

**Compliance of the Republic of Azerbaijan
with the Convention against Torture
and Other Cruel, Inhuman or Degrading
Treatment and Punishment**

**An alternative NGO report to the
UN Committee against Torture**

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**Prepared by the Human Rights Center of Azerbaijan
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INTRODUCTION

This alternative report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT) was elaborated by HRCA with the support of the International Federation for Human Rights (FIDH) and reviews the issues covered by the 3rd periodic report of the Republic of Azerbaijan (CAT/C/AZE/3).

HRCA is a non-governmental human rights organization established in April 1993, registered in 1999 and engaged in monitoring human rights in Azerbaijan. It has submitted NGO alternative reports to several UN Treaty Bodies in the past: CEDAW (1998, 2007, 2009), CAT (1999, 2003), CCPR (2001, 2009), CESCR (2004) and CERD (2005). It has also contributed to the UPR (2009).

FIDH, of which HRCA is a member, is a federation of 155 human rights NGOs in over 100 countries. FIDH has consultative status with ECOSOC.

This report presents article-by-article information on the observance by the Republic of Azerbaijan of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT). It updates the previous reports submitted by HRCA in 1999 and 2003, focusing on recent events and trends.

INFORMATION ON THE ACTUAL IMPLEMENTATION OF THE CONVENTION

Article 1

The definition of “torture” in the criminal legislation of the Republic of Azerbaijan does not comply with Article 1 CAT and significantly differs from it.

Article 133.1 of the Criminal Code (CrC) on “Torture” generally defines torture as “causing strong physical pains or mental sufferings by regularly causing injury or other violent actions, not entailed to consequences provided in articles 126 and 127 of the present Code.” without reference to the purpose of such act and to the position of the perpetrator.

Article 126 CrC entitled “Deliberately causing serious harm to health” criminalises a “harm dangerous to human life, or brought to loss of seeing, hearing, speech either organs or loss by body of its functions, mental frustration or other frustration of health, long-term disability, which is not less than on one third or obviously for guilty caused full loss of professional work capacity, either interruption of pregnancy, or harm which consequence brought to disease of a person to narcotics or glue sniffing or expressed in ugliness of persons.” Article 127 CrC entitled “Deliberately causing minor serious harm to health” criminalizes a “less serious harm to the health, which did not endanger the life of the victim and did not have consequences as provided in article 126 of the present Code, but which has caused long-term health frustration or a significant loss of general work capacity less than on one third part of it.” Hence, causing serious or less serious harm to the health of victim entirely excluded accusation under Article 133.

Article 133.3 CrC addresses the commitment of the same acts “by a public official using his position or his instigation with a view to receive information or force confession, or with a view to punish acts committed or allegedly committed.”

Article 113 CrC entitled “Application of tortures” refers to “causing a physical pain or mental sufferings to detained persons or persons, or other restrictions of freedom.”

Thus, the official definition of torture permits criminal liability for the imposition, *without purpose*, of strong physical pains or mental sufferings to a person, and with regular injuries or other violent actions undertaken, which do not result in a serious or less serious harm to the health of the victim, while Article 1.1 CAT provides that such act shall be intentional.

No punishment is provided for torture committed “with the consent or acquiescence of a public official.” Public officials are only punished for direct involvement in acts of torture or in their instigation. Article 133 does not mention that besides officials, the perpetrators or instigators of torture can also be “other persons acting in an official capacity.”

In the particular cases mentioned in law, the officials can torture a victim or instigate the torturer(s) to get information or confession from the victim or to punish the victim. However, the definition provided by Article 1 CAT is wider and includes also obtaining information or confession from a third person, punishment, intimidation or coercion of a third person. The reason of torture can be discrimination of any kind.

These gaps in legislation cause a ‘lawful’ impunity for torture, which entails serious or less serious harm to health, commitment or instigation of torture by non-officials or torture directed at third person. The courts repeatedly ignored allegations of torture threats against third persons or torture and inhuman treatment based on political discrimination.

Article 2

Articles 31, par. I, II; 41, par. I, II, III and 46, par. III of the Constitution (1995) prohibit torture and ill-treatment. Since 1 September 2000, the Azerbaijan Republic criminalizes torture under Articles 113 and 133 CrC, although the definition of torture differs from that given by CAT. Moreover, Article 12.3 CrC provides that “citizens of the Azerbaijan Republic, foreigners and persons without the citizenship, who have committed ... torture ... shall be instituted to criminal liability and punishment under the Present Code, irrespective of the place of commitment of the crime,” i.e. even outside the country.

