

**Council of Europe contribution for the 16<sup>th</sup> UPR session  
regarding Azerbaijan**

**Prevention of Torture**

*CPT periodic visit in December 2011*

A delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out a visit to Azerbaijan from 5 to 15 December 2011. The Azerbaijani authorities have not yet requested publication of the CPT's report on the visit.

*CPT ad hoc visit in December 2008*

On 26 November 2009 the CPT published the report on its *ad hoc* visit to Azerbaijan from 8-12 December 2008, together with the response of the Azerbaijani Government. These documents have been made public at the request of the Azerbaijani authorities and are attached below.

During the visit, the CPT's delegation reviewed the situation at Gobustan Prison previously visited. The delegation received several credible allegations from life-sentenced prisoners of deliberate physical ill-treatment and excessive use of force by prison officers. In their response, the Azerbaijani authorities indicate that staff at Gobustan Prison has been instructed to apply physical force and special means only in exceptional circumstances determined by law.

In the units for lifers, the delegation observed some improvements to material conditions. However, life-sentenced prisoners continued to spend 23 hours a day locked up in their cells, without being offered any form of organised activity. The CPT has called upon the Azerbaijani authorities to take steps to devise and implement a comprehensive regime of out-of-cell activities for life-sentenced prisoners. Further, the Committee has stressed once again that it can see no justification for keeping life-sentenced prisoners apart from other prisoners. The authorities' response makes reference to plans to set up workshops and sports facilities at Gobustan Prison, as well as to enable inmates to receive education.

During the visit, the CPT's delegation also carried out a visit to the Central Penitentiary Hospital in Baku. It found that nursing staff resources were insufficient and that no health-care staff was present in the wards after 4 p.m. Further, the delegation gained the impression that the treatment provided at the hospital's internal diseases, narcology and psychiatry wards left a lot to be desired. The CPT has recommended that a thorough assessment of the hospital's health-care services be carried out. The authorities' response refers to various training courses for health-care staff of the hospital and the involvement of experts from the Ministry of Health in the treatment of prisoners.

At the Republican Psychiatric Hospital No. 1 in Mashtaga, the CPT's delegation heard a number of allegations from patients of occasional physical ill-treatment, mostly by orderlies and occasionally by nurses. Living conditions in the wards which had already been refurbished were on the whole acceptable, but conditions in the non-refurbished wards were very poor. The worst situation was observed in Ward 12, conditions in the ward's two isolation rooms being particularly bad. According to the authorities' response, a refurbishment of Ward 12 has been launched and the isolation rooms have been abolished.

As regards the Regional Psycho-Neurological Dispensary in Sheki previously visited, the delegation observed a number of positive changes. That said, the dormitories remained overcrowded, dilapidated and impersonal, and lacked privacy. The response refers to a decision to move the dispensary to a new hospital to be built in Sheki region.

More generally, the CPT has recommended that steps be taken at psychiatric establishments to adopt a policy on the use of means of restraint, and that the recording of information on the use of means of restraint be improved. Other recommendations made by the Committee concern the legal safeguards in the context of involuntary hospitalisation and the setting up of a system for regular visits to psychiatric establishments by independent outside bodies responsible for the inspection of patients' care.

A complete list of the CPT's recommendations, comments and requests for information is contained in the Appendix I to the report.



Azerbaijan report 2008.pdf (15...  
Azerbaijan response 2008.pdf (



### **Council of Europe Commissioner for Human Rights**

On 29 June 2010, the Commissioner for Human Rights, Thomas Hammarberg, published a report based on the findings of his visit to Azerbaijan from 1 to 5 March 2010.<sup>1</sup> The Commissioner's report, which includes the response of the Azerbaijani authorities<sup>2</sup>, is attached below.

The Commissioner's report focuses on the following selected human rights issues:

- I. Freedom of expression (defamation; violence, harassment and intimidation against journalists and activists; freedom of information, ethical journalism and media diversity)<sup>3</sup>
- II. Freedom of association (registration procedure; amendments to the law on NGOs)<sup>4</sup>
- III. Conduct of law enforcement officials<sup>5</sup>
- IV. Administration of justice (pre-trial detention; right to a fair trial)<sup>6</sup>
- V. Observations on the visit to the Autonomous Republic of Nakhchivan (general remarks; psychiatric hospital; recent events in Bananyar)<sup>7</sup>

For each issue the Commissioner provides specific conclusions and recommendations.<sup>8</sup>

As a follow-up to his visit in 2010, the Commissioner published, on 29 September 2011, Observations on the respect of human rights in Azerbaijan focusing on freedoms of expression, association and assembly. The Commissioner's Observations are attached below.

