Parliamentary Assembly
Assemblée parlementaire
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 14397
18 September 2017

Azerbaijan's Chairmanship of the Council of Europe: what follow-up on respect for human rights?

Report[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Alain DESTEXHE, Belgium, Alliance of Liberals and Democrats for Europe

Summary

Following criticism voiced in particular by the Parliamentary Assembly itself, the Committee on Legal Affairs and Human Rights looks at the situation of human rights in Azerbaijan. It remains concerned about the reported prosecution and detention of NGO leaders, human rights defenders and journalists on the basis of charges relating to their work. It notes that the number of "prisoners of conscience" varies considerably depending on the sources, and encourages the authorities to review their cases. In view of the prevailing climate and restrictive legislation for the work of the media and NGOs, the authorities are urged to bring this legislation into line with the standards of the Council of Europe and to create an environment conducive for the activities of the media and NGOs.

The committee also condemns instances of torture carried out by law-enforcement officers and the lack of effective investigations in this regard. It is also concerned about the lack of independence of the judiciary and the arbitrary application of criminal law, and encourages the authorities to continue the reforms already embarked upon in this area.

The Azerbaijani authorities should execute fully and quickly the judgments of the European Court of Human Rights, including the *Ilgar Mammadov* judgment by ensuring the immediate release of the applicant.

1. Reference to committee: Doc. 13484, Reference 4050 of 23 June 2014.

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A. Draft resolution[2]

1. The Parliamentary Assembly has already adopted several resolutions on the situation in Azerbaijan since the Azerbaijani Chairmanship of the Committee of Ministers of the Council of Europe, which took place between May and November 2014, in particular Resolution 2062 (2015) on the functioning of democratic institutions in Azerbaijan, in which it assessed how those institutions operated and expressed its concerns regarding the lack of independence of the judiciary, the violations of the right to freedom of expression and association and the reprisals against independent media, human rights defenders, journalists and other persons expressing criticism of the authorities. It points out that developments in this country are under constant examination by its Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee).

2. The Assembly also refers to its Resolution 2096 (2016) "How can inappropriate restrictions on NGO activities in Europe be prevented?" and Resolution 2095 (2016) "Strengthening the protection and role of human rights defenders in Council of Europe member States".

3. The Assembly takes note that in the course of 2014 several individuals, including human rights defenders and other activists who had co-operated with the Council of Europe and the Assembly, were arrested and then given prison sentences. The Assembly welcomes the fact that in the course of 2016 most of them were released; however, some of these releases continue to be subject to conditions. The Assembly remains concerned about the reported prosecution and detention of leaders of non-governmental organisations, human rights defenders, political activists, journalists, bloggers and lawyers, on the basis of alleged charges relating to their work.

4. The Assembly notes that the number of persons currently in detention, allegedly for having voiced criticism of the authorities, varies considerably depending on the sources. It encourages the competent authorities to review the individual cases, as far as possible, to release wrongfully imprisoned persons, and to consider, where appropriate, the use of non-custodial sentences or alternative measures to pretrial detention.

5. The Assembly is concerned about the increasing number of allegations of violations of certain human rights and fundamental freedoms, such as those guaranteed by the European Convention on Human Rights (ETS No. 5, "the Convention") in Azerbaijan. It is particularly worried by the cases established by the European Court of Human Rights ("the Court") of torture and inhuman or degrading treatment during arrest, in police custody and in prisons, and the lack of effective investigations in this regard (violations of Article 3 on the substantial and procedural aspects), violations of the right to a fair trial (violations of Article 6), especially in criminal cases, and violations of the right to freedom of expression, association and assembly (violations of Articles 10 and 11).

6. The Assembly reiterates that the prohibition of torture and inhuman or degrading treatment guaranteed by Article 3 of the Convention is a non-derogable right and it strongly condemns any violation of this right. It calls on the authorities to:

6.1. carry out effective investigations into all violations of this right to ensure that the perpetrators are punished;

6.2. take all the necessary measures to prevent further violations of this type;

6.3. step up its co-operation with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and request publication of the reports of its visits.

7. The Assembly considers that the judicial system in Azerbaijan must be independent and impartial. It reiterates that an independent judicial system is a precondition for a criminal justice system which complies with European standards. The Assembly is concerned about allegations of a lack of independence of the judiciary vis-à-vis the executive and the arbitrary application of criminal law. It is concerned about allegations of the excessive use of pretrial detention by judges at the request of prosecutors, without a detailed examination of the grounds which could justify such detention, and the problems in properly ensuring the rights of the defence. Nonetheless, it notes that the authorities have begun to take action to address this situation. It notes that the Azerbaijani authorities have initiated reforms of their judicial system following the relevant recommendations of the Council of Europe, in particular those of the Group of States against Corruption (GRECO) and the European Commission for the Efficiency of Justice (CEPEJ). Nevertheless, it

2. Draft resolution adopted unanimously by the committee on 5 September 2017.

finds that the concerns over the functioning of justice expressed in its Resolution 2062 (2015) remain valid. Furthermore, the constitutional amendments approved following the referendum of 26 September 2016 could entail the risk of increasing the power of the executive in relation to the legislative and judiciary.

8. The Assembly calls on the Azerbaijani authorities to guarantee the full independence of judges vis-à-vis the executive and to continue the reforms to establish a judicial system which complies with the requirements of Article 6 of the European Convention on Human Rights and the other standards of the Council of Europe.

9. The Assembly notes with great concern reports linking the Azerbaijani Government to a large-scale money laundering scheme occurring in the years 2012 to 2014, used *inter alia* to influence the work of members of the Assembly as regards the human rights situation in Azerbaijan. The Assembly urges the Azerbaijani authorities to start an independent and impartial inquiry into these allegations without delay and furthermore, co-operate fully with the competent international authorities and bodies on this issue.

10. The Assembly welcomes the Presidential Executive Order of 10 February 2017 on improving the functioning of the prison system, the humanisation of criminal policies and the extension of alternative sanctions and non-custodial preventive measures. However, it calls on the authorities to enact and apply rapidly the necessary legislation for it to be put into effect. It encourages the Azerbaijani authorities to ensure that it is applied in compliance with the standards of the Council of Europe. It also calls on Azerbaijan to create a separate juvenile justice system.

11. The Assembly stresses the fact that the exercise of the rights guaranteed in Articles 10 and 11 of the European Convention on Human Rights is essential for the proper functioning of a democratic society. The Assembly is concerned by allegations relating both to a restrictive climate for extra-parliamentary activities of the opposition and the limitations on the freedoms of expression and association, in particular with regard to independent media and advocates of freedom of expression. It is concerned about the reported problems concerning the use of criminal legislation to limit freedom of expression, as underlined by the Committee of Ministers in the context of its supervision of the application of the judgments of the European Court of Human Rights. The legislative framework for NGO activities has been judged insufficiently compliant with European standards by the bodies of the Council of Europe. Accordingly, the Assembly calls on the Azerbaijani authorities to:

11.1. ensure that activists, human rights defenders and other individuals are able to peacefully exercise these rights without fear of retribution.

11.2. remove the obstacles to the work of journalists and human rights defenders;

11.3. create an environment conducive to the work of the independent media and the activities of NGOs;

11.4. bring the legislation on defamation and NGOs into line with the requirements arising from the judgments of the European Court of Human Rights and the recommendations of the European Commission for Democracy through Law (Venice Commission);

11.5. ensure that fair trial guarantees and due process rights are respected and upheld in all cases;

11.6. abrogate any other legislative measure which could restrict the exercise of the freedoms guaranteed in Articles 10 and 11 of the Convention;

11.7. apply the relevant legislation in compliance with the requirements arising from the Convention and the case law of the Court.

12. The Assembly calls on the government to eliminate obstacles to the activities of NGOs and to step up meaningful dialogue with them and civil society and urges the latter to participate actively in a constructive and co-operative spirit.

13. Given that this is a region currently experiencing considerable tension, the Assembly welcomes the secular nature of the State and its climate of religious tolerance, for example in relation to the Jewish community which, according to its representatives, lives in harmony with the rest of the population.

14. The Assembly is aware that Azerbaijan, like most countries in the Council of Europe, is faced with the problem of foreign fighters in Syria and Iraq, and it supports the government's efforts to combat this phenomenon, urging it to do so with full regard for the principles of the rule of law. The Assembly shares the authorities' concern to combat the financing of terrorism.

15. The Assembly also notes with satisfaction that Azerbaijan has made significant progress in reducing poverty.

16. The Assembly refers to its Resolution 2178 (2017) on the implementation of judgments of the European Court of Human Rights. It notes that more than 120 Court judgments against Azerbaijan have not yet been executed or have been only partially implemented. The Assembly notes that little progress has been made regarding the execution of certain judgments or groups of judgments, in particular regarding ill-treatment, violations of the right to a fair trial, the right to freedom of expression and freedom of assembly and association, and the right to free elections. It calls on the authorities to co-operate fully with the Committee of Ministers and the Department for the Execution of Judgments of the European Court of Human Rights and to take all the necessary measures to implement quickly and fully the judgments of the Court, including the payment of just satisfaction to applicants within the time frames set out in the Court's judgments.

17. The Assembly refers to the Court's judgment of 22 May 2014 concerning Mr Ilgar Mammadov and the repeated calls of the Committee of Ministers for his release. It takes note of the authorities' explanations justifying the continued detention of Mr Mammadov. Nonetheless, the Assembly urges the Azerbaijani authorities to execute the judgment and release Mr Mammadov immediately.

18. The Assembly encourages the Azerbaijani authorities to step up the measures to raise the awareness of the standards of the European Convention on Human Rights among judges, prosecutors, law-enforcement officers and lawyers.

B. Explanatory memorandum by Mr Alain Destexhe, rapporteur

1. Introduction

1.1. Procedure

1. On 23 June 2014, the Parliamentary Assembly referred to the Committee on Legal Affairs and Human Rights, for report, the motion for a resolution on "Azerbaijan's Chairmanship of the Council of Europe: what follow-up on respect for human rights?". At its meeting in Strasbourg on 25 June 2014, the committee appointed Mr Pedro Agramunt (Spain, EPP/CD) rapporteur. On the basis of an information note by the rapporteur, the committee discussed the issue at its meetings on 30 October 2014 (in Madrid) and 10 December 2014 (in Paris). Following Mr Agramunt's election as President of the Assembly in January 2016, the committee appointed me rapporteur at its meeting in Paris on 7 March 2016. On 18 May 2016, the committee authorised me to make a fact-finding visit to Azerbaijan. I subsequently visited Baku on 9 and 10 February 2017 and presented an oral report on the visit to the committee at its meeting in Paris on 7 March 2017.