The Code of Execution of Punishments (CEP) also prohibits ill-treatment (Art.3.3) and provides for the right of prisoners not to be subjected to any experiments dangerous for life (Art. 10.4). However in practice, any allegations of torture or inhuman treatment of prisoners are rejected by the courts.

As for compensation of harm, according to the Civil Code of Azerbaijan Republic the harm by the tort (*delictum*) shall be compensated (Article 1097.1).

The Presidential Decree dated of 19 January 2006 and the Decision of the Supreme Court Plenum dated of 30 March 2006 prescribe to the domestic courts to use the ECtHR case law. In 2007-2009, the ECtHR passed three judgments against Azerbaijan under the Article 3 (Prohibition of torture) of the European Convention on the Prevention of Torture: *Mammadov v. Azerbaijan* (no. 34445/04, 11 January 2007), *Hummatov v. Azerbaijan* (nos. 9852/03 and 13413/04, 29 November 2007), *Muradova v. Azerbaijan* (no. 22684/05, 02 April 2009). However, the perpetrators of torture and unfair judges never were punished.

The effectiveness of other state institutions remains also low. For example, the Constitutional Court (CC) since it began to examine the individual applications in 2004, did not find violation of Article 46 of the Constitution in any case. Almost all cases examined by the CC are related to property disputes. In 2007, the CC received 1715 individual complaints and passed 11 judgments and 4 decisions¹.

The Office of the Ombudsman did not take even a single case of torture since 2002, which would be consequently approved by the Prosecutor's Office. However, this very institution was selected as National Prevention Mechanism under the Optional Protocol to CAT.

The Special Rapporteur on torture recommended in 2000, and CAT in 2003 that the remand centre of the Ministry of National Security (MNS) has to be closed or subordinated to the Ministry of Justice. However, it continues to operate and remains under the jurisdiction of the same authorities. The State report (paras 166-168) clearly indicates that it is a result not of technical or financial problem but of a certain outdated approach arguing that "the complexity of the criminal cases under the authority of the Ministry, the need to protect State secrets and national security interests and to combat terrorist activities effectively and the degree of the threat posed to society by the offences and suspects concerned."

Instead of implementing CAT recommendations, the Government proposes to improve the detention regime, social and living conditions, health and hygiene, and legal protection of remand prisoners. The main problem however is that this prison is under the jurisdiction of the same authorities that conduct the pre-trial investigation, and after every court hearing the defendants returns under the control of MNS. Moreover, the prison director as an officer of MNS has decisional power over questions such as access to lawyer, permission of family meeting, reception of appeals and complaints to be sent to other, external institutions, etc.

For example, the MNS had investigated the crimes of so called "Hadji Mammedov's gang" including 22 Azerbaijani and 4 Russian citizens of Chechen origin. The HRCA followed a case of one of the defendants, former police colonel Kamil Sadreddinov. After the extradition from Russia, the prison director (MNS officer) prohibited Mr. Sadreddinov during 16 days to have access to the legal counsel hired by his family. Just in this period, the investigation forced his self-accusatory confession. Consequently, the judge ignored statements of Mr. Sadreddinov and other defendants about the tortures applied against them. The key defendant, H.Mammedov who had committed several attempts of suicide in the MNS prison hinted that he feared for his life in the prison: "I also am a human being and it can happen that tomorrow I will not wake up." Usually, the convicted person is transferred to the post-trial prison immediately after decision of the Appeal Court. Hence, throughout the period of investigation and examination of the criminal case and appeal, the defendants were detained under the control of MNS. Moreover, despite the fact that the Appeal Court passed its judgment in November 2007, the key defendant (H.Mammedov) is detained in the MNS prison till now. He is the only life prisoner in Azerbaijan detained outside of Qobustan Prison of closed type.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) visited the MNS prison in 2002. In its report,² the CPT noted the serious shortcomings in

¹ Press Service of Constitutional Court, quoted by the Day.az News Agency, 16.01.2008, source: <http://www.day.az/news/society/104315.html>

² CPT/Inf (2004) 36. Report to the Azerbaijani Government on the visit to Azerbaijan carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 November to 6 December 2002, published on 7 December 2004, §§ 65-68 .

medical documentation, contacts with the outside world and confidentiality of complaints.

It is very characteristic, that after the above mentioned CPT initial report, the Government of Azerbaijan did not authorize the publication of further CPT reports. It ignored the direct recommendation of the Parliamentary Assembly of the Council of Europe (PACE) in Resolution 1545(2007) to implement the CPT recommendations and to authorize the publication of CPT reports.³

In 2002, the Government permitted individual complaints under the CAT. However, while the domestic law established some machinery to implement the decisions of the ECtHR or of the Constitutional Court, there is no procedure established to implement the UN Treaty Bodies decisions following individual communications. As a consequence, victims and their lawyers have no interest in appealing to the UN.

