Mammadov, aged 70, had seriously deteriorated in detention centre No. 15, particularly because of the ill-

20 / Article 206 of the Criminal Code.

21 / See HRCA and Statement of the Legal Education Society, November 25, 2009.

22 / See Statement of *Radio Free Europe/Radio Liberty (RFE/RL)*, April 7, 2009.

23 / See HRCA and Statement of the Legal Education Society, November 25, 2009.

treatments he suffered when he was placed in solitary confinement. On July 28, 2009, he was transferred to the neurological department of the prison's central hospital, run by the Ministry of Justice, where he received no care. Following his death, his wife and son filed a criminal complaint against the Ministry of Finance, the Prison Service of the Ministry of Justice, the medical director for the Department of Justice, the administration of the colony prison No. 15, and the central prison hospital of the Ministry of Justice for "endangering the lives of others". However, on September 29, 2009, the Prosecutor for the Nizami District of Baku refused to open a criminal investigation. Mr. Mammadov's family then challenged the decision. The Court of the Nizami District, then in the second instance the Court of Appeal in Baku, on November 17, 2009, rejected the appeal. Another civil complaint was filed against the same institutions following their refusal to compensate the family of Mr. Mammadov. On October 15, 2009, a review of this complaint was opened in the Nashimi District Court but, on January 10, 2010, it decided not to initiate proceedings against these institutions.

Moreover, in 2009, no Azerbaijani judge upheld the complaints of human rights defenders brought against State officials. Thus, advocates of prisoners' rights who call for compliance with international standards of conditions of detention were persecuted and did not obtain satisfaction before the courts. This applied, for example, to Mr. **Shakir Rzakhanov**, founder of a prisoners' group at the Gobustan prison, the Initiative Group for Human Rights of Lifers. Since the start of the protest movement in 2002, Mr. Rzakhanov has been punished several times by prison authorities because of his involvement. Since February 2008, he has been held in solitary confinement for "advocacy on behalf of other prisoners", as well as for having "secretly filed [collective] complaints through his mother in order to gain some influence", and for raising "issues related to violations of minority rights". These charges relate to complaints that Mr. Rzakhanov filed before the European Court of Human Rights²⁴. Mr. Rzakhanov's mother challenged the conclusions of the inquiry before the Regional Court of

24 / In 2008 and early 2009, he, jointly with his fellow inmates, filed 16 complaints with the prison service, denouncing the use of threats and violence towards prisoners, as well as the fact that their complaints were never examined. The findings of the internal investigative division did not confirm the complaints. However, the report of the Committee for the Prevention of Torture (CPT), which was released on November 22, 2009 and drafted following a survey carried out from September 8 to 12, 2008, reported violations of international standards in Gobustan prison, such as failures in access to medical care and the use of ill-treatments. In addition, the Committee also reported "serious concerns" about the detention of prisoners in solitary confinement for long periods. See *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*, November 26, 2009.

Garadagh in July 2008, but her complaint was dismissed on October 31, 2008. On March 30, 2009, the Baku Court of Appeals upheld the decision of the District Court of Garadagh²⁵.

Worrying situation for defenders working in the Nakhchivan enclave

In 2009, defenders operating in the regions, particularly in the Nakhchivan enclave²⁶, were subjected to pressure, threats and attacks because of their remoteness from the seats of international organisations and a lack of media interest. Human rights violations are common in this region, where the local government is particularly authoritarian. Human rights defenders and opponents of the Government suffered many attacks, harassment and intimidation by local authorities to stifle dissent. Those responsible for this persecution act with total impunity. Some activists cooperating with international organisations were also threatened and prosecuted on the basis of fabricated accusations. For example, the representative of the regional office of the IRFS in Nakhchivan, Mr. **Elman Abbassov**, received telephone threats against him and his family on September 21 and 22, 2009. Police in the town of Nakhchivan refused to register his complaint²⁷. Mr. Abbassov had already received death threats by phone in March 2007. Additionally, in January 2009, he and his colleague, Mr. **Hakimeldostu Mehdiyev**, were victims of insults and death threats. In both cases, no response was received to the complaints submitted to the office of the Ministry of Internal Affairs of Nakhchivan, to the District Prosecutor, and to the Ministry of National Security²⁸. Moreover, on December 15, Mr. **Ilgar Nasibov**, a journalist for the radio station *Azadliq*²⁹ and a member of the Democracy and NGO Development Resource Centre, and Mr. **Vafadar Eyvazov**, a member of the same organisation, were assaulted while they were conducting an investigation as part of a project to fight against corruption at the State University of Nakhchivan. Doctors, who would have been pressured by the local authorities, refused to treat them. Furthermore, attempts by the two defenders to lodge a complaint with the police, the Prosecutor of Nakhchivan, and then the local representative of the Ministry of Internal Affairs were unsuccessful. The Ministry of Internal Affairs of Nakhchivan finally opened an investigation after

25 / The Government of Azerbaijan, in its response to the CPT report, referred to the complaint of Mr. Shakir Rzakanov's mother, without citing her. He disputed the opinion of the Committee, alleging that the Azerbaijani justice system did not confirm the inmate's complaint. See HRCA.

26 / The Autonomous Republic of Nakhchivan is an Azerbaijani enclave between Armenia, Turkey and Iran. The roads connecting Azerbaijan to Armenia through the enclave were closed because of the dispute between the two countries on the issue of Nagorno Karabakh.

27 / See HRCA.

28 / See Statement from the Nakhchivan Human Rights and Mass Media Monitoring, September 22, 2009.

29 / *Azadliq* is the Azerbaijani branch of RFE/RL.

receiving a written request from the two defenders, filed on December 16, and at the same time launched a smear campaign against the Centre. While the investigation was still ongoing, information on the attack, issued by the Press Service of the Ministry, was indeed published in the official newspaper *Sberg Gapisi* on December 18, 2009. The reports included particular mention that, contrary to reality, the Centre was not officially registered and acted illegally. Finally, on December 21, Mr. Ilgar Nasibov received a call from the Tax Ministry informing him that a tax inspection of the organisation would be conducted 15 days later.

Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. Novruzali Mammadov	Sentencing	Urgent Appeal AZE 001/0808/OBS 139.2	January 7, 2009
	Arbitrary detention / Ill-treatments	Urgent Appeal AZE 001/0808/OBS 139.3	January 21, 2009
	Worsening health status / Destruction of equipment	Urgent Appeal AZE 001/0808/OBS 139.4	June 24, 2009
	Death in prison	Urgent Appeal AZE 001/0808/OBS 139.5	August 18, 2009
	Impunity	Urgent Appeal AZE 001/0808/OBS 139.6	October 22, 2009
Ms. Leyla Yunus	Judicial harassment	Urgent Appeal AZE 001/0109/OBS 008	January 19, 2009
		Urgent Appeal AZE 001/0109/OBS 008.1	January 26, 2009
		Closed Letter to the authorities	February 5, 2009
	End of judicial proceedings	Urgent Appeal AZE 001/0109/OBS 008.2	March 3, 2009
Mr. Ilgar Nasibov and Mr. Vafadar Eyvazov	Assault	Urgent Appeal AZE 002/1209/OBS 196	December 22, 2009