1.2. Issues at stake

2. In the motion for a resolution in April 2014, the signatories expressed concern about the increase in arrests and detentions of persons active in political and public life in Azerbaijan since the Assembly had adopted Resolution 1917 (2013) on the honouring of obligations and commitments by Azerbaijan. In particular, the motion for a resolution indicated that seven-year prison sentences had been handed down on two opposition politicians, Mr Ilgar Mammadov, the leader of the party Republican Alternative Movement (REAL), who was also the Director of the Council of Europe School of Political Studies in Baku, and Mr Tofig Yagublu, the deputy head of the Musavat Party, and that Mr Anar Mammadli, the head of the Election Monitoring and Democratic Studies Centre (EMDS), had been placed in pretrial detention. According to the signatories, as Azerbaijan was shortly due to take up the rotating chairmanship of the Committee of Ministers of the Council of Europe (mid-May to mid-November 2014), it was essential to address concerns regarding the implementation of fundamental freedoms and, especially, politically motivated detention, in the country.

3. Later in 2014, more activists were arrested, including: the human rights lawyer, Mr Intigam Aliyev; the founder of the non-governmental organisation (NGO) Human Rights Club, Mr Rasul Jafarov; Ms Leyla Yunus, Director of the Institute for Peace and Democracy, and her husband, Mr Arif Yunus, historian; the investigative journalist, Ms Khadiya Ismayilova; and the journalist, Mr Rauf Mirqadirov. Mr Emin Huseynov, a journalist and activist for freedom of expression, went into hiding in the Swiss embassy in Baku in August 2014. In June 2015, he was transferred to Switzerland, and the authorities revoked his Azerbaijani citizenship.

4. The main Council of Europe bodies, other international organisations (including the European Union, the Organization for Security and Co-operation in Europe (OSCE) and the United Nations)[3] and several non-governmental organisations condemned these arrests. In a statement on 7 August 2014, Mr Nils Muižnieks, Council of Europe Commissioner for Human Rights, said that "by stifling dissent, Azerbaijan is failing to comply with its international obligations which require safeguarding freedom of expression, assembly and association, and called for the release of the detained activists.

5. Since then, the circumstances have changed and Azerbaijan's chairmanship of the Council of Europe ended in mid-November 2014. Under the presidential pardon decree of 17 March 2016, 148 persons, including 14 "prisoners of conscience" (human rights defenders, journalists, youth activists, political activists and members of NGOs), were released. They included Anar Mammadli, Rasul Jafarov and Tofig Yagublu. Later on, in 2015, Rauf Mirqadirov, Intigam Aliyev, Khadiya Ismayilova and Leyla and Arif Yunus were released by the domestic courts, which commuted their prison sentences into suspended sentences. In April 2016, Leyla and Arif Yunus were allowed to travel abroad (to the Netherlands) for health reasons. Other prisoners were subsequently released under a further pardon decree in March 2017.

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3. Concerns over the situation of human rights defenders in Azerbaijan, Council of Europe Commissioner for Human Rights, press release of 7 August 2014. See also: the statement by Council of Europe Secretary General Thorbjørn Jagland on 11 August 2014, Secretary General Thorbjørn Jagland expresses concern for human rights defenders in Azerbaijan*; the EU statement,* EU Statement on the situation of human rights and civil society in Azerbaijan*;* and the call by United Nations experts of 19 August 2014, Persecution of rights activists must stop – UN experts call on the Government of Azerbaijan (the Special Rapporteur on the situation of human rights defenders, Michel Forst, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, and the Special Rapporteur on the promotion and protection of the right to freedom or opinion and expression, David Kaye).

6. Nevertheless, in spite of these developments, serious reservations about the human rights situation in the country have been voiced within the Council of Europe (in particular, by the Assembly itself and the Commissioner for Human Rights), other international organisations (in particular the European Union and the United Nations) and several NGOs working in this area (including Amnesty International, Human Rights Watch and Human Rights House). In Resolution 2062 (2015) on the functioning of democratic institutions in Azerbaijan, the Assembly expressed concern about the lack of independence of the judiciary, the situation of civil society, the prosecutions of journalists, NGO leaders and lawyers who criticised the authorities and violations of the right to freedom of expression and association.[4] The situation is still being examined by the co-rapporteurs of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee). In my report, I therefore wish to consider in detail certain issues relating to respect for human rights, namely respect for political freedoms (of expression, association and assembly), freedom of religion, prohibition of torture and inhuman or degrading treatment and the right to a fair trial. I will also address the issue of several lists of "prisoners of conscience" or "political prisoners", given the number of people I spoke to who mentioned the problem of criminal prosecutions which may have been "politically motivated".

7. I would also point out that respect for the principle of the rule of law, in particular the separation of powers, is a vexed issue. Following the referendum on 26 September 2016, the constitutional amendments expanding the powers of the President of the Republic and the executive and reducing those of parliament were approved, in spite of criticism from the European Commission for Democracy through Law (Venice Commission).[5] According to the latter, the amendments might also restrict certain human rights, in particular the right to property.

8. Before visiting Azerbaijan, I held talks on several occasions with representatives of certain Azerbaijani NGOs. During my visit to Baku in February, I met several interlocutors, including the President of the Republic, the Minister of Justice, Supreme Court judges, the Head of the Presidential Administration, the Prosecutor General, ambassadors of the European Union, of its member States and of the United States and NGO representatives. They all had relatively divergent points of view and/or analyses regarding the situation on the ground. As far as possible, this report will seek properly to reproduce the opposing views expressed concerning certain issues so that their breadth is clearly reflected.

2. The geopolitical context

9. The situation in Azerbaijan must be analysed in relation to its geopolitical context, which is particularly difficult. The country has always been at the crossroads of Russian, Ottoman and Persian influences. Its neighbours are:

– Iran, whose political system is a dictatorial theocracy based on the application of the sharia and which is one of the countries in the world which executes the largest numbers of convicted persons;

– Turkmenistan, one of the most isolationist regimes in the world;

– Armenia, with which Azerbaijan fought a war which cost it the province of Nagorno-Karabakh and seven neighbouring provinces which are occupied by Armenia but which the latter acknowledges are not part of its territory;

– Georgia, some of whose territory is occupied by pro-Russian forces;

– the Russian Federation and, more particularly, the Republic of Dagestan, where massive human rights violations occur, including high numbers of political assassinations and murders. Also close to Azerbaijan is the Chechen Republic, where the security situation is similar to that in the Republic of Dagestan. In both cases, the authorities are faced with a violent Islamist insurgency which is harshly suppressed. At its April 2017 part-session, the Assembly adopted Resolution 2157 (2017) "Human rights in the North Caucasus: what follow-up to Resolution 1738 (2010)?", in which it voiced grave concerns about the human rights situation in the region.[6]

10. According to several resolutions of international organisations such as the Security Council of the United Nations and our Assembly, the province of Nagorno-Karabakh and the other neighbouring provinces in Azerbaijan are being illegally occupied by Armenia. The authorities believe that Europe and the Council of

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4. See also the report by the Monitoring Committee (co-rapporteurs: Mr Pedro Agramunt (Spain, EPP/CD) and Mr Tadeusz Iwiński (Poland, SOC), Doc. 13801.
5. Venice Commission, Opinion on the draft modifications to the Constitution, CDL-AD(2016)029, 18 October 2016.
6. See also Doc. 14083 (rapporteur: Mr Michael McNamara (Ireland, SOC)).

Europe are applying double standards by not addressing this issue, which they regard as an absolute priority. In their view, the greatest human rights violations in Azerbaijan stem from the violations of the right of 1.5 million people to return to their homes.

3. Relations with the Council of Europe

11. Along with Armenia, Georgia and the Russian Federation, Azerbaijan is a member of the Council of Europe and a Party to the European Convention on Human Rights (ETS No. 5, "the Convention"), which it ratified in 2002. Azerbaijan became the 43rd member State of the Council of Europe on 25 January 2001. In terms of the signature and ratification of Council of Europe treaties, Azerbaijan has (only) signed eight conventions, signed and ratified 63 and still not signed 134 to date.[7]

12. Azerbaijan ratified the Convention in 2002. Since then, the European Court of Human Rights ("the Court") has delivered 128 judgments finding violations of human rights (in particular violations of Articles 3, 5, 6 and 11 of the Convention and of Articles 1 and 3 of Protocol No. 1 (ETS No. 9));[8] 184 cases have been referred to the Committee Ministers for supervision of execution and three cases have been closed by final resolutions.[9] The Committee of Ministers is examining a number of Azerbaijani cases under the enhanced procedure. These are the judgments concerning the right to a fair trial,[10] prohibition of torture and inhuman or degrading treatment,[11] the right to property, including for persons displaced by the Nagorno-Karabakh conflict,[12] the right to liberty and security,[13] freedom of assembly and association,[14] the right to free and fair elections[15] and freedom of expression.[16]

13. In 2016, the Court dealt with 186 applications concerning Azerbaijan, of which 136 were declared inadmissible or struck out. The Court delivered 16 judgments (concerning 50 applications) which found at least one violation of the Convention.[17] According to the latest statistics from the Court, 2 000 of the 93 200 pending applications as at 31 May 2017 – i.e. 2.1% of the total – concerned Azerbaijan, putting it in seventh place in terms of the States with the largest number of applications pending before the Court.[18] In December 2015, the Secretary General of the Council of Europe launched an inquiry into respect for human rights in Azerbaijan, under Article 52 of the Convention.

14. Various recommendations have been issued with a view to providing Council of Europe assistance with the execution of the judgments of the Court. The authorities have indicated that there is a department dealing with the implementation of the Convention and a website which lists the various judgments. They also stated that legislation which breaches the Convention is returned to parliament for amendment. According to the Minister of Justice, the processing of proceedings in connection with the Convention is due to be speeded up so as to avoid cases like that of Ilgar Mammadov, which is mentioned below.