Since November 2006, the Public Committee to monitor prisons was established in the Ministry of Justice. It has access to the prisons under subordination of the Ministry of Justice. However, the police station, mental asylums, special schools, disciplinary battalions and other places of deprivation of liberty subordinated to other state bodies have no similar monitoring structures involving civil society.

Article 3

Article 3.2.2 of the Surrender of Criminals (Extradition) Act 2001 provides that “extradition shall be refused under the following circumstances: ...If there are substantial grounds to believe that the requested person, if extradition is granted, would be subjected to torture, other cruel, inhuman or degrading treatment or punishment in the requesting State.”

Article 52.2.7 CrC provides that a forced exile, which is one of the kinds of punishments under the criminal law “shall not be applied to persons... , for which there are sufficient bases to believe, that they will be exposed to torture or prosecutions in the country to where they will arrive after exclusion.”

Article 5 of the Law on Status of Internally Displaced Persons and Refugee prohibits to send back (“refouler”) a person arrived in the Republic of Azerbaijan without valid travel document owing to the impossibility or unwillingness to avail themselves of the protection of its state of permanent residence, because of the danger for this person of being persecuted for reasons of ethnicity, race, citizenship, religion, language, political opinion, membership of a particular social group as well as the real threat to the life, family and property.

In violation of this law and State Party obligation to not “expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture” under the Article 3 CAT, cases of extraditions to the countries with bad human rights records were registered in Azerbaijan, e.g. Chechens to Russia and Kurds to Turkey. In these cases, Azerbaijan prefers rather bilateral agreements than European treaties.

The several thousands of Chechen asylum seekers face permanent problems with registration of their status. The Azerbaijan State Committee on Work with Refugees and IDPs still refuses to deal with this group of asylum seekers and re-addressed this issue to the UNHCR office in Baku.

³ PACE Resolution 1545, par. 8.13.

The Chechens are generally provided with a standard letter confirming that UNHCR is examining their cases, which helps them to avoid forced eviction from the country. But even after 3-4 and more years of such “examination”, they have no official refugee status. Even widow of first Chechen President Djohar Dudayev and family of Aslan Maskhadov failed to receive this status and were forced to leave the country.

Although the authorities of Azerbaijan do not practice the formal refoulement of Chechens, they tolerate the disappearances and extradite the Chechens in Russia. Since 1999, at least 24 Chechens were illegally transferred in Russia where they faced torture. Most famous is the case of **Ruslan Eliyevich Eliyev** who had been registered by UNHCR as refugee under No.6032. After his kidnapping in Baku on 09 November 2006, he was found dead in Samashki, Chechnya in March 2007 with traces of severe torture, in a bag thrown down from a helicopter. In April 2008, **Yusup Nagayev** was arrested for extradition to Russia. He had been registered by the UNHCR already in 2002 under no. 4338. On February 7, 2009, he was extradited to Russia. In June 2008, Azerbaijan forcibly extradited a disabled asylum seeker, **Suleyman Ayubov**, registered by the UNHCR office in Baku under No. 6024.

Besides them, at least 18 Chechens were secretly extradited from Azerbaijan and consequently arbitrarily executed in Russia. Namely, the representative of Chechen rebels informed in May 2008 about the same fate of **Azimov Kyuri, Aziyev Rasul, Bogayev Hampash, Chuchayeva Aset Zhavazhbaudinovna, Demelkhanov Zelimkhan Hamzatovich, Dikayev Mussa Vakhaevich, Edilov Ruslan Muslimovich, Eskiyev Aslan Mogomed-Eminovich, Gadayev Bislan, Gaziyev Imran, Marayev Dokka Lechiyevich, Mazhidov Ramazan, Mezhidov Abubakar, Oybuyev Ruslan, Shaipov Shamil Shamsudinovich, Tsulayeva Zara, and Yandarbiyev Salam.**⁴

Therefore, some Chechens try to use the temporary prohibition of non-refoulement as interim measure of the European Court of Human Rights (ECtHR). For example, Chechen asylum seeker Hadji Chankayev was extradited to Russia in July 2006 under the request related to the terrorist case in Kaspiysk, Russia, despite the lawyer’s request of interim measure. The ECtHR was misinformed by the Government about the alleged absence of extradition request of Russia. Only a few days after the ECtHR negative response, Chankayev was extradited. Consequently, the Russian law-enforcement agencies did not find his guilt under the terrorist act and changed the accusation to have him extradited. Finally, Russian authorities accused and sentenced him for alleged theft dating back to a decade to justify the extradition request. In another case, on 30 June 2008, the Azerbaijan authorities arrested **Alikhan Khasuyev** who had been registered under no. 786-06c06036. Only an urgent request of interim measures from the ECHR in the framework of the case *Khatuyeva and Khasuyev v. Azerbaijan and Russia* (no. 33810/08) prevented him from immediate extradition.