"Freedom of expression, association and peaceful assembly have encountered serious setbacks in Azerbaijan. Urgent measures must be taken to uphold these fundamental human rights", he said.

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<sup>1</sup>A summary of the report appears on pp. 1-2.

<sup>2</sup> Appendix to the report.

<sup>3</sup> Section I, paras. 8-38.

<sup>4</sup> Section II, paras. 39-46.

<sup>5</sup> Section III, paras. 47-54.

<sup>6</sup> Section IV, paras. 55-61.

<sup>7</sup> Section V, paras. 62-75.

<sup>8</sup> Paras. 76-96.

The Commissioner regrets to note that most of the recommendations he made in 2010 report as regards these areas have not been implemented. In some cases, steps taken by the authorities have even run counter to Azerbaijan's human rights obligations. "One of my recommendations was to end practices of unjustified or selective criminal prosecution of journalists or critical opinion makers. However, resort to such methods has apparently not abated. Fabricated charges have been used to arrest and silence parliamentary candidates, journalists and members of youth groups. Such intimidation is inconsistent with the principles of a democratic society founded on human rights principles and the rule of law. Measures should be taken to release immediately all persons imprisoned because of views or opinions expressed."

The Commissioner is concerned by information indicating that in the past months several national and international NGOs have faced difficulties in carrying out their activities freely in Azerbaijan. He is particularly worried about the recent demolition of a building where several human rights organisations were located. "Responsibility for this illegal action - which contravened a court order - should be established, and the persons affected should at the very least obtain adequate compensation for the loss of their property."

Another source of concern relates to the wave of arrests of activists and political opponents in connection with protests held in Baku in March and April 2011. "These protests were sometimes dispersed with excessive force, and the work of journalists was hindered. Several persons were detained on grounds of violating public order. Six opposition activists were sentenced on 25 August 2011 for participating in 'actions causing disturbance of public order', following trials whose conformity with human rights standards has been called into question."

The Commissioner therefore urges the Azerbaijani authorities to fully respect the right to freedom of peaceful assembly, in accordance with the case-law of the European Court of Human Rights.

"Freedom of expression, association and peaceful assembly are indispensable principles of a democratic society. Effective measures must be taken by the Azerbaijani authorities to uphold them."



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## **Execution of judgments and decisions of the European Court of Human Rights**

On 31 December 2011, there were 45 cases pending before the Committee of Ministers for supervision of their execution, 24 of these cases were "leading cases", i.e. raising a new structural /general problem and requiring the adoption of general measures. The 3 main cases or groups of cases revealing such structural problems are listed below:

- ❖ Non-execution of final judicial decisions ordering the eviction of internally displaced persons unlawfully occupying apartments to the detriment of the rights of lawful tenants or owners - *Mirzayev/Tarverdiyev/Humbatov* group (application No. 50187/06)
- ❖ Unjustified convictions for defamation and/or unjustified imposition of prison sanctions for mere defamation; arbitrary application of anti-terror legislation - *Mahmudov* and *Agazade* and *Fatullayev* group (application No. 35877/04 and 40984/07)
- ❖ Excessive use of force or ill-treatment by the police and/or absence of effective investigations - *Mammadov/Muradova/Mikayil Mammadov* group (application No. 34445/04).

The document attached presents a brief description of the violations and the last detailed decision taken by the Committee of Ministers and the responses given thereto by the respondent state.



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### **European Commission for Democracy through Law (Venice Commission)**

The Venice Commission adopted between 2009 and October 2012 a number of opinions on draft laws and on the constitutional situation in Azerbaijan. The complete list of the opinions adopted during that period, with hyperlinks to the texts of the opinions, appears below.



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### **Fight against racism and intolerance**

On 31 May 2011, the European Commission against Racism and Intolerance (ECRI) published its third report on Azerbaijan (attached below).<sup>9</sup>

While there have been improvements, there are still concerns in some areas, such as the situation of unregistered religious groups and of persons seeking international protection.

To simplify administrative procedures affecting migrant workers, a State Migration Service has been established and a one-stop service point for migrants has been set up. The authorities are also drawing up a Migration Code to consolidate the relevant legislation. Measures have been taken to improve refugees' access to social rights and the authorities have begun working to remedy problems faced by stateless persons. Significant efforts have been made in recent years to improve the living conditions of displaced persons, as well as their access to other social rights. The authorities have also taken steps towards improving access to health care for persons belonging to vulnerable groups.

At the same time, some restrictive provisions and practices with respect to religious communities have been tightened and religious communities whose applications for re-registration are still pending are exposed to arbitrary treatment. There are reports of abuse by law-enforcement officials against members of minority groups and there should be an independent mechanism for dealing with complaints against the police.