15. An Action Plan (2014-2016) was established following a joint initiative by the Council of Europe and the Azerbaijani authorities. Various aspects are highlighted in the plan:

– the 2008 law on freedom of assembly, which took into account most of the recommendations by the Venice Commission;

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7. www.coe.int/en/web/conventions/search-on-states/-/conventions/chartStats/AZE.
8. As at 28 June 2017, according to the Court's HUDOC case law database.
9. As at 20 June 2017, according to data from the Department for the Execution of Judgments of the European Court of Human Rights, country factsheet on Azerbaijan.
10. See *Insanov v. Azezerbaijan,* Application No. 16133/08, judgment of 14 March 2013; *Huseyn and Others* group, Application No. 35485/05, judgment of 26 July 2011 and, concerning non-enforcement of domestic judicial decisions, *Humbatov* group, Application No. 13652/06, judgment of 3 December 2009, and *Tarverdiyev* group, Application No. 33343/03, judgment of 26 July 2007.
11. *Mikayil Mammadov, Mammadov (Jalaloglu)* and *Muradova* groups, see below; *Garayev* group, Application No. 53688/08, judgment of 10 June 2010.
12. *Sargasyan v. Azerbaijan*, Application No. 40167/06, judgment of 16 June 2015, and *Mirzayev* group, Application No. 50187/06, judgment of 3 December 2009.
13. See, in particular, *Ilgar Mammadov v. Azerbaijan,* Application No. 15172/13, judgment of 22 May 2014, and *Gafgaz Mammadov* group, op. cit.
14. *Gafgaz Mammadov* group, see below.
15. *Namat Aliyev v. Azerbaijan,* Application No. 18705/06, judgment of 8 April 2010.
16. *Mahmudov and Agazade* group, see below for more details.
17. European Court of Human Rights, press country file on Azerbaijan, April 2017.
18. www.echr.coe.int/Documents/Stats_pending_2017_BIL.pdf.

– the publication since 2007 of a Court bulletin setting out the latest judgments of the European Court of Human Rights, which is widely distributed among judges, prosecutors, lawyers and civil society.

16. According to the report of the Group of States against Corruption (GRECO) published on 17 March 2017,[19] Azerbaijan has satisfactorily implemented 11 of the 21 recommendations set out in the fourth evaluation round report (Corruption prevention in respect of members of parliament, judges and prosecutors). Four of the recommendations, including some concerning the Judicial Legal Council, which is responsible for the appointment of judges and for disciplinary proceedings, have been partly implemented, and six have not been implemented, including those concerning asset disclosure by judges and prosecutors. It should be noted that Transparency International's corruption perceptions index ranked Azerbaijan 123rd out of 176 countries in 2016.[20]

4. Human rights and fundamental freedoms

17. The authorities maintain that freedom of association, assembly and expression are guaranteed. Some leading NGOs disagree. For instance, for 2017, Freedom House gave the lowest scores (7 = least free) in almost all categories assessing democracy in Azerbaijan. In its 2016/2017 report, Amnesty International refers to deterioration in respect for human rights in Azerbaijan. Moreover, similar findings appear in the US Department of State 2016 report on human rights in the country.

4.1. Freedom of expression and the situation of the media

18. As far as freedom of expression is concerned, the authorities state that the media environment is not comparable with that in longer-standing democracies. There is no genuinely independent conventional television channel. Television broadcasters include Meydan TV, based in Berlin, Azaklink.org (Radio Free Europe), based in Prague, and other operators such as Azklik, Turan.tv and Musavat news. There is an opposition newspaper, *Yeni Musavat*, but some observers maintain that it has been less independent since 2014 than it was in the past. The main opposition media outlets operate on the internet, where there are television channels, radio stations, newspapers and blogs which are highly critical of the government and institutions.

19. Some blogs are very popular and have tens of thousands of followers. This is true of a blog to expose corruption which has 300 000 followers on Facebook, run by the blogger Mehman Huseynov, whom I met in person during my visit to Baku in February 2017.

20. According to Freedom House's Freedom in the World 2017 report, the press in Azerbaijan is "not free" and the internet is "partially free". Reporters without Borders ranks Azerbaijan 162nd on the World Press Freedom Index.[21] In its 2016/2017 report, Amnesty International expresses concern about reprisals against independent journalists, stressing that all mainstream media remained under government control. As examples of reprisals in 2016, the organisation mentions, in particular, the launching in April 2016 of a criminal investigation concerning Meydan TV and 15 journalists working there and, in November 2016, the arrest of the journalists Afgan Sadykhov and Teymur Kerimov, who were charged with assault after they themselves had been attacked by unidentified individuals, and threats made by police officers to Zamin Gadji, a journalist with the opposition newspaper *Yeni Musavat*. Such reprisals have apparently continued in 2017.

21. On 3 March 2017, Mehman Huseynov, the blogger mentioned above, was sentenced to two years' imprisonment for defaming police officers because he alleged he had been tortured by the police when arrested in January 2017. The sentence, which was confirmed on appeal, has been widely condemned in particular by civil society[22] and the European Union.[23] Further to a letter which I sent to the Minister of Justice, the Director of the Department for Human Rights and Public Relations, Mr Faig Gurbanov, replied on 20 June 2017 that Mr Huseynov's lawyers had lodged an appeal on points of law and that he had received appropriate medical treatment at the time of his arrest and enjoyed all the rights that were afforded to detained persons.

19. https://rm.coe.int/16806fe9f2.
20. www.transparency.org/country/AZE.
21. https://rsf.org/en/azerbaijan.
22. See, for instance, Statement by the World Organisation against Torture (OMCT) and other NGOs, 3 May 2017.
23. https://eeas.europa.eu/headquarters/headquarters-homepage/22074/statement-sentencing-mehman-huseynov-azerbaijan_en.

22. I also took an interest in the case of the blogger, Mehman Galandarov, who was found hanged in his cell in Baku Detention Centre No. 1 on 28 April 2017 following his arrest in February 2017. According to some sources, his arrest was also related to expressions of support for one of the "prisoners of conscience" made by Mr Galandarov on his private Facebook account.[24] In a press release and a letter to the Minister of Justice, I called on the authorities to conduct an inquiry into the circumstances of his death.[25] This call was also reiterated by the European Parliament in its resolution of 15 June 2017 concerning the case of Afgan Mukhtarli, and by the US Department of State.[26] In his letter of 20 June 2017, Mr Gurbanov informed me that Mr Galandarov had been arrested for the possession of drugs and that an inquiry into the circumstances of his death was being conducted by the prosecutor's office in Baku. The authorities stated that Mr Galandarov had suffered from psychological problems, had taken drugs and was alcoholic and had committed suicide; he had not been tortured. According to them, he was not a blogger, a journalist or a member of a political party.

23. On 29 May 2017, Afgan Mukhtarli, an independent journalist living in Georgia, was allegedly abducted outside his home and returned by force to Azerbaijan, where he was placed in pretrial detention. He is accused of crossing the border illegally, smuggling €10 000 and violence against police authority. According to NGOs, he is at risk of torture and may face a very long prison sentence.[27] Rapporteurs from our Assembly have expressed concern about the incident.[28] In addition, in its resolution of 15 June, the European Parliament strongly condemned his abduction and detention as a serious violation of human rights. It stated that the charges against Mr Mukhtarli were bogus and that he was being targeted for his work as an independent journalist. The European Parliament accordingly called on the Azerbaijani authorities to drop all charges against him and release him. It further stated that the case "is another example of the Azerbaijani authorities targeting and persecuting critics living in exile and their relatives at home" and referred to "the previous cases of international arrest warrants requested for Azerbaijani citizens living in exile who are critical of the authorities".[29]

24. Amnesty International also told me of other cases of persecution of independent journalists, in particular Aziz Orudjev and Nijat Amiraslanov. The former is also director of the "Kanal-13" online TV channel, which is a discussion forum for human rights defenders and opposition activists. In May 2017, he was placed in administrative detention for 30 days for allegedly resisting police orders. At the beginning of June, criminal proceedings were brought against him for illegal entrepreneurship and abuse of power. He was placed in pretrial detention and faces up to seven years' imprisonment. Nijat Amiraslanov is alleged to have been tortured when placed in administrative detention for 30 days for resisting police orders. According to some NGOs, he suffered these reprisals for posting critical comments on the government on Facebook.

25. On 12 May 2017, Baku Sabail district court granted the request by the Minister for Transport, Communications and High Technologies to block access in Azerbaijan to the websites of Radio Free Europe/ Radio Liberty's (RFE/RL) Azerbaijani Service (azadliq.org), Meydan TV (meydan.tv), Azadliq Daily (azadliq.info), Turan TV (kanalturan.com) and Azerbaijani Hour (Azerbaycansaati.com and Azerbaycansaati.tv). At the same time, according to certain NGOs, the authorities decided partially to restrict voice calls in Azerbaijan using WhatsApp, Telegram, Skype, Facebook messenger and FaceTime. I voiced concern about these moves in my letter to the Minister of Justice; he told me that the ruling of 12 May was being reviewed following an appeal and that some of the sites concerned could still be accessed following changes in their domains or names. There are no restrictions on the use of instant messaging; communication may have been disrupted during the 4th Islamic Solidarity Games.

26. The Committee of Ministers is still examining the execution of the 2008 *Mahmudov and Agazade*[30] and 2010 *Fatullayev*[31] judgments concerning violations of the applicant journalists' right to freedom of expression (violations of Article 10 of the Convention) following criminal convictions for defamation (and, more specifically, a prison sentence in the first case).[32] Although no further individual measures are required in these cases, the Committee of Ministers is examining the question of general measures, i.e. measures to bring the law on defamation and its application into line with the requirements of the Convention and the case law of the Court. It should be noted that defamation is still punishable by imprisonment under Azerbaijani criminal law, the sentencing of the blogger Mehman Huseynov in March 2017 being an example here.

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24. https://www.irfs.org/news-feed/authorities-claim-that-arrested-blogger-mehman-galandarov-commits-suicide/
25. Statement of 5 May 2017.
26. 2017/2722(RSP); https://www.state.gov/r/pa/prs/ps/2017/05/270623.htm.
27. OMCT open letter, 7 June 2017.
28. Statement by the Monitoring Committee co-rapporteurs on Georgia of 6 June 2017.
29. See paragraph 7 of the resolution.
30. Application No. 35877/04, judgment of 18 December 2008.
31. Application No. 40984/07, judgment of 22 April 2010.
32. http://hudoc.exec.coe.int/eng?i=004-1709.