Turkish journalist of Kurdish origin Ms. **Elif Pelit** (CAT communication No. 281/2005: Azerbaijan. 29/05/2007) went through a similar experience. She was arrested in Azerbaijan and although she already had a refugee status in Germany, she was extradited in 2005 from Azerbaijan to Turkey where she had been sentenced *in absentia*. The UN CAT found the violation of Articles 3 and 22 CAT in her case and recommended her release. However, the fate of **Ahmed Kirboga** and **Atesh Edip**, two other Kurdish refugees who had been extradited to Turkey several months before Ms. Pelit on the basis of a judgment by an Azerbaijani court, remains unknown to date.

⁴ Source: <http://www.chechenews.com/news/117/ARTICLE/4498/2008-05-31.html>

Article 4

There is still no disaggregated statistics of conviction for acts assimilated to torture. However, some information published officially proves that courts failed to accuse perpetrators of torture. That reflects not only unofficial position that “torture does not exist in Azerbaijan” but also intentional gaps of definition of torture.

Obviously, in all 10 cases of deaths of suspects in police custody mentioned in the State Report (paras 61-129), the incorrect definition of torture prevented the accusation of alleged perpetrators under Article 113 or 133, despite the fact that these cases fall under Article 1 CAT.

For example, Rasim Alyshov (paras 61-68 of State Report) was arrested as a suspect of theft, subjected the physical coercion to extract information and he died from his injuries. The investigation considered this *corpus delicti* as ‘excess of authority’ under Article 309.2 CrC. In other cases reportedly presented as suicide, the suspects were accused for minor crimes like robbery of cellular phone (Bayram Agayev, paras 82-88 of Report), theft (Namiq Mammedov, paras 69-76 of Report), stealing personal property (Nariman Veliev, paras 114-118 of Report), theft of 200,000 Manats, i.e. about EUR 40 (Etibar Nadjafov, paras 96-104 of Report), possession of 0.053 grams of heroin and 1.28 grams of marijuana (Yusif Abdullayev, paras 77-81 of Report), selling of 2 grams of heroin (Agadj Nuriyev), petty hooliganism (Bakhtiyar Djabbarov, paras 123-129 of Report).

Although the suspects obviously had been driven to suicide, the perpetrators were accused for excess of authority (B.Agayev), neglect of duty (N.Mammedov), negligence and causing minor serious or serious harm to health out of imprudence (B.Djabbarov). In the cases of E.Nadjafov, N.Veliev and A.Nuriyev, the accusation for incitement to suicide was later dropped, while in the case of Y.Abdullayev, it was decided not to bring any criminal proceedings, as no offence had been committed.

In the case of physical injuries to at least four persons (Eshqin Hamidov and others, paras 105-113), the later were suspected of theft of golden objects, and in this connection were summoned to police, illegally detained three days and ‘subjected to physical violence’ to extract confessions. The case was considered as ‘abuse of duty’ under Article 308 CrC and perpetrator of beating four people during three days was punished by a fine of about EUR 1,500.

The above was a review of cases quoted by the Government in its own report. The domestic non-governmental organizations claim that a number of allegations of torture submitted to the law-enforcement agencies remains improperly investigated or ignored.

Article 5

The jurisdiction of Azerbaijan in the case of torture committed by Azerbaijani citizens outside of its territory is clearly provided for under domestic criminal law.

Article 12.3 CrC namely provides criminal liability of the persons who have committed a crime outside of Azerbaijan: “Citizens of the Azerbaijan Republic, foreigners and persons without the citizenship, who have committed ... torture ... shall be instituted to criminal liability and punishment under the Present Code, irrespective of the place where the crime was committed.”

According to Article 3.2 of the Code of Criminal Procedure, “The provisions of legislation on criminal procedure shall be applied outside the territory of the Azerbaijan Republic at sea, on waterways and in the air, on vessels flying the flag or national emblems or registered in its ports.”