The rate of recognition of refugees is extremely low and no subsidiary form of protection is recognised in Azerbaijani law, leaving many persons who need it in a precarious situation. Migrant workers remain vulnerable to illegal employment practices and serious forms of abuse. Further measures are needed to remedy the difficulties faced by displaced persons in daily life. Finally, anti-discrimination legislation remains little known and rarely used, and the application of provisions of the Criminal Code regarding national security and the prohibition of ethnic hostility remains a concern.

The report contains findings and recommendations regarding the following issues:

- Existence and implementation of legal provisions<sup>10</sup>
- Racism in public discourse<sup>11</sup>

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<sup>9</sup> A summary of the report can be found on pp. 7-10.

<sup>10</sup> pp. 11-20.

- Racist violence<sup>12</sup>
- Vulnerable/target groups, including religious groups, migrants, refugees and asylum seekers, stateless persons and persons in similar situations, Armenians, national/ethnic minorities, Roma<sup>13</sup>
- Situation regarding refugees and internally displaced persons as a result of the conflict over Nagorno-Karabakh<sup>14</sup>
- Areas currently not under the effective control of the Azerbaijani authorities<sup>15</sup>
- Discrimination in various fields, including health care, employment and housing, and administration of justice<sup>16</sup>
- Conduct of law enforcement officials<sup>17</sup>
- Monitoring of racism and racial discrimination<sup>18</sup>

The following three recommendations require priority implementation and will be revisited in two years' time:

- swiftly complete the registration of religious communities and clarify the legal situation of communities still awaiting the final outcome in their cases;
- complete the process of adopting a Migration Code;
- establish a system for collecting data broken down by criteria coming within ECRI's mandate, so as to detect and combat discrimination within the judicial system.



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### **Protection of Minorities**

The Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities will adopt its third Opinion on Azerbaijan in October 2012.

Azerbaijan has signed but not yet ratified the European Charter for Regional or Minority Languages. Thus, the country is not yet covered by the monitoring procedure set up under the Charter.

### **Action against Trafficking in Human Beings**

The evaluation of Azerbaijan by the Group of Experts on Action against Trafficking in Human Beings (GRETA) will take place in 2013.

### **Preventing and Combating Violence against Women and Domestic Violence**

Azerbaijan has not yet signed or ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence. For this reason, it is not yet concerned by the monitoring procedure under the convention.

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<sup>11</sup> pp. 20-21.

<sup>12</sup> p. 22.

<sup>13</sup> pp. 22-32.

<sup>14</sup> pp. 32-33.

<sup>15</sup> p. 34.

<sup>16</sup> pp. 34-36.

<sup>17</sup> pp. 36-37.

<sup>18</sup> pp. 37-38.

## Social and economic rights

Azerbaijan ratified the Revised European Social Charter on 02/09/2004 and has accepted 47 of the 98 paragraphs. It has not signed the Additional Protocol Providing for a System of Collective Complaints.

### Cases of non-compliance

#### *Thematic Group 1 “Employment, training and equal opportunities”*

► Article 20 – Right to equal opportunities and equal treatment in matters of employment and occupation without sex discrimination

Legislation prohibits the employment of women in underground mining and all other labour intensive jobs.

(Conclusions 2008)

#### *Thematic Group 2 “Health, social security and social protection”*

► Article 11§1 – Right to protection of health – removal of causes of ill-health

The rate of infant and maternal mortality is manifestly higher than in other European countries.

The health care budget is significantly lower than that of other European countries.

(Conclusions 2009, p. 8)

► Article 11§3 – Right to protection of health – prevention of diseases and accidents

Legislation does not prohibit the sale and use of asbestos.

(Conclusions 2009, p. 12)

#### *Thematic Group 3 “Labour rights”*

► Article 4§1 – Right to a fair remuneration – decent remuneration

The minimum wage is manifestly unfair.

(Conclusions 2010, p. 5)

► Article 5 – Right to a organise

It has not been established that, in practice, the free exercise of the right to form trade unions is ensured in multinational companies.

(Conclusions 2010, p. 10)

#### *Thematic Group 4 “Children, families, migrants”*

► Article 7§5 – Right of children and young persons to protection – Fair pay

The minimum wage of young workers is unfair.

(Conclusions 2011, p. 8)

► Article 8§1 – Right of employed women to protection of maternity – Maternity leave

Unemployment periods are not included in the calculation of the qualifying period for maternity benefits.

(Conclusions 2011, p. 12)

Please find attached below the Conclusions regarding Azerbaijan from 2008, 2009, 2010 and 2011, as well as the fact sheet.



Azerbaijan2008\_en.pdf



Azerbaijan2009\_en.pdf



Azerbaijan2010\_en.pdf



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