According to the information provided to the Committee of Ministers by the government, the courts have no longer handed down criminal convictions since 2011.[33] On 21 February 2014, the Plenum of the Supreme Court of Azerbaijan published a decision that reminded lower courts of the requirements of the Convention in relation to freedom of expression and defamation and highlighted the need for imprisonment for defamation to only be imposed in "exceptional circumstances".[34] A draft law on defamation was submitted to the Venice Commission, which found it incompatible with the key principles established by the Court's case law.[35] To date, no other amendments with the aim of decriminalising defamation have been forthcoming and, in May 2013, before the case of the blogger Mr Huseynov, and the death in detention of the blogger Mr Galandarov, the scope of criminal liability for defamation was extended to include "publicly displayed internet information resource[s]".[36] In November 2016, parliament passed an amendment introducing a prison sentence for defamation of the President of the Republic.[37]

27. Given the lack of progress on these issues, the Committee of Ministers has adopted four interim resolutions[38] in this connection. In December 2016, while reiterating the importance of constructive dialogue between Azerbaijan and the Committee of Ministers, it expressed grave concern in the face of recent legislative amendments to the Criminal Code introducing new defamation offences subject to imprisonment irrespective of whether incitement to violence or hatred is involved. In March 2017, it reiterated the position expressed in its previous decisions and noted with interest the adoption of the Presidential Executive Order of 10 February 2017 providing for a number of measures that were also relevant to this group of cases (see below).

28. In Resolution 2062 (2015), the Assembly said that it was "deeply concerned about the increasing number of reprisals against independent media and advocates of freedom of expression in Azerbaijan" (paragraph 9). In this regard, it deplored the arbitrary application of criminal legislation to limit freedom of expression, in particular against journalists and bloggers, and recommended "taking the measures necessary to ensure a genuinely independent and impartial review by the judiciary of cases involving journalists and others expressing critical opinions". In addition, it called on the authorities to "create proper conditions for journalists to carry out their work and refrain from exerting any kind of pressure on them" (paragraph 11.6.1). It also called on them to "speed up efforts towards the decriminalisation of defamation, in co-operation with the Venice Commission, to ensure that defamation cannot be associated with excessively high criminal sanctions, including imprisonment; in the meantime, use the existing legislation with caution to avoid prison sentences for such offences" (paragraph 11.6.4).

29. The state of freedom of expression and media freedom and the detention of several young bloggers have been the subject of recent concerns of the co-rapporteurs of the Monitoring Committee.[39] In addition, in Resolution 2141 (2017) on attacks against journalists and media freedom in Europe, the Assembly made some very specific recommendations concerning the situation of certain media outlets and journalists in Azerbaijan (see paragraph 11) and regretted the absence of information on measures taken to comply with the *Mahmudov and Agazade* group judgments. It also expressed concern about recent legislative amendments to the Criminal Code that introduced new defamation offences subject to imprisonment, irrespective of whether incitement to violence or hatred was involved (paragraph 10). Concerns were also raised in November 2016 by the United Nations Human Rights Committee.[40]

4.2. Freedom of assembly

30. The law relating to freedom of assembly was amended in 2008 following advice from the Venice Commission,[41] but it would seem that the "notification procedure" has been interpreted more as an "authorisation procedure". Azerbaijan law lays down harsh penalties for the organisation of, or participation in, any "unauthorised" public gathering, i.e. administrative detention or heavy fines. This situation has already been criticised by the European Court of Human Rights in some 10 judgments concerning peaceful

33. CM/Notes/1273/H46-4.
34. Committee of Ministers, 1201st meeting (DH), CM/Del/Dec(2014)1201, 6 June 2014. Decisions taken concerning the cases of Mahmudov and Agazade v. Azerbaijan and Fatullayev v. Azerbaijan.
35. Venice Commission, Opinion on the legislation pertaining to the protection against defamation in the Republic of Azerbaijan, CDL-AD(2013)024, 14 October 2013, paragraph 60.
36. Communication from an NGO (Media Rights Institute) (12 September 2013) in the cases of Mahmudov and Agazade and Fatullayev v. Azerbaijan (Applications Nos. 35877/04 and 40984/08), DH-DD(2013)971, 20 September 2013.
37. www.reuters.com/article/us-azerbaijan-defamation-idUSKBN13P2OT?il=0.
38. CM/ResDH(2013)199, CM/ResDH(2014)183, CM/ResDH(2015)250 and CM/ResDH(2016)145.
39. See statement following their visit to Azerbaijan on 21 June 2017 and the information note on their fact-finding visit to Baku (12-14 January 2017), AS/Mon (2017) 06 declassified, paragraph 46.
40. Concluding observations on the fourth periodic report of Azerbaijan, CCPR/C/AZE/CO/4, paragraphs 36-37.

demonstrations held between 2010 and 2014 (see *Gafgaz Mammadov v. Azerbaijan group);*[42] unfortunately, no progress has been made in terms of the general measures called for by the Committee of Ministers for the execution of these judgments.

31. No demonstrations have been authorised in the centre of Baku since 2006.[43] When demonstrations take place, they are often dispersed by the authorities, who frequently use force; this was true of the demonstrations held by the NIDA movement, the demonstration held by the Popular Front Party on 17 September 2016 and other demonstrations held before the referendum on 26 September 2016.[44] The European Court of Human Rights has previously held treatment experienced by protesters to constitute "ill-treatment" and found that investigations into these abuses were ineffective (substantive and procedural violations of Article 3 of the Convention).[45] According to Amnesty International's 2016/2017 report, the amendments to the Constitution introduced following the September 2016 referendum granted the government even more power to restrict the right to freedom of peaceful assembly.

4.3. Freedom of association and the situation of civil society and human rights defenders

32. Although the Constitution of Azerbaijan protects the right to freedom of association, respect for this fundamental freedom has raised serious concerns in recent years. Problems encountered by local and international NGOs in applying for registration[46] or receiving donations from foreign donors, particularly following the 2013 and 2014 changes in legislation, and the criminal proceedings initiated against NGO leaders or activists suspected of failing to comply with the very strict legislation on NGOs have already been dealt with by the Monitoring Committee and our own committee.

33. In its Resolution 2062 (2015), the Assembly expressed concern about the situation of civil society (paragraph 8) and called on the Azerbaijani authorities to "review the law on NGOs with a view to addressing the concerns formulated by the Venice Commission"[47] and to "create an environment conducive for NGOs to carry out their legitimate activities including those expressing critical opinions" (paragraph 11.7). In its Resolution 2096 (2016) "How can inappropriate restrictions on NGOs activities in Europe be prevented?", adopted on 28 January 2016, the Assembly took a similar stance, expressing once again its concerns about the worsening situation of civil society in Azerbaijan.[48] In its Resolution 2095 (2016), "Strengthening the protection and role of human rights defenders in Council of Europe member States", adopted on the same day, the Assembly expressed its deep concern about the increased reprisals against human rights defenders in Azerbaijan.[49] New reports on the situation of civil society and human rights defenders are being drafted by our committee.[50]

34. Reference should also be made to the *Rasul Jafarov v. Azerbaijan* case,[51] in which the European Court of Human Rights found several violations of the Convention following the arrest of this activist, it observed that the legislative framework governing the functioning of NGOs had driven a number of them to operate on the

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41. Venice Commission, Opinion on the Law on Freedom of Assembly in Azerbaijan, CDL-AD(2006)034, 25 October 2006, and Venice Commission, Opinion on the Draft Amendments to the Law on Freedom of Assembly of Azerbaijan, CDL-AD(2007)042, 17 December 2007.
42. Application No. 60259/11, judgment of 15 October 2015 and nine other judgments; decision taken by the Committee of Ministers at its 1288th meeting (DH), 6-7 June 2017. See also the judgment in *Hajili and others v. Azerbaijan*, Application No. 44699/13 and others, judgment of 29 June 2017 (not final).
43. Council of Europe Commissioner for Human Rights, Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Azerbaijan, from 22 to 24 May 2013, CommDH(2013)14, 6 August 2013, paragraph 64. In reply to the update by the Commissioner on 23 April 2014, the Azerbaijani authorities stated that some demonstrations had been held in the city centre the previous year, without indicating which demonstrations; see "Comments of the Azerbaijani authorities on the observations on human rights situation in Azerbaijan by Mr Nils Muižnieks, Council of Europe Commissioner for Human Rights", CommDH/GovRep(2014)8, 23 April 2014.
44. See footnote 40, paragraph 38.
45. Muradova v. Azerbaijan, Application No. 22684/05, judgment of 2 April 2009, Rizvanov v. Azerbaijan, Application No. 31805/06, judgment of 17 April 2012, and Najafli v. Azerbaïdjan, Application No. 2594/07, judgment of 2 October 2012. The Committee of Ministers is still examining their execution; see HUDOC EXEC.
46. See, in particular, *Ramazanova and Others v. Azerbaijan*, Application No. 44363/02, judgment of 1 February 2007.
47. See the Venice Commission's Opinions Nos. 636/2011 and 787/2014.
48. Paragraph 5 of the resolution. For further details on the relevant legislation on NGOs and on its application, see our committee's report on this subject (rapporteur: Mr Yves Cruchten, Luxembourg, SOC), Doc. 13940.
49. See the report on "Strengthening the protection and role of human rights defenders in Council of Europe member States" (rapporteur: Ms Mailis Reps (Estonia, ALDE)), Doc. 13943, chapter 3.
50. "How can inappropriate restrictions on NGO activities in Europe be prevented" (rapporteur: Ms Aleksandra Djurović (Serbia, EPP/CD)) and "Protecting human rights defenders in Council of Europe member States" (rapporteur: Mr Yves Pozzo Di Borgo, (France, EPP/CD)).

fringes of the law and concluded that Azerbaijani legislation on NGOs had become "increasingly harsh and restrictive" on account of the introduction of additional registration and reporting requirements and heavy penalties.[52] It also noted that several human rights activists who had worked with international organisations, including the Council of Europe, had been arrested and accused of committing serious offences. In the Court's view, the applicant's arrest was part of a more general crackdown on human rights defenders which had intensified over the summer of 2014 with the aim of silencing him because of his activities in the area of human rights; the Court accordingly concluded that there had been a violation of Article 18 (abusive use of restriction of rights), taken in conjunction with Article 5 of the Convention.

35. Moreover, the United Nations Special Rapporteur on the situation of human rights defenders, Mr Michel Forst[53] (following his September 2016 visit), and the UN Human Rights Committee[54] also expressed concern about the worsening situation of civil society in Azerbaijan.

