

Council of Europe contribution for the 30th UPR session (April-May 2018) regarding Azerbaijan

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Prevention of torture (CPT)

The 'European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment' organises country visits in order to visit places of detention to assess how persons deprived of their liberty are treated. After each visit, the CPT sends a detailed report to the State concerned. This report includes the CPT's findings, and its recommendations, comments and requests for information.

The most recent public [report on Azerbaijan](#) dates from 2008.

[Government response](#)

[News flash on the publication](#) for a summary

Council of Europe Commissioner for Human Rights

The Commissioner for Human Rights is an independent and impartial non-judicial institution established by Council of Europe to promote awareness of and respect for human rights in the 47 Council of Europe member States.

On 6 August 2013, the Commissioner published a report, following his visit to Azerbaijan from 22 to 24 May 2013, focusing on the right to freedom of expression, notably through the Internet, the right to freedom of assembly and association, and the right to property.

The Commissioner stressed that releasing all persons who are in detention because of the views they hold and express should be a priority for the Azerbaijani authorities in order to protect freedom of expression. Recommending the full decriminalisation of defamation, the Commissioner regretted that the President of Azerbaijan had signed in June amendments aimed at facilitating the application of defamation provisions to online expression. Another concern related to the excessive damages which are sometimes awarded in civil defamation cases. The Commissioner urged the authorities to finalise the reform of the defamation legislation in order to repeal imprisonment and allow only proportionate fines. The Commissioner further underscored the need to strengthen the independence and impartiality of the courts, which appeared to be particularly severe in judging journalists and other media professionals. The Commissioner also expressed concerns about recent restrictions to the exercise of fundamental freedoms online, as a wave of arrests and prosecutions, as well as surveillance activities, had targeted social media users. The Commissioner called upon the authorities to cease these practices and to refrain from restricting or controlling Internet access and information available via the web by legislative and technical means.

Concerns remained about the limitations imposed on freedom of assembly, notably the excessive use of force by law enforcement officials to disperse demonstrations and the requirement of authorisation to hold public gatherings. The Commissioner stressed that the authorities should refrain from using the force against peaceful demonstrators and should seek to facilitate and protect public assemblies at the organisers' preferred location. The Commissioner was also worried about the recent harshening of the fines and the use of administrative detention against those who organise or participate in "unauthorized" public gatherings and urged the authorities to ensure that no disproportionate sanction, which would undermine the fundamental right to peaceful assembly, is imposed.

A further reason of concern were the additional restrictions imposed on NGOs by recent amendments, as well as the tone of the political discourse which often stigmatises NGOs, in particular those receiving funds from abroad. The Commissioner called on the authorities to ensure full respect of the right to freedom of association, notably by alleviating the registration requirements and making the whole process, as well as the functioning of NGOs, less bureaucratic.

Lastly, the Commissioner expressed concerns about the effective enjoyment of the right to property in the context of the ongoing general urban renewal of Baku. He called on the authorities to ensure that all further expropriations and demolitions are carried out in a lawful and transparent manner. The authorities should also provide fair market value compensations and allow access to an effective national remedy for those who would like to impugn the decisions against their properties.

Following up on the abovementioned report, the Commissioner published his observations on the human rights situation in Azerbaijan on 23 April 2014, focusing on the same issues. The Commissioner regrets a deterioration of the situation in these human rights areas and urges once again the Azerbaijani authorities to comply with the country's human rights obligations and commitments as a member state of the Council of Europe.

Referring to unjustified and selective criminal prosecutions against critical voices, the Commissioner deplored a series of arrests based on charges which lack credibility, including journalist Parviz Hashimli, online activist Abdul Abilov and blogger Omar Mammadov. The Commissioner was also concerned by the conviction of Hilal Mammadov, journalist, academic and minority rights defender; Tofiq Yagublu, deputy chair of the opposition political party Musavat and journalist; and Ilgar Mammadov, Chair of the Republican Alternative Civic Movement. With defamation still criminalised and disproportionate damages awarded in civil proceedings, the Commissioner pointed to Azerbaijan's lack of compliance with the case-law of the European Court of Human Rights and Council of Europe recommendations in the field of freedom of expression.

Additional restrictions to the activities of non-governmental organisations introduced by law in February 2014 were reasons for further concern. The Commissioner stressed that this new law worsened an already cumbersome situation in which NGO activities were disproportionately restricted.