For example, the authorities prosecuted several former military servicemen who tortured their comrades in the Armenian captivity to punish them on order of prison personnel. The alleged crimes had happened on territories out of the control of the Azerbaijani government, i.e. in Armenia and the territory of Nagorno-Karabakh occupied by Armenia. The offences in question were punished according to the relevant provisions of Azerbaijani criminal law.

By the same token, the Military Court on Grave Crimes tried in 2009 the case of Elmar Quliyev who reportedly voluntarily surrendered to Armenian captivity and tortured and raped other Azerbaijani prisoners of war in 1993. He was arrested in 2008 and accused of high treason.⁵

Articles 6 - 9

The Republic of Azerbaijan arrested and extradited to the countries of origin dozens of foreigners accused of crimes committed outside of Azerbaijan. Some of them can be considered as falling under Article 4 CAT. However, the existence of bad practice of torture in these countries and the lack of effective procedures of appeal raise the questions under Article 3 CAT.

For example, in the case already mentioned of Mr. **Yusup Nagayev**, Russian citizen of Chechen origin,, the Russian authorities demanded his extradition under Articles 111 (Intentional Infliction of a Grave Injury) and 126.2 (Abduction) of CrC of the Russian Federation. Nagayev was arrested although at the moment of his arrest, he was registered by the local UNHCR Office under the No. 4338. On 09 May 2008, the ECtHR stopped the extradition and communicated the parties the respective information. On 13 December, the UNHCR decided not to provide Nagayev a refugee status. Consequently, on 22 December 2008, the Prosecutor Office decided to extradite him to Russia. On 23 January 2009, this decision was confirmed by the district court, and on February 7, he was extradited, reportedly without opportunity to appeal against the decision.

The HRCA shares the concern expressed in the UN Human Rights Committee’s concluding observations CCPR/C/AZE/3 (par.9) on the absence of a “mechanism allowing aliens who claim that their forced removal would put them at risk of torture or ill-treatment to file an appeal with suspensive effect”

That is notable that in its judgment on the case *Shamayev and Others v. Georgia and Russia* (no. 36378/02, 12 April 2005), the ECtHR decided that the intention of Georgia to extradite five ethnic Chechens to Russia violated Article 13 taken in conjunction with Articles 2 and 3 of the European Convention of Human Rights. That means that before the change of position of ECtHR, the courts of the Republic of Azerbaijan have to take this precedent into account and not to extradite the Chechens in Russia and to prosecute them in Azerbaijan if necessary.

Articles 10 and 11

The tolerance of torture and ill-treatment and the high perception of impunity attracted the

⁵ Day.az News Agency, source: <http://www.day.az/news/criminal/143038.html>

attention of the PACE⁶.

The HRCA believes that the education of personnel on the international standards on the prohibition of torture will remain ineffective as long as the local practice will permit the perpetrators to enjoy impunity. There are enough evidences that authorities, which permanently improve the legislation on torture simultaneously undermine these efforts by unofficially concealing the perpetrators.

For example, Article 27 of the Law “About Police” clearly prohibits the use of force or special police tools against women. However, in 2003 and 2005 the female demonstrators were injured by policemen who can be identified at the photographs and videotapes. Despite of this, none of the policemen was ever punished for that.

The HRCA faced the situation when the Minister of Justice prescribed in 2004 certain hygienic standards to the prison cells (in so called Rules of Internal Order). In 2008, the director of Qobustan Prison put an active complainant in a former punishment cell, whose standards are lower than prescribed in the Rules. However, the judges did not conclude to a violation of the prisoners’ rights. Thus, the prison personnel learned that clear instructions are not obligatory and their violation is tolerated.

Article 12

Since September 1, 2000, when the torture was criminalized in Azerbaijan, the official investigation of events assimilated to torture never ended in the conviction of an official on the only ground of torture.

There are artificial obstacles to the access of detainees to a lawyer, which is in contradiction of criminal procedural norms and delaying medical examination, which can be initiated only by the prosecuting agency. For example, in the case of *Sardar Mammadov (Jalaloglu)* (no. 34445/04, 11 January 2007), the official forensic examination of S.Mammadov was conducted only nine days after his arrest. Nevertheless, it revealed some injuries on his body, two bruises on his right calf and right heel which are very characteristic for *falaka* (beating of the naked soles of feet with truncheons), which were ignored by the prosecutor and the judges. The ECtHR found “that no effective investigation was carried out into the applicant's allegations of ill-treatment” and “the domestic investigation of the applicant's claim was not sufficiently thorough and effective.”

The main problem is the *de facto* prohibition of independent forensic examination. According to Article 125.2.5 CCP, “information, documents and other items shall not be accepted as evidence in a criminal case if they are obtained in the following circumstances: ... where the ... investigative or other procedures are conducted by a person who does not have the right to do so.”