36. In October 2016, the Extractive Industries Transparency Initiative (EITI), a grouping of governments, companies and non-governmental groups promoting better governance of resource-rich countries, which presupposes that their governments create an "enabling environment for civil society", gave Azerbaijan four months to eliminate the legal and bureaucratic obstacles inhibiting civil society engagement.[55] Subsequently, the government withdrew from the EITI.[56]

37. Since late 2015, other changes have been made to NGO legislation. On 28 December 2015, the Minister of Justice adopted new "rules on studying the activities of NGOs, branches or representative offices of foreign NGOs" which granted the ministry broad powers to conduct intrusive "regular" as well as "extraordinary" inspections on NGOs.[57] On 21 October 2016, the President of the Republic signed a decree facilitating grants by foreign donors to Azerbaijani NGOs, and establishing, as of 1 January 2017, a "one-stop shop" for this procedure.[58] According to information obtained by the co-rapporteurs of the Monitoring Committee, NGO legislation was being reformed. In his comment of 4 April 2017 on "The Shrinking Space for Human Rights Organisations", the Commissioner for Human Rights reiterated his concerns about the highly bureaucratic requirements for NGO registration, the Ministry of Justice's near-total discretion in this regard and the additional administrative barriers to NGOs and their funders. The Commissioner also felt that despite recent initiatives aimed at simplifying grant registration, the procedures for the receipt and use of grants remained so cumbersome that many independent NGOs had had to scale down or discontinue their work, or had moved their operations abroad. It had become very difficult to carry out human rights work in Azerbaijan. Furthermore, in a statement of 17 May 2017, the Commissioner once again reiterated these findings and called on the authorities to free all persons who were in detention because of their dissenting views or their civic activity.

38. Amnesty International's Azerbaijan 2016/2017 report states that most of the leading Azerbaijani human rights NGOs had been unable to resume their work following the freezing of their assets (even though the authorities had unfrozen the bank accounts of certain NGOs involved in the EITI) and their members had been subjected to ongoing harassment, including criminal prosecution. Similar findings had been observed by Human Rights Watch.[59]

39. Reference should also be made to the case of Leyla Yunus, Director of the Institute for Peace and Democracy (IPD), and her husband Arif Yunus, who have suffered unprecedented judicial harassment since 2014. Given prison sentences, she and her husband were released on urgent medical grounds and have sought political asylum in the Netherlands. However, on 17 May last, the Baku Court of Appeal ordered the couple to return to the country on the ground that their participation in a trial before this court was essential.[60]

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51. Application No. 69981/14, judgment of 17 March 2016.
52. Ibid., paragraphs 120 and 159.
53. See his statement following his visit to Azerbaijan on 22 September 2016.
54. CCPR/C/AZE/CO/4, paragraphs 40-41.
55. Human Rights Watch, Giorgi Gogia, Azerbaijan Suspended Over Rights Crackdown, 10 March 2017.
56. https://eiti.org/news/azerbaijan-withdraws-from-eiti.
57. Human Rights Watch, Harassed, Imprisoned, Exiled. Azerbaijan's Continuing Crackdown on Government Critics, Lawyers and Civil Society, October 2016.
58. Information note on a fact-finding visit to Baku (12-14 January 2017) by the co-rapporteurs of the Monitoring Committee (Mr Stefan Schennach (Austria, SOC) and Mr Cezar Florin Preda (Romania, EPP/CD)), AS/Mon (2017) 06 declassified, 19 February 2017, see Section II.
59. See footnote 57.
60. Joint NGO letter to Interpol, 12 June 2017.

40. During my visit to Baku, I met several NGOs. I was able to see for myself the significant division among Azerbaijani NGOs, in particular in relation to the persons arrested for their religious beliefs, according to some, or for their radicalism and terrorism activities, according to others. The situation is totally different, depending on whether one speaks to the authorities or human rights activists who have contacts abroad. The authorities claim that freedom of association is fully guaranteed. There are 3 156 NGOs registered in Azerbaijan and some operate without authorisation. Last year, 100 NGOs were registered. The authorities acknowledge that registration was complicated before, involving several ministries, but that the law had been changed in order to simplify procedures which now involved only the Ministry of Justice (which itself contacts the other ministries concerned whereas previously these formalities had to be carried out by the NGOs themselves). On average, it takes 140 days to obtain registration. The number of documents has been reduced and the "one-stop shop" has simplified procedures. NGOs can receive donations from abroad. In 2016, the latter increased by 2.5 and it is believed that between 40% and 45% of funds come from abroad. The authorities attempt to monitor donations from abroad in order to ensure that they are not used by Islamist groups and to ensure that NGO members financed from abroad pay taxes like all other Azerbaijani citizens. The authorities claim that some people establish NGOs in Poland, Georgia and elsewhere in order to obtain funds more easily.

41. According to certain NGOs and human rights activists, NGOs have no freedom in Azerbaijan. They claim that they are subject to authorisations and detailed controls. There would appear to have been no fewer than 18 changes to NGO legislation over the last two years. These NGOs feel that the recent or forthcoming legislative changes are simply technical improvements and have no impact on the fact that, at political level, the authorities seek to closely monitor activists who are opponents of the regime. In their view, monitoring of foreign funding is a means of limiting their activities. The NGOs claim that they face frequent problems over the payment of taxes and abuse of power by the authorities. Some activists say that they are under permanent police surveillance. Those against whom criminal prosecutions have been brought or who have been convicted are prohibited from leaving the country: there were apparently 20 such individuals in 2014 and 90 in 2017.

42. Other NGOs felt that they were able to operate appropriately in the current legal framework. Some representatives of these NGOs were highly critical of those operating from outside the country who "exist only thanks to foreign funding"; in their view, these NGOs had no credibility or legitimacy and had developed what to all intents and purposes was a "human rights business", bringing with it a false and distorted picture of the real situation in the country. The true aim of their activists was to overturn the regime in a process similar to that of the Arab Spring or the revolution in Ukraine. Accordingly, it was claimed, they were not interested in genuine improvements to the human rights situation in the country and were calling for Azerbaijan to be excluded from the Council of Europe, which was not constructive and would merely cause the regime to close ranks and no longer be a Party to the Convention and, therefore, subject to the positive influence of the Council of Europe which had inspired the majority of the major legislative reforms in the country. I have no information on the source of funding of these other NGOs.

4.4. Freedom of religion

43. It should also be emphasised that Azerbaijan is a country where the Shi'ite majority co-exists in perfect harmony with a very sizeable Sunni minority, and with other much less numerous religions. The Azerbaijan Constitution guarantees secularism and freedom of religion, and the authorities attach great importance to this point.

44. Religions are recognised by the State. It is not uncommon for Shi'ites and Sunnis to frequent the same mosques, which is rare in the Muslim world. During my visit to Baku, I was able to meet the representative of the Jewish community, Mr Melix Yevdayev. He said that the situation of Jews in Azerbaijan was excellent and that the President of Azerbaijan had made a financial contribution to the Baku synagogue. He felt that Azerbaijan upheld the values of religious tolerance and it was by far the best situation for Jews and religious minorities in the Middle East and in Muslim countries. He wore a kippa and told me that this presented no problems whatsoever in Azerbaijan. Mr Yevdayev also said that the Sheikh of the Muslims had made a financial contribution to the construction of a dedicated cemetery for the Jews in Azerbaijan who for a long time had been calling for a separate cemetery.

45. There were reports of a problem which a small group of Baptists (35 members) had had with the authorities, primarily, it would appear, because this denomination was very much a minority and was not recognised in Azerbaijan.

46. In addition, I spoke on a number of occasions with representatives of the Jehovah's Witnesses (in Strasbourg). They complained that the Azerbaijani authorities refused to recognise and register their religious community, which had been present in Azerbaijan for almost 20 years. Consequently, the Jehovah's

Witnesses were subject to harassment, which could come in the form of very steep administrative fines or police raids on the premises where they worshipped. More than 20 applications in this connection have been submitted to the European Court of Human Rights since 2007.

47. The problem relating to the non-registration of certain religious communities was recently criticised by the European Commission against Racism and Intolerance (ECRI)[61] and the UN Human Rights Committee.[62] The latter also expressed concern about the censorship of religious publications and restrictions on their sale and distribution, and the vague definition of "religious activities" which was open to arbitrary interpretation of the legislation.

4.5. Torture and other ill-treatment

48. It is claimed that there continues to be widespread torture in the form of police beatings and there are few prosecutions against the police. However, almost all police stations are apparently equipped with CCTV. The authorities insist that some police officers have been convicted, which the NGOs dispute.

49. In November 2016, the UN Human Rights Committee expressed concern at consistent reports of torture and ill-treatment, including of journalists, human rights defenders and youth activists, that had reportedly led to death in several cases. It was also concerned about the limited effectiveness of the national preventive mechanism, established in 2011, in such cases.[63] The United Nations Working Group on Arbitrary Detention was also very critical of the situation following its visit to Azerbaijan in May 2016.[64] According to the Working Group, acts of torture and other ill-treatment were used to coerce detainees to sign police "protocols" in order to obtain their confessions, especially for matters falling under administrative offences. The Group had received testimonies from a number of victims who claimed to have been tortured in the building of the Temporary Detention Centre and in the pretrial detention centre under the auspices of the State Security Service. The victims interviewed referred to various methods of torture/ill-treatment: a gun pointed at their head, beatings lasting several hours, threats of physical and sexual abuse, verbal abuse and psychological pressure, having to remain standing for hours on end and threats to arrest family members.