Furthermore, a number of peaceful protests had been dispersed by the police, sometimes with excessive force, and participants had been sentenced to administrative detention and fines. The Commissioner therefore stressed that the authorities should comply with European standards, which establish that no authorisation should be required for the holding of public demonstrations, and seek to facilitate and protect public assemblies at the organisers' preferred location. The Commissioner also expressed concerns about the arrest of Anar Mammadli, Chairman of the Election Monitoring and Democracy Studies Center, under investigation for illegal business, tax evasion and abuse of power. He stressed that NGOs needed less restrictive NGO legislation in order to be able to pursue their public watchdog function.

Lastly, the Commissioner expressed concerns at continuing demolitions of houses and violations of property rights and called on the authorities to ensure that all persons affected by expropriations have access to an effective remedy at national level and that any further expropriations and demolitions are carried out in a lawful manner, with fair compensations.

Following the arrest and detention of virtually all the civil society partners of the Commissioner's Office over the summer of 2014, the Commissioner carried out a visit to Azerbaijan from 22 to 24 October 2014. In the course of the visit, the Commissioner held discussions with the authorities and visited Anar Mammadli, Leyla Yunus, Rasul Jafarov and Intigam Aliyev in Kurdakhani detention centre. He also met with family members of prisoners, defence lawyers and some civil society representatives.

The Commissioner shared with the authorities his concerns relating to deficiencies in the protection of freedom of expression, assembly and association in Azerbaijan, and shortcomings in the NGO legislation and the way it is implemented, noting that legislation should not make human rights work impossible. He also raised the issue of the full and effective execution of judgments of the European Court of Human Rights, referring in particular to the case of Ilgar Mammadov. He noted that this judgment, which found that the applicant had been detained for purposes other than having committed an offence, brought the broader issue of selective justice to the forefront and called on the Azerbaijani authorities to deal with this and similar cases as a matter of priority.

Between February 2015 and November 2016, the Commissioner used his right to submit written comments in cases before the European Court of Human Rights (pursuant to Article 36, paragraph 3 of the European Convention on Human Rights) in seven cases against Azerbaijan. These cases related to the situation of human rights defenders, including defence lawyers, journalists and others expressing critical voices in the country.

The first six third-party interventions of the Commissioner on Azerbaijan relate to the cases of Hilal Mammadov (Application No. 81553/12, Commissioner's comments published on 24 February), Intigam Aliyev (Application No. 68762/14, Commissioner's comments published on 18 March), Rasul Jafarov (Application No. 69981/14, Commissioner's comments published on 1 April), Anar Mammadli (Application No. 47145/14, Commissioner's comments published on 1 April), Leyla and Arif Yunus (Application No. 68817/14, Commissioner's comments published on 20 April), Khadija Ismayilova (Application No. 30778/15, Commissioner's comments published on 21 January 2016). Prominent human rights defenders or journalists, the applicants are all long-standing civil society partners of the Commissioner's Office, who were detained as a result of their work.

The Commissioner's comments in these cases underline serious and systematic deficiencies in the area of freedom of expression and association in Azerbaijan, including judicial harassment of those expressing critical voices and a pattern of retaliatory measures against those who co-operate with international organisations to expose human rights violations in the country. The Commissioner emphasises that the cases of the applicants, whom he had met several times, including while they were detained, are emblematic of the reprisals that human rights defenders and journalists face in Azerbaijan because of their work. They are often targeted with unjustified or selective criminal prosecutions on charges that defy credibility, a problem which not only affects the human rights of the persons concerned but also obstructs the functioning of international human rights mechanisms. With regard to freedom of association in particular, the Commissioner stresses that a number of the arrests and detentions of Azerbaijani human rights defenders are related to shortcomings in the NGO legislation and the way it is implemented. This restrictive legal framework constitutes in his view an integral part of the pattern of judicial harassment and reprisals against human rights defenders currently prevailing in the country.

The seventh third-party intervention relates to the case of Khalid Bagirov (Application No. 28198/15, Commissioner's comments published on 28 November 2016) and concerns the disbarment of the applicant, an Azerbaijani lawyer who had been actively involved in the defence of human rights, from the Azerbaijani Bar Association. In his submission, the Commissioner considered that the applicant's case provided an important illustration of the shortcomings in the areas of both freedom of expression and the functioning of the judiciary in Azerbaijan. He stated that the hindrances imposed on the applicant were closely linked to his involvement in the protection of human rights as a lawyer and that the disbarment of the applicant should be seen in the context of a more general pattern of repression in Azerbaijan against those expressing dissent or criticism of the authorities, including human rights defenders, their lawyers, journalists, bloggers and other activists. In the case of defence lawyers, disbarment or the threat of disbarment may in particular be used as a tool for punishing lawyers who take on sensitive cases, therefore constituting retaliation for activities which should be perfectly legal in a well-functioning democracy. Lastly, the Commissioner stressed that reprisals against the civil society partners of his Office make it increasingly difficult to work on human rights issues in Azerbaijan.