The ECtHR judgment on the case *Alakram Hummatov* (nos. 9852/03 and 13413/04, 29 November 2007) describes the attitude of authorities towards the independent examination of medical records of the prisoner by a prominent doctor awarded by the Government for her achievements. In the process of communication, the Government maintained that the examination, submitted by the applicant in support of his allegations, “had been prepared by a non-professional, “presented in an artificially bloated way and [was] completely ill-founded”.

⁶ PACE Resolution 1545(2007), par. 8.12.

The Government learned this lesson, and in 2007, when the prisoner Natiq Mirzayev had complained for infection of tuberculosis as the result of sharing his cell with ill Hummatov, the doctors stated that all his medical records “were lost because of negligence of technical personnel.” After that the court found that there is no reliable evidence of administration’s guilt. The families of other prisoners can not get the copies of medical records under the pretext that it is strictly secret information of personal file, although such an approach violates the CPT recommendation.⁷

The Human Rights Commissioner (Ombudsman) of Azerbaijan reported⁸ in 2007: “One of the issues of concern in 2007 was the question of torture. Thus, the complaints received by the Commissioner informed about cases of physical and psychological pressure, degrading treatment, beatings, detention for a period exceeding the maximum term set by the Law and other abuses committed by the personnel of police bodies and prisons...

Cases of beatings at police stations are usually explained by resistance of the detained person and his refusal to obey officers’ orders, whereas in penitentiaries they are justified by the violation of the rules of discipline by inmates and their disobedience to lawful demands of the prison personnel.

Although the number of such cases decreases every year, the elimination of violence, which is a result of old behavioural habits will undoubtedly take time.

The Commissioner has made motions to the Ministries of Internal Affairs and Justice, as well as the Office of the Prosecutor General for investigation of the situation, as well as for punishment of the officials responsible for torture and beatings when such cases were discovered. Although usually it was reported that no cases of torture took place, sometimes such persons were punished in an administrative order, demoted in rank or dismissed from their positions.”

Obviously, the Ombudsman would never inform the respective agencies if she would not doubt official explanations that injuries were the result of lawful reaction of policemen to the disobedient behaviour of detainees. The consequent reaction of the officials confirms that the Government would like to decrease the scope of torture but simultaneously is very concerned by the reputation issues.

In this connection, it is necessary to mention the fate of Sahib Teymurov, a head of the Orphanage Guardianship NGO who disclosed the concealment by the police of a case of prostitution of an under-age girl infected with HIV. In February 2008, the girl was sentenced. Consequently, Mr. Teymurov was arrested in August 2007 for alleged extortion of money and hooliganism. After several days in detention, he unsuccessfully committed suicide in remand prison No.1. In April 2008, he was put in the psychiatric ward of the central prison hospital and diagnosed “Psychosis of schizophrenia type.” In May 2008, the Court of Grave Crimes decided to stop the persecution and to treat him forcibly in the mental asylum. That is in contrary to the CAT recommendation (2003) “to ensure the full protection of non-governmental human rights defenders and organizations.”

Situation in Nagorno-Karabakh

⁷ 3rd General Report CPT/Inf (93) 12, § 46.

⁸ Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan. Promotion and protection of human rights and liberties in Azerbaijan. Summary of the annual report for 2007

Special concern is raised by the investigation of war crimes, which took place in Armenia and in the occupied territories in Nagorno-Karabakh and some surrounding regions. In January 2009, 1396 citizens of Azerbaijan were released from Armenian captivity, including 169 children, 289 elders and 343 women.⁹ Practically all of them after return complained about torture and ill-treatments. Some returned corpses of dead prisoners of war also had traces of torture.

There is no way for the Azerbaijani authorities to investigate these crimes. Armenia as the occupying authority holds the responsibility to investigate and to prosecute such crimes. However, the case *Harutyunyan v. Armenia* (no. 36549/03, 28 June 2007, par.66) examined by the ECtHR, found violations in the investigation by the Armenian authorities of the killing of an Armenian soldier as a result of bullying in the Armenian military unit in occupied Mardakert region. The ECtHR “concludes that, regardless of the impact the statements obtained under torture had on the outcome of the applicant's criminal proceedings, the use of such evidence rendered his trial as a whole unfair.”