50. Similarly, according to Amnesty International,[65] law-enforcement officers continue to commit torture and other ill-treatment with impunity in order to force detainees to "confess" to the charges made against them. This was the case in particular of 18 members of the Shi'ite Muslim Unity movement arrested during clashes in Nardaran in 2015[66] and the youth activists Bayram Mammadov, Giyas Ibrahimov (who both claimed to have been brought to trial for painting slogans on a statue of Heydar Aliyev) and Elgiz Gahraman.[67]

51. Many institutions, including the United Nations and the Council of Europe through its European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), carry out regular checks on prisoners' living conditions. The CPT visited Azerbaijan in the days following my own visit to Baku, on 16 and 17 February 2017. The aim of this visit was to take stock of co-operation between the CPT and the Azerbaijani authorities, with particular reference to the various recommendations that had been made in the past. According to the CPT press release "the talks were also an opportunity to learn about other developments since the CPT's last visit to Azerbaijan, in March-April 2016. In this context, the Azerbaijani authorities informed the CPT about the recent Executive Order by the President of the Republic of Azerbaijan, dated 10 February 2017, 'On improvement of operation of the prison system, humanisation of criminal policies and extension of application of alternative sanctions and non-custodial preventive measures'".[68] Nonetheless, it should be recalled that most of the CPT's reports on Azerbaijan – on its periodic visits between 2011 and 2016 and its ad hoc visits in 2004, 2012, 2013 and 2015 – have not hitherto been published as the authorities have not requested their publication.[69]

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61. See ECRI's report on Azerbaijan of 17 March 2016, CRI(2016)17, paragraph 66.
62. CCPR/C/AZE/CO/4, paragraph 32.
63. Ibid., paragraph 18.
64. Working Group on Arbitrary Detention Statement upon the conclusion of its visit to Azerbaijan (16-25 May 2016).
65. See its 2016/2017 report.
66. See the Amnesty International article of February 2017.
67. For further information, see also the US State Department report, pp. 3-6.
68. www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-holds-high-level-talks-in-azerbaijan
69. Last April, the authorities requested the publication of the reports on the CPT's 2005 ad hoc visit and its 2006 periodic visit; see: www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-reports-on-azerbaijan.

52. The UN Human Rights Committee states that despite certain progress (in particular the building of new prison facilities), overcrowding and corruption in prisons remain a problem and living conditions in certain prisons continue to be inadequate.[70]

53. This problem has already been examined by the European Court of Human Rights in the *Insanov v. Azerbaijan* judgment[71] (violation, amongst others, of Article 3 of the Convention), the execution of which is still being examined by the Committee of Ministers.[72] In addition, the Committee of Ministers continues to supervise the execution of a group of Court judgments concerning ill-treatment and/or torture carried out during arrests and police custody, alongside the ineffectiveness of investigations into these allegations;[73] no progress would appear to have been made in this connection since December 2009[74] (see also the *Yunusova and Yunus* judgment on the absence of appropriate medical care in prisons).[75]

5. Functioning of justice

54. In its Resolution 2062 (2015), the Assembly stated that "the independence of the judiciary is one of the basic preconditions of the separation of powers and of the system of checks and balances". It encouraged the authorities to prevent influence by the executive branch, in particular by amending the legislation on the composition and powers of the Judicial Legal Council (most of its members are appointed by the government) and the appointment of judges (on account of the probationary period for judges considered by the Venice Commission to be too long[76]).[77] It also called on the authorities to take measures to avoid criminal proceedings being instituted without a legitimate basis, to guarantee due process and the impartiality of the courts, in compliance with Article 6 of the Convention, ensure that pretrial detention is imposed only when it is necessary and proportionate (paragraph 11.5. 3-5) and to "use all available legal tools to release those prisoners whose detention gives rise to justified doubts and concerns". The co-rapporteurs of the Monitoring Committee continue to look at issues relating to the functioning of justice, particularly criminal justice.[78] Furthermore, in November 2016, the UN Human Rights Committee, having taken note of the recent reforms, reiterated its concern about the continued lack of judicial independence from the executive branch, in particular because of the unchanged composition of the Judicial Legal Council and allegations of corruption within the judiciary. It also voiced concerns about the number of disciplinary proceedings instituted against judges in recent years and the lack of information on safeguards to ensure that judges cannot be sanctioned for minor infractions or for a controversial interpretation of the law.[79]

55. In 25 years of independence, the authorities have had to totally reorganise a judicial system inherited from the Soviet Union. The authorities maintain that the independence of the judiciary is guaranteed; however, I noted that the Prosecutor General retained a prominent role with regard to pretrial detention. In most cases, judges followed the opinion of the Prosecutor General concerning the use of pretrial detention, despite a decision of 3 November 2009 by the plenum of the Supreme Court. It is essential for the independence of the judiciary to be guaranteed vis-à-vis the prosecution services. The recommendations in this regard of GRECO and the European Commission for the Efficiency of Justice (CEPEJ)[80] should be duly applied. The GRECO report on Azerbaijan published on 17 March 2017 spells out the steps to be taken to prevent the corruption of judges and prosecutors.[81] In this report, GRECO once again expressed its concern about the absence "of any measure to remove the direct presidential oversight of the Prosecutor's Office" and called for progress "towards the setting up of a transparent and impartial system for the appointment to senior positions".[82]

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70. See footnote 43, paragraph 22.
71. Application No. 16133/08, judgment of 14 March 2013.
72. Recent information on this case can be found on HUDOC-EXEC.
73. *Mammadov (Jalaloglu),* Application No. 34445/04, judgment of 11 January 2007, and eight other judgments delivered between 2014 and 2016. Last June, the Court submitted a request to the government regarding the death in prison of Elshad Babayev. See also the cases regarding the lack of effective investigation into deaths allegedly caused by law-enforcement officers, *Mikayil Mammadov,* Application No. 4762/05, judgment of 17 December 2009, and *Aliyeva and Aliyev,* Application No. 35587/08, judgment of 31 July 2014, currently under examination by the Committee of Ministers.
74. Recent information on this case can be found on HUDOC-EXEC.
75. Application No. 59620/04, judgment of 2 June 2016.
76. Venice Commission, Report on the Independence of the Judicial System, Part 1: the independence of judges, CDL-AD(2010)004, 16 March 2010.
77. Paragraphs 5 and 11.5 of the resolution.
78. AS/Mon (2017) 06, See footnote 39.
79. See footnote 40, paragraph 26.
80. See the CoE/EU Eastern Partnership Programmatic Co-operation Framework (PCF) 2015-2017, Theme II.1 – Justice: Strengthening independence and efficiency of justice, Action "Support to increased efficiency of courts, improved training of judges and judicial self-governance in Azerbaijan".
81. https://rm.coe.int/16806fe9f2.

56. Another problem is the ease with which persons taken in for questioning are deprived of their liberty, along with the table of offences, which often carry very heavy sentences. The perpetrators of many offences which in western Europe would be punishable by a fine or alternative measures (electronic tagging device or community service) are still given prison sentences in Azerbaijan, often for many long years. The authorities assured me that they were working on a reform of the Criminal Code and on the decriminalisation of a substantial number of offences. The Supreme Court is able to initiate laws in its field of competence and the reform process has begun and should be complete by the end of this year or next year. Attention should be drawn in this context to the Executive Order signed by the President of the Republic on 10 February 2017 covering the decriminalisation of a number of offences and extending the application of non-custodial sentences. Nonetheless, as pointed out by certain NGOs, this Order breaks with the principle of the separation of powers as it contains a number of "instructions" (from the President of the Republic) to judges, including those of the Supreme Court, and to the Prosecutor General. Moreover, it makes no reference to the question of detentions which could be "politically motivated" and does not cover any reduction of sentences in cases of more serious offences, such as those involved in criminal prosecutions against certain NGOs. It should also be recalled that the co-rapporteurs of the Monitoring Committee expressed concern about the absence of any separate juvenile justice system.[83]

57. A further problem is the difficulty experienced by those who have committed what they consider to be a crime of opinion in having a lawyer to defend them. Some NGOs have reported that witnesses are occasionally reduced to silence, that drugs are planted in order to accuse certain individuals, that legal documents are not accepted, in short that the rights of the defence are not upheld. The co-rapporteurs of the Monitoring Committee have also heard that strong pressure was exerted on lawyers defending human rights activists, journalists and NGO representatives. This pressure could take the form of arrests, criminal prosecutions, bans on leaving the country or disciplinary measures which could even go so far as disqualification from the Bar (see in particular the case of the lawyer Khalid Bagirov, in which the Commissioner for Human Rights intervened).[84] The UN Human Rights Committee, which has voiced concern over this pressure, also noted that these reprisals could include lawyers being called as witnesses in cases in which they represent their clients.[85] In addition, the United Nations Working Group on Arbitrary Detention has reported several cases in which: 1) persons arrested or detained were never granted the assistance of a lawyer; 2) they were assisted by a State lawyer selected without their involvement; and 3) they were not given the opportunity to meet their lawyer during the criminal procedure or only at the court hearing.[86]

58. It will also be recalled that the Committee of Ministers is still supervising the execution of a number of European Court of Human Rights judgments concerning violations of the right to a fair trial caused by failure of the domestic courts to honour their obligation to examine the submissions of the defence (see *Layijov v. Azerbaijan*[87] and *Jannatov v. Azerbaijan*[88])[89] or allow the defence to question witnesses (the case of *Insanov v. Azerbaijan,* in which information on the reopening of the domestic procedure is still awaited).[90]

6. Lists of "prisoners of conscience"

6.1. Context

59. According to several NGOs and activists working for the protection of human rights, there are "prisoners of conscience" or "political prisoners" in Azerbaijan. The authorities state that every convicted person has been sentenced for specific offences and that there are no "prisoners of conscience" in the country. As rapporteur, I cannot take the place of the judicial authorities and reach a conclusion on this matter. Nonetheless, I note that the lists given to me by various organisations do not overlap and that they range from just a few persons to 160 in the largest list. The following is an overview of the different lists I was given.

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82. Ibid., paragraph 116.
83. AS/Mon (2017) 06, See footnote 39, paragraph 32.
84. Following his disqualification from the bar, he filed an application with the European Court of Human Rights. The Commissioner for Human Rights intervened in this case – see his third party intervention of 28 November 2016.
85. CCPR/C/AZE/CO/4, paragraph 28.
86. See footnote 64.
87. Application No. 22062/07, judgment of 10 April 2014.
88. Application No. 32132/07, judgment of 31 July 2014.
89. The Committee of Ministers examines these two cases as part of the *Mammadov (Jalaloglu) v. Azerbaijan* group, see footnote 13.
90. See footnote 10.

6.2. List of Leyla Yunus

60. The "List of political detainees" forwarded by Leyla Yunus comprised, as at 15 November 2016, 160 names. This list was drawn up by three former "prisoners of conscience" – Leyla Yunus, Ogtay Gulaliyev and Elshan Gasanov. It includes persons arrested and convicted allegedly for political reasons, within the meaning of the criteria set out in Assembly Resolution 1900 (2012) "The definition of political prisoner".[91] The prisoners are classified into ten groups: journalists and bloggers (7 persons); writers and poets (2); human rights defenders (1); youth organisation activists (5); members of opposition parties and movements (7); "victims of crimes of the Ministry of Internal Security" (10); "believers" (105); "hostages" (5); former civil servants (4); and prisoners serving life sentences (14).