In May 2017, the Commissioner issued two statements in which he referred to examples that illustrate his continuing serious concerns about freedom of expression in Azerbaijan. The first, released on 17 May, marked the four-year anniversary of the arrest of Ilkin Rustamzade, a blogger and youth activist, imprisoned in Azerbaijan since 17 May 2013. The Commissioner reiterated his concerns regarding certain human rights in Azerbaijan, including limitations to freedom of expression, the shrinking space for NGOs, and official harassment of human rights defenders and their lawyers. He referred notably to the cases of the leader of the opposition party "REAL", Ilgar Mammadov, two young activists Bayram Mammadov and Giyas Ibrahimov, as well as blogger Mehman Huseynov. He called upon the Azerbaijani authorities to uphold their human rights obligations and release immediately all persons who are in detention because of their views expressed or legitimate civic activity.

On 31 May, the Commissioner also reacted on his Facebook page to the arrest of Afgan Mukhtarli. The Azerbaijani journalist and activist, who had been living in Georgia since 2015 to escape the government's repression of critical voices, was reportedly abducted from there, ill-treated by his abductors, and forcibly taken to Azerbaijan, where he is now facing prosecution for illegal crossing of the border and smuggling. The Commissioner called on the Georgian authorities to carry out an effective, rapid and independent investigation into the events and on the Azerbaijani authorities to release Mr Mukhtarli without delay and ensure that he fully enjoys his human rights, including protection from torture and ill-treatment.

Fight against racism and intolerance (ECRI)

The European Commission against Racism and Intolerance (ECRI) is a human rights body of the Council of Europe, composed of independent experts, which monitors problems of racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as "race", national/ethnic origin, colour, citizenship, religion and language. It prepares reports and issues recommendations to member States, in which its findings, along with recommendations are published. These reports are drawn up after a contact visit to the country in

question and a confidential dialogue with the national authorities. The country monitoring takes place in five-year cycles. As part of the fourth round of ECRI's monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI's country reports.

ECRI adopted its [fourth report](#) on Azerbaijan on 17 March 2016.

ECRI adopted its [Conclusions on the Implementation](#) of the Recommendations in Respect of Azerbaijan Subject to Interim Follow-Up on 19 March 2014.

Protection of minorities

Framework Convention for the Protection of National Minorities

The monitoring procedure for this convention requires each state party to submit a report within one year following the entry into force of the Framework Convention and additional reports every five subsequent years. State reports are examined by the [Advisory Committee](#), a body composed of 18 independent experts responsible for adopting country-specific opinions. These opinions, on which States Parties have an opportunity to comment, are meant to advise the Committee of Ministers in the preparation of its resolutions, containing conclusions and recommendations to the State concerned.

European Charter for Regional or Minority Languages

The [Charter's monitoring procedure](#) is based on state reports, as each State Party is required to present its first report within the year following the entry into force of the Charter with respect to the Party concerned. The subsequent reports are presented at three-yearly intervals. A committee of independent experts examines the state's periodical report and addresses an evaluation report to the Committee of Ministers, including proposals for recommendations.

Action against trafficking in human beings (GRETA)

The Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008, following its 10th ratification. While building on existing international instruments, the Convention goes beyond the minimum standards agreed upon in them and strengthens the protection afforded to victims.

The Convention has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

The main added value of the Convention is its human rights perspective and focus on victim protection. Its Preamble defines trafficking in human beings as a violation of human rights and an offence to the dignity and integrity of the human being. The Convention provides for a series of rights for victims of trafficking, in particular the right to be identified as a victim, to be protected and assisted, to be given a recovery and reflection period of at least 30 days, to be granted a renewable residence permit, and to receive compensation for the damages suffered.

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.

[GRETA's page on Azerbaijan](#)

A 2nd round evaluation visit to AZE will take place in October 2017. GRETA's 2nd round evaluation report should be published in the 2nd half of 2018, with 2nd round Committee of the Parties' recommendations following shortly thereafter.