In another case, *Arayik Zalyan, Razmik Sargsyan and Musa Serobyan v. Armenia* (nos. 36894/04, 3521/07, 11 October 2007, dec.), the Armenian citizens recruited in the Armenian military unit no. 33651 situated near the village of Mataghis in the unrecognised Nagorno Karabakh had been arrested for the murder of two servicemen from the same military unit in December 2003. The ECtHR communicated to Armenia its complaints for torture to the territory of Nagorno Karabakh with permission and instigation of officials.

Article 13

There are several formal ways to complain against the unlawful acts of the prosecuting agency or officials. If there is criminal case opened, then it is possible to complain to the court under Article 449 of the Code of Criminal Procedure (CCP) concerning procedural acts or decisions of the prosecuting authority, in particular torture (Article 449.3.4). On other occasions, it is possible to commence a dispute concerning decisions and actions (or inaction) of relevant bodies of the executive authority under Articles 296-297 of Civil Procedural Code referring to the violation of rights and freedoms of the person (Article 297.1.1 CPC).

One of the problems impeding the timely identification and prevention of torture is the fact that the imprisoned complainants remain in the same places where they were allegedly subjected to torture and ill-treatment. Moreover, the investigators often complicate the access to a lawyer.

In the case of *Sardar Mammadov (Jalaloglu)* (no. 34445/04, 11 January 2007, par. 74), the ECtHR found out that the applicant, who is a prominent opposition leader, “was not able to bring his claim of ill-treatment immediately to the attention of the authorities because he was not allowed to see his lawyer for three days after the beating. The matter was first brought to the attention of the authorities when his lawyer demanded a medical examination on 22 October 2003. However, this request was not handled with sufficient diligence, as no action was taken in this regard until the lawyer complained to the prosecutor, five days later, about the failure to arrange for a medical examination. Even after this, it took two more days for the medical examination to be carried out... The Court therefore considers that the failure to secure the forensic evidence in a timely manner was one of the important factors contributing to the ineffectiveness of the investigation in the present case. A timely medical examination could have enabled the medical expert to reach a more definitive conclusion as to the time of infliction and

⁹ Day.az News Agency, source: <http://www.day.az/news/society/143480.html>

cause of the injuries.”

The situation of simple citizens who are unknown to the general public and international organizations is even more difficult. Often, they are provided a legal aid lawyer, who is underpaid and not motivated to defend the detainee. The provision of procedural law that the defendant has to be obligatorily represented by a lawyer in the Supreme Court, often creates a serious obstacle for the exhaustion of domestic remedies necessary for a complaint to the UN or the ECtHR.

If the detainee has no lawyer, the only way to complain is to send a written complaint. Despite the formal prohibition of the censorship of complaints to the supervisory bodies and European Court of Human Rights and the permission since 2008 to challenge the acts of the prison administration, according to Article 14 of the Code of Enforcement of Punishments, all complaints have to be given through the prison’s special division. Moreover, the prison officers demand to submit the letters in opened envelopes. Because of the censorship of the prisoners’ complaints for inhuman treatment, the later prefer to use other channels and ways to complaint, up to hunger-strikes and self-mutilation.

HRCA, which assisted some prisoners in preparing applications to the ECtHR, registered a number of cases of censorship of such letter exchanges. After the repeated complaints to the various state bodies, the prison administration decided to censor officially the letters of one life prisoner, **Mr. Shakir Rzakhstanov**. He is even isolated in solitary detention since February 2008 for an uncertain period, namely for his complaints to the domestic and international organizations sent by unofficial channels, which was confirmed by the administration during the trial initiated by the prisoner.

Article 14

Article 4 of the Law “About Compensation of harm caused to the physical entities in result of unlawful acts of the organs of preliminary investigation, Prosecutor’s Office and courts” provides that only those citizens, whose criminal or administrative case was discontinued or who got acquitted by the court, have a right to compensation.

Article 56 of the Code of Criminal Procedure (CCP) lists the persons who are entitled to compensation:

- “an accused who is acquitted;
- a person against whom the criminal prosecution is discontinued...;
- a person against whom the criminal prosecution should have been discontinued ..., but was not discontinued in time and was pursued.
- a person against whom the criminal prosecution should have been discontinued ..., but continued although that decision was upheld;
- a person unlawfully arrested or placed in a medical or educational institution by force or a person kept in detention on remand without legal grounds for longer than the prescribed period of time;
- a person unlawfully subjected to coercive procedural measures during the criminal proceedings in the circumstances provided for in Articles 176 and 177 of this Code” (i.e. the coercion in principle permitted by law like forcible appearance before the prosecuting authority, search of premises, arrest of property, tapping of correspondence, exhumation of corpse, medical examination).

The victims found guilty and persons subjected to torture and inhuman treatment are not listed.