6.3. List of the "Working Group on a Unified List of Political Prisoners in Azerbaijan"

61. Another list of "political prisoners" has been drawn up by a group of human rights defenders, lawyers, journalists and other Azerbaijani experts, including a number of activists, such as Anar Mammadli, Intigam Aliyev, Rasul Jafarov and Khadiya Ismayilova – who had been imprisoned earlier. It also refers to the criteria contained in Resolution 1900 (2012) and, as at 25 May 2017, comprised 146 names, including journalists/ bloggers, writers/poets, human rights defenders, political and voluntary sector activists, religious activists, prisoners serving life sentences, persons arrested following demonstrations organised in defence of social rights, former senior civil servants, political hostages and Said Dadashbayli (oil industry expert accused of espionage) and others arrested with him.

6.4. Amnesty International list

62. The Amnesty International website (2016/2017 report) mentions "at least" 14 prisoners of conscience still behind bars.[92] According to the most recent information dating from last June, the (non-exhaustive) list of "prisoners of conscience" produced by Amnesty International comprises 11 persons: Ilgar Mammadov, Mehman Huseynov and Afghan Mukhtarli (mentioned above), bloggers and activists Seymur Haziyev, Rashad Ramazanov and Elvin Karimov; NIDA activists Bayram Mammadov, Ilkin Rustamzade and Giyas Ibrahimov, and members of the Popular Front opposition party Fuad Gahramanli and Murad Adlilov.

63. This list refers only to cases which Amnesty International, whose representatives have been prevented from travelling to Azerbaijan since October 2015, has been able to examine in detail. The fact that other persons are not included on this list does not mean that this organisation denies the existence of other human rights problems. Amnesty International believes that criminal law is applied arbitrarily in order to restrict freedom of expression. Several critics of the authorities have been arrested in recent years on the basis of false accusations, which are claimed to be politically motivated. These accusations concern, amongst other things:

i. illegal economic activities and abuse of authority (see the case of the militants arrested in summer 2014 – Natig Jafarli, member of the Republican Alternative party (REAL), released on bail in September 2016 and Gozel Bayramli, member of the Popular Front opposition party, arrested on 25 May 2007);

ii. illegal possession of drugs and arms (see the case of NIDA activists Bayram Mammadov and Giyas Ibrahimov, sentenced to 10 years' imprisonment,[93] and Elgiz Gahraman, sentenced to five and a half years' imprisonment);

iii. defamation (see the case of Mehman Huseynov);

iv. offences contrary to public and social order (see the case of Tofig Yagublu and Ilgar Mammadov);

v. crimes against the State (see the case of Taleh Bagirzade and 16 other members of the Muslim Union Movement, sentenced following the clashes in Nardaran).

91. See Doc. 13011, report of the Committee on Legal Affairs and Human Rights (rapporteur: Mr Christoph Strässer (Germany, SOC)).
92. https://www.amnesty.org/en/countries/europe-and-central-asia/azerbaijan/report-azerbaijan/.
93. See the statement by the Commissioner for Human Rights of 17 May 2017.

6.5. Human Rights Watch list

64. The non-exhaustive list forwarded to me at the beginning of last June by Human Rights Watch comprises 37 names, subdivided into various categories: members of opposition parties (7 persons), members of the NIDA movement (4 persons), journalists and/or bloggers (9) and 17 persons sentenced following the clashes in Nardaran in November 2015 who claimed to have been tortured by law-enforcement officers.

6.6. List of the "Monitoring Group of Human Rights Organizations Azerbaijan"

65. This list, which I received during my visit to Baku, drawn up by a group of local NGOs, comprises 28 names, also subdivided into various categories: journalists/bloggers (3 persons); youth activists (5); opposition party members (7); former civil servants (2); life prisoners (5); and those sentenced for having supported the wearing of the *hijab* in schools (6).

6.7. Action taken during and after my visit to Baku

66. During my visit to Baku, I handed over the most extensive list – that drawn up by Ms Yunus – to the various authorities I met, in particular the Minister of Justice and the Prosecutor General. The authorities commented that this list contained a large number of people (105 to be exact) included under the category of "believers". They considered these people to be radical Islamists who wished to establish an Islamic State in Azerbaijan or who had attempted to establish on the territory of Azerbaijan an Islamic enclave independent from the Azerbaijani State.

67. As rapporteur, I was unable to verify this information and I asked the Minister of Justice for authorisation to visit four prisoners on this list. I was able to visit only three people in three different prisons – the blogger Abdul Abilov (Baku hospital prison), Ilgar Mammadov (Baku prison No. 2) and Rovshan Zahidov (Baku detention centre No. 3), who claimed to have been imprisoned on account of being related to Ganimat Zahid, editor-in-chief of the newspaper *Azadliq*, who was in exile in France, the fourth was being held an hour and a half's road journey from Baku. During these visits, I was able to talk freely with the detainees without any prison staff in attendance.

68. As far as I could tell in the places I went to and at the time of my visit, which was organised by the authorities, the detention conditions were harsh but within acceptable limits, although in two of the three cases, detainees were living in very crowded conditions. They appeared to have access outdoors for several hours a day. In one of the prisons, the authorities told me that detainees could leave their cells all day and had access to toilets and regular showers (at least twice a week, according to the authorities).

69. Azerbaijani legislation provides for release once two thirds of the sentence has been served, and also by presidential pardon. Parliament has a Pardons Committee which can submit proposals. On my return, in a letter sent to the Minister of Justice, Mr Fikrat Mammadov, on 15 February 2017, I asked the authorities to make greater use of this possibility provided for in Azerbaijani legislation. I called for the release of certain prisoners (Abdul Abilov, Rovshan Zahidov, Rufat Zahidov and Elvin Abdullayev), the reopening of certain files (Seyidov Elnur Rafik, Abdullayev Mubariz Asslana and Murad Adilov Gulakhmed), and authorisation for Intigam Aliyev to receive medical treatment abroad. I also raised the case of Ilgar Mammadov. Following this request, I learned that all of them (with the exception of Ilgar Mammadov) had been released.

7. Ilgar Mammadov

70. It will be recalled that Ilgar Mammadov, a journalist and opposition politician, was arrested in February 2013 for incitement to anti-government riots in Ismayili (northern Azerbaijan). In March 2014, the Sheki Court of Serious Crimes (at first instance) found him guilty and sentenced him to seven years' imprisonment. On 22 May 2014, the European Court of Human Rights delivered a judgment in this case, in which it found a violation of the right to liberty and security (Article 5.1 of the Convention), of the right to judicial review of one's detention (Article 5.4), of the presumption of innocence (Article 6.2) and of the limitation on the use of restrictions on rights guaranteed by the Convention (Article 18).[94] In particular, the Court held that there was no "reasonable suspicion" justifying Mr Mammadov's arrest and pretrial detention and that the criminal proceedings brought against him had been in retaliation to critical public statements he had made.

94. Application No. 15172/13, judgment of 22 May 2014.

71. Since the Committee of Ministers began examining execution of this judgment, it has constantly called for the release of the applicant; three interim resolutions have been adopted in this context. In February 2017, the authorities provided a new action plan which mentioned the President's Executive Order of 10 February 2017 on the liberalisation of criminal law policy; nonetheless, according to certain NGOs, it would not be applicable in Mr Mammadov's case. In its decision adopted at its 1288th meeting (DH) last June the Committee of Ministers expressed regret that, notwithstanding the positive developments that had taken place, the applicant remained in prison and it called on the authorities to submit in time for adoption in June 2017 the draft laws to implement the Executive Order and to "follow all other possible means capable of fully executing the present judgment and ensuring Mr Mammadov's unconditional release without any further delay".

72. During my visit to Baku, in my talks with all the authorities I met, I called for the release of Ilgar Mammadov in application of the Court's judgment. Following our committee's decision of 23 January 2017 and as its Chair, I handed over a letter on this matter personally to the President of the Republic, and copies thereof to the Minister of Justice, Fikrat Mammadov, and to the Head of the Presidential Administration, Ramiz Mehdiyev. I made it clear that the Court's judgment was unambiguous and that Mr Mammadov had to be released. I said that Ilgar Mammadov should have been released during his pretrial detention, in accordance with the Court's judgment even if this meant he was to be subsequently imprisoned once again should there be sufficient judicial evidence to warrant such a move.

73. The various authorities explained at length the reasons why they disagreed. In their view, the Court's judgment referred to the placing of Ilgar Mammadov in pretrial detention, before the criminal conviction became final (the first judgment at first instance was delivered on 17 March 2014, before the Court gave its judgment in May 2014). On 18 November 2016, the Supreme Court of Azerbaijan, ruling on a final appeal, confirmed the last judgment handed down by the appeal court. Subsequently, Ilgar Mammadov submitted a new application to the European Court of Human Rights, challenging his final conviction. In the view of the authorities, the Court's judgment, which found against the applicant's pretrial detention and not his final conviction, had been executed, particularly as the just satisfaction awarded by the Court had been paid to the applicant. The criminal proceedings which came to an end with the Supreme Court's judgment of 18 November 2016 could be reopened only if the European Court of Human Rights found a violation of Article 6 of the Convention further to the new application submitted by Mr Mammadov.

74. During my talks with Mr Mammadov, I gave him my honest opinion that I had doubts about his speedy release. These words were reflected in a communication sent to the Committee of Ministers on 2 March 2017[95] by his lawyer, Fuad Aghayev. Mr Mammadov confirmed this exchange: "He did not lie to me and, most importantly, to himself".

75. Given that the conviction and release process has been going on for many years, I believe that the Monitoring Committee and the Committee of Ministers are the ones best placed to monitor how the situation develops. The Assembly's monitoring helps the Council of Europe member States keep their promises to uphold the highest standards in the field of democracy and human rights.

8. The influence of the international community

76. During my visit to Baku, I met the ambassador of the European Union, ambassadors/diplomats of five European Union member States, of Norway and of the United States, and subsequently other representatives of the international community

77. We discussed how best to have a positive influence on democracy and human rights in Azerbaijan. The prevailing view was that direct, public and fierce criticism of the country failed to achieve the desired results, as the authorities had a tendency to become more rigid and not to be receptive to such pressure, or indeed to take retaliatory measures where possible. The best way of ensuring that Azerbaijan moved in a positive direction was to engage in a frank and constructive dialogue with the authorities, pointing out what was not working and what needed to be improved, but without criticising them harshly and publicly. Most of the diplomats I met did not echo the view held by certain NGOs that it was only sanctions that would have an impact on the authorities. Some stressed that follow-up contacts would be one way of improving democracy and human rights, but that such contacts were at present lacking. The point was also made that the authorities and civil society should engage in dialogue and that economic reforms and direct investment abroad were a real way of improving the rule of law.