[GRETA's 1st round evaluation report and Government's comments](#)
[Committee of the Parties' recommendations – 1st evaluation round](#)
[Government's reply to Committee of the Parties' 1st round recommendations](#)

Preventing and combating violence against women and domestic violence

The Council of Europe Convention on preventing and Combating violence against women and domestic violence ([Istanbul Convention](#), CETS No. 210) provides for two types of monitoring procedures: a country-by-country evaluation procedure and a special inquiry procedure in exceptional cases where action is required to prevent a serious, massive or persistent pattern of any acts of violence covered by the Convention. [GREVIO](#), the Group of Experts on Action against violence against women and domestic violence, is the independent body responsible for monitoring the implementation of CETS No. 210. GREVIO launched its first evaluation procedure in spring 2016, after adopting a questionnaire on legislative and other measures giving effect to the Istanbul Convention.

Fight against corruption (GRECO)

The 'Group of States against Corruption' ([GRECO](#)) monitors all its members through a "horizontal" evaluation procedure within thematic evaluation rounds. The evaluation reports contain recommendations aimed at furthering the necessary legislative, institutional and practical reforms. Subsequently, the implementation of those recommendations is examined in the framework of a "compliance procedure", assessing whether they have been implemented satisfactorily, partly or have not been implemented 18 months after the adoption of the evaluation report.

Fourth Evaluation Round: "Corruption prevention in respect of members of parliament, judges and prosecutors".

GRECO's [Fourth Round Compliance Report](#) on Azerbaijan was adopted on 2 December 2016 and made public on 17 March 2017.

Statistical data

At 31 December 2016, there were 168 cases against Azerbaijan pending before the Committee of Ministers for supervision of their execution (147 at 31.12.2015). 53 of these cases were “leading cases” (45 at 31.12.2015), i.e. raising a new structural / general problem and requiring the adoption of general measures, the other cases being “repetitive cases” (including a number of friendly settlements) concerning issues already revealed by earlier judgments of the European Court of Human Rights.

In 2016, the CM was seized by 21 new cases (34 in 2015) against Azerbaijan of which 2 leading cases (3 in 2015) and the sums awarded in 2016 as just satisfaction amounted to 815 146 euro.

In 2016, no cases (1 in 2015) were closed by the adoption of a Final Resolution.

Main cases /groups of cases under Committee of Ministers’ supervision

The main cases presently under the Committee of Ministers’ supervision cover notably the issues presented below. For a fuller overview of the situation see the [Country Factsheets](#) available on the website of the Department for the Execution of Judgments of the European Court of Human Rights and in the [Committee of Ministers’ Annual Reports](#) on its supervision activity. More detailed information on the status of execution in individual cases can be found through [HUDOC-EXEC](#).

Infringement proceedings: It is recalled at the outset that the Committee of Ministers warned, by [decision of 21 September 2017](#), the authorities of Azerbaijan of its intention to commence infringement proceedings before the European Court of Human Rights on 25 October 2017 should no tangible progress be made in ensuring the applicant’s release in the [Ilgar Mammadov case](#) (see further below).

Actions of security forces and effective investigations

Ineffective investigations into actions of security forces, notably to establish the extent of state agents’ responsibility for the death of an internally displaced woman during an eviction operation, as well as into the absence of due action by police and prosecutors to elucidate a killing - [Mikayil Mammadov group of cases](#) , application No. 4762/05, judgment final on 17/03/2010, enhanced supervision

Ill-treatment and/or torture during arrest and police custody and ineffective investigations into allegations of such ill-treatment - [Mammadov \(Jalaloqlu\) group of cases](#), application No. 34445/05, judgment final on 11/04/2007, enhanced supervision

Disproportionate and unnecessary intervention by the police forces during demonstrations, excessive use of force and ill-treatment, notably against journalists; ineffective investigations - [Muradova group of cases](#), application No. 22684/05, judgment final on 02/07/2009, enhanced supervision

Expulsion and extradition

Unsatisfactory evaluation of risks of torture and inhuman or degrading treatment in country requesting extradition; custody ordered on the basis of unclear and foreseeable legislation and without any possibility of judicial review of continued detention - [Garayev group of cases](#), application No. 53688/08, judgment final on 10/09/2010, standard supervision

Lawfulness of detention and related issues

Unlawful and arbitrary arrest and detention on remand - [Gafqaz Mammadov](#), application No. 60259/11, judgment final on 14/03/2016, enhanced supervision