95. https://rm.coe.int/16806fa08c

9. Conclusion

78. Several NGOs working in the field of human rights protection, such as Amnesty International and Human Rights Watch, have, ever since Azerbaijan's accession to the Council of Europe in 2001, received allegations of politically motivated prosecutions against opposition members, journalists, human rights activists, lawyers and, more recently, bloggers. The authorities, including President Ilham Aliyev, categorically refute that this is the case. Nonetheless, there is a very widespread feeling – not only among NGOs but also among certain international authorities, such as the United Nations experts and our own Commissioner for Human Rights, that these prosecutions are a real fact. Certain judgments of the European Court of Human Rights (for example, *Ilgar Mammadov* and *Rasul Jafarov)* confirm this.

79. Justice must not only be done, it must also be seen to be done. The high conviction rate in criminal cases does nothing to improve the reputation of the judiciary: it indicates a prosecution-driven criminal system, where courts do not assess independently the evidence submitted by the prosecution and do not take sufficiently into account the rights of the accused. One blatant example is the *Ilgar Mammadov* case. I once again earnestly call on the authorities to comply with the decisions of the Committee of Ministers and release the applicant as quickly as possible.

80. Reform of the judiciary in Azerbaijan is still a work in progress and the Presidential Executive Order of 10 February 2017 is very promising in this connection; nevertheless, it will not solve all the human rights problems identified by the international bodies and certain NGOs. I am fully aware that judicial reform requires not only a legal framework but also a change in mentality, which can only happen in the long run: this requires training and legal guarantees for judges, prosecutors and law-enforcement personnel. It is perfectly understandable that it is not easy to build a functioning, competent and independent judiciary more or less from scratch.

81. I call on the authorities to pursue their co-operation with the Council of Europe and to step up their efforts to execute fully and quickly the judgments of the European Court of Human Rights, and to take into account the recommendations of the Venice Commission. I also urge them to take account of the findings of other Council of Europe bodies – in particular those of other Assembly rapporteurs and of the Commissioner for Human Rights – and of the United Nations bodies with regard to respect for human rights and fundamental freedoms in their country, and to solve the problems of torture and ill-treatment, and violations of the freedoms of expression, association and assembly. All these freedoms are vital to ensure a democratic society.

82. I also note that this report is being drafted at the same time as a Monitoring Committee report on "The functioning of democratic institutions in Azerbaijan".[96] Both reports address identical issues. In order to avoid the risk of substantive contradictions in the future, I believe that the monitoring of human rights in Azerbaijan should be entrusted solely to the Monitoring Committee in the interests of ensuring consistency in the Assembly's decisions and recommendations. I therefore invite the Committee on Rules of Procedure to review the mandates of the committees concerned in this perspective and to propose, as need be, changes in order to avoid double work and contradictions.

96. Doc. 14403.

Appendix 1 – Dissenting opinion[97] by Mr Pieter Omtzigt (Netherlands, EPP/CD), Ms Anne Brasseur (Luxembourg, ALDE), Ms Thorhildur Sunna Ævarsdóttir (Iceland, NR), Ms Kerstin Lundgren (Sweden, ALDE), Mr Frank Schwabe (Germany, SOC), Mr Mart Van de Ven (Netherlands, ALDE), members of the Committee on Legal Affairs and Human Rights

When Azerbaijan joined the Council of Europe in 2001, there was little expectation that it would complete its democratic transformation within 15 years. But the uncomfortable truth, for this Assembly and for the Council of Europe as a whole, is that Azerbaijan has in fact regressed since its accession: its civil society is less vibrant and less free today than it was 15 years ago, and political pluralism has likewise dwindled. Azerbaijan languishes in 162nd place on the Press Freedom Index[98]; it is 123rd on the Corruption Index.[99]

Since Azerbaijan ratified the European Convention on Human Rights, the Court has delivered a total of 128 judgments finding violations of its provisions. 184 cases have been referred to the Committee Ministers for supervision of execution and only three cases have been closed by final resolutions.[100] This dreadful track record had seemingly no consequences for Azerbaijan´s standing within the Council of Europe.

The ongoing independent investigation into serious allegations of corruption, "caviar diplomacy" and undue influence by members of the Azeri delegation to the Assembly is set to shed some light on this impunity. Added to this are the recent "Laundromat Affair" revelations, concerning $2.9 billion of Azeri money used, *inter alia*, to pay former Assembly members for their influence and possibly votes within the Assembly.[101] The evidence for the contention that Azerbaijan has systematically undermined the integrity of the core institutions of the Council of Europe by bribery and corruption can no longer be ignored. Any normal country would have started an independent and full investigation by itself, but Azerbaijan has not.

Furthermore, Azerbaijan has been found to have violated the prohibition on torture or inhuman or degrading treatment. Despite this, it appears that the State has failed to comply with its obligation to investigate cases of torture and to bring perpetrators to justice.[102] This fact becomes even more alarming in light of Azerbaijan´s unwillingness to publish six CPT reports.[103] Recent reports of suspicious deaths in prisons in the so-called Azerbaijani spy scandal[104] serve as further worrying signs of widespread use of torture. Additional serious concerns relate to the uncertain yet undoubtedly significant numbers of political prisoners in Azerbaijan.

These grave concerns will not be addressed by the Assembly in a credible manner as long as we keep publishing reports which fail to name the root causes.

The Assembly should strive to root out any corrupt practices within it by affirming that immunity for members does not apply in corruption or money laundering cases.[105] All Assembly members should co-operate fully with the investigative committee on this grave matter. Our institutions and actors have so far failed to adequately address this woeful threat to the integrity of the Council of Europe.

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97. Rule 50.4 of the Assembly's Rules of Procedure: "The report of a committee shall also contain an explanatory memorandum by the rapporteur. The committee shall take note of it. Any dissenting opinions expressed in the committee shall be included therein at the request of their authors, preferably in the body of the explanatory memorandum, but otherwise in an appendix or footnote."
98. Reporters without Borders, 2017 list.
99. Corruption perception index 2016, Transparency International.
100. Paragraph 12 of the report.
101. https://www.occrp.org/en/azerbaijanilaundromat/.
102. See, for instance; www.europapraw.org/files/2014/06/REPORT-ECtHR-implemE.pdf.
103. www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-reports-on-azerbaijan.
104. https://www.rferl.org/a/azerbaijani-spy-scandal-dead-suspects/28558844.html.
105. See paragraph 8 of Assembly Resolution 2127 (2016) and the Venice Commission opinion.

Appendix 2 – Dissenting opinion[106] by Mr Constantinos Efstathiou (Cyprus, SOC), member of the Committee on Legal Affairs and Human Rights

The situation in Azerbaijan should have been considered as a test case for Europe, and mainly the Assembly. We must always have in mind that our institution is a very sensitive and central one in Europe.

We should never forget that we stand for a Europe of solidarity, democracy, human rights and the rule of law. This is our duty when we deal with the case of Azerbaijan, where human rights are violated in a flagrant way and where the rule of law is manifestly manipulated by an arbitrary and undemocratic government. While the report rightly highlights the undemocratic and arbitrary situation in Azerbaijan which is contrary to the core of European ideals, the explanatory memorandum maintains a rather conciliatory attitude and a spirit of complacency towards the Azeri authorities. Moreover, due to the rejection of several amendments in committee, the draft resolution, if adopted, would make the Assembly appear disoriented and not steadfast in suggesting measures to remedy the situation.

106. Rule 50.4 of the Assembly's Rules of Procedure: "The report of a committee shall also contain an explanatory memorandum by the rapporteur. The committee shall take note of it. Any dissenting opinions expressed in the committee shall be included therein at the request of their authors, preferably in the body of the explanatory memorandum, but otherwise in an appendix or footnote."

Appendix 3 – Dissenting opinion[107] by Mr Samvel Farmanyan (Armenia, EPP/CD), member of the Committee on Legal Affairs and Human Rights

1. The explanatory memorandum by Mr Alain Destexhe, rapporteur, contains factual mistakes, unsubstantiated claims and subjective assessments, while referring to the complex and highly sensitive issues related to the Nagorno-Karabakh conflict.

2. The Armenian Delegation to PACE objects to the ongoing efforts by certain delegates to manipulate the PACE platform by voicing one-sided viewpoints of certain member States.

3. Specifically it is seen in Point 2 (paragraphs 9 and 10) of the explanatory memorandum, where the rapporteur delved into the "geopolitical context" of human rights violations in Azerbaijan. The terminology used by the rapporteur represents a verbatim of Azerbaijani interpretations of such issues as the status of Nagorno-Karabakh and the number of displaced persons. By voicing its legitimate concerns about this controversial terminology, the Armenian delegation provided an opportunity for the rapporteur to balance his act, which, regrettably, was rejected by Mr Destexhe.

4. The rapporteur is making prejudiced and misguided references to the UN and PACE documents on the Nagorno-Karabakh conflict, while failing to even mention the OSCE, specifically its Minsk Group Co-Chairmanship, which is the only internationally mandated format to negotiate a lasting settlement to this conflict. The wording used by the rapporteur with regard to the issue is in direct contradiction with all the relevant documents of the OSCE, as well as of the UN and PACE.

5. Moreover, the rapporteur speaks about "violations of the right of 1.5 million of people to return to their homes". This number of "displaced persons in Azerbaijan" is highly exaggerated. The UN High Commissioner for Refugees speaks about 600 000 displaced persons in Azerbaijan.[108] The rapporteur failed to justify his numbers.

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107. Rule 50.4 of the Assembly's Rules of Procedure: "The report of a committee shall also contain an explanatory memorandum by the rapporteur. The committee shall take note of it. Any dissenting opinions expressed in the committee shall be included therein at the request of their authors, preferably in the body of the explanatory memorandum, but otherwise in an appendix or footnote."

108. http://data.un.org/Data.aspx?q=azerbaijan+refugee&d=UNHCR&f=indID%3aType-Ref%3boriID%3aaze.