Protection against abuse of power

Abuse of power through arbitrary engagement of criminal proceedings implying use of arrest and detention, notably to punish a political opponent for having criticised the government and a human rights defender for his human rights activities - [Ilgar Mammadov group of cases](#), application No. 15172/13, judgment final on 13/10/2014, enhanced supervision

Fairness of judicial proceedings – criminal charges

Unfair criminal proceedings notably on account of family ties between judges, prosecution and investigative authorities participating in the trial; refusals to hear witnesses in the defendant's favour; ineffective legal assistance and absence of sufficient opportunities to prepare the defence; insufficient time, facilities and access to file to prepare the defence; absence of possibilities to challenge the credibility of important witnesses/experts; failure by the courts to address objections raised by the defence as to the authenticity of the evidence produced by the prosecutors and its use during the trial (notably allegations that drugs had been planted by the police).

Double conviction for the same offence, one administrative and one criminal, both related to the same involvement in a demonstration - [Insanov](#), application No. 16133/08, judgment final on 14/06/2013, enhanced supervision - [Huseyn and Others group of cases](#), application No. 35485/05, judgment final on 26/10/2011, standard supervision

Fairness of judicial proceedings – civil proceedings

Unjustified refusal to hear detained persons in civil cases concerning conditions of detention and alleged lack of medical care - [Insanov](#), application No. 16133/08, judgment final on 14/06/2013, enhanced supervision

Enforcement of domestic judicial decisions

Non-enforcement of final judgments ordering the restoration of the right of use of plots of land - [Humbatov group of cases](#), application No. 13652/06, judgment final on 03/03/2010, enhanced supervision

Failure or delayed enforcement of final judgments ordering reinstatement and/or payment of certain sums - [Tarverdiyev group of cases](#), application No. 33343/03, judgment final on 26/10/2007, enhanced supervision

Freedom of expression – defamation

Unjustified convictions and prison sentence as sanction for defamation, notably against journalists; also arbitrary application of criminal law to limit freedom of expression - [Mahmudov and Agazade group of cases](#), application No. 35877/04, judgment final on 18/03/2009, enhanced supervision

Freedom of assembly and association

Unsatisfactory legislation regulating freedom of assembly not meeting the requirements of foreseeability and precision; arbitrary interferences with the right to freedom of assembly: abusive dispersal of peaceful demonstrations / public gatherings; unjustified arrest and administrative conviction of participants - [Gafqaz Mammadov](#), application No. 60259/11, judgment final on 14/03/2016, enhanced supervision

Electoral rights

Arbitrary application of electoral legislation and absence of procedures affording adequate safeguards against arbitrariness: arbitrary rejection of complaints regarding irregularities or breaches of electoral law; arbitrary cancelation of registration of candidates; erroneous application of electoral law, etc - [Namat Aliyev group of cases](#), application No. 18705/06, judgment final on 08/07/2010, enhanced supervision

Protection of home and property – displaced persons

Impossibility for displaced persons to gain access, in the context of the Nagorno-Karabakh conflict, to their homes and properties and relatives' graves in the disputed area near Nagorno-Karabakh on the territory of Azerbaijan - lack of effective remedies - [Sargsyan](#), application No. 40167/06, judgment final on 16/06/2015, enhanced supervision

Non-enforcement of orders for the eviction of internally displaced persons unlawfully occupying houses or apartments - [Mirzayev group of cases](#), application No. 50187/06, judgment final on 03/03/2010, enhanced supervision

Social and Economic Rights (ECSR)

The European Committee of Social Rights (ECSR) monitors compliance with the [European Social Charter](#) under two procedures: the national periodic reporting system and the collective complaints procedure. Following a decision taken by the Committee of Ministers in 2006, the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

[Azerbaijan and the European Social Charter](#)

Venice Commission

The [European Commission for Democracy through Law](#) (Venice Commission) is the Council of Europe's advisory body on constitutional matters. It provides States and international organisations working with it (EU, OSCE/ODIHR) with legal advice in the form of opinions.

Since 2013 the Commission adopted opinions on the Law on non-governmental organisations, on the legislation pertaining to the protection against defamation as well as on modifications to the Constitution of the Republic of Azerbaijan.

[CDL-AD\(2016\)029](#)

Opinion on the draft modifications to the Constitution submitted to the Referendum of 26 September 2016

[CDL-AD\(2014\)043](#)

Opinion on the amended Law on non-governmental organisations (public associations and funds)

[CDL-AD\(2013\)024](#)

Opinion on the Legislation pertaining to the protection against defamation