Hence, even approved facts of torture do not lead to any monetary harm compensation, if the person has been found guilty. If the acquitted victim of torture was found guilty later on, the court can return the paid compensation of harm. Article 58.5 CCP provides that ‘if the compensation is paid on the grounds of acquittal or a decision to discontinue the criminal prosecution, and if that decision is later rescinded in respect of that person and he is convicted in the same criminal case, the return of the sum paid as compensation may be ordered by the court.’”

Moreover, the false self-accusatory confessions even being extracted under torture exclude any compensation. According to Article 57.3 CCP, “the persons ... who ... made a statement of guilt in court, which was later disproved, and who thereby created an opportunity for the start of criminal proceedings against them and for the application of coercive procedural measures, shall not receive compensation.”

Article 58.3 of the CCP listed the pecuniary harm, which shall be compensated: “loss of salary, pension, allowances and other income; loss of property caused by forfeiture, transfer to the state, removal by the investigating authorities or distraint; legal costs; fees paid to defence counsel; fines paid or taken during the execution of the sentence.”

As for “physical and moral damages”, Article 58.2 provides that they “shall be paid on the basis of fair assessment by the court if no other statutory arrangement is laid down.”

Only compensations for torture received by the victims of torture was paid on the basis of decisions of the ECtHR. In particular, *Alakram Hummatov* (nos. 9852/03 and 13413/04, 29 November 2007), who contracted tuberculosis and received inadequate medical treatment in detention, received EUR 12,000 in respect of non-pecuniary damage, *Sardar Mammadov* (no. 34445/04, 11 January 2007) who was allegedly tortured - EUR 10,000, *Mahira Muradova* (no. 22684/05, 02 April 2009) who lost one eye because of beating by police at a demonstration by the opposition - EUR 25,000. Ignoring the complimentary character of this payment, the Government did not pay any additional compensation. Moreover, there is not any price list for different types of non-pecuniary harm.

Article 15

In cases where a defendant retracted during the open trial its confessions obtained by torture during the investigation, the courts generally stuck to the initial statements.

The OSCE Trial Monitoring Mission described in details the allegations of torture of defendants and witnesses during 13 trials in 2003-2004 and listed the alleged perpetrators.¹⁰ In one of the group cases, the judgment does not even refer to the allegations of torture. In eighth group cases “statements that were alleged to have been made under duress were expressly relied upon as evidence... In general, the response of the courts to the numerous motions by the defence that statements made in temporary detention facilities were obtained by torture or other ill-treatment consisted of ordering medical examinations and calling law enforcement officials as witnesses... In at least ten cases, the bench did not order a medical examination on the day that the allegation of torture was first made before the court. In all instances in which medical examinations were ordered, they either found no proof of injuries, or that the injuries had preceded the arrest of the

¹⁰ OSCE Office in Baku. Report from the Trial Monitoring Project in Azerbaijan 2003-2004, pp.19-27

defendant or that the injuries were caused as a result of the disorders caused by the defendants. In a number of instances the defence counsel did not ask the court to investigate the torture allegations. There is, however, an obligation for the judge to immediately order a forensic medical examination, even in the absence of an express allegation of ill-treatment, whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment.”

One of the cases, *Sardar Mammadov (Jalaloglu)* (no. 34445/04, 11 January 2007) was consequently examined by the ECtHR, which found violation of Article 3 ECHR. However, at the domestic level, all three court instances *de facto* ignored his allegations of torture.

Article 16

There is the substantial gap between the legislative framework and its practical implementation in Azerbaijan, especially for conditions of detention of prisoners serving life sentences/¹¹

The FIDH and HRCA conducted in 2006 a fact-finding mission in Azerbaijan. The mission attracted attention to the situation of former prisoners on death row and other lifers.¹² The mission report was quoted in the report of the Monitoring Committee of the Parliamentary Assembly of Council of Europe (PACE)¹³ and in PACE Resolution 1545 (2007) (par. 8.8, 8.9). The PACE expressed special concern for “the number of deaths and suicides committed by inmates” in Qobustan prison.

It is the only cellular prison for life prisoners and prisoners who had to spent a certain part of their sentences in prison cells. The situation of life prisoners can be illustrated by high mortality rate – 52 of 289 lifers (18%) in the last 11 years of existence of this punishment. Among the dead lifers are 33 of 128 survivors of death row (26%)¹⁴.

According to the research of the Penal Reform International with participation of the HRCA,¹⁵ only 15% of lifers were detained in cells with living space corresponding to the CPT standard, i.e. at least 7 sq.m, while the national standard is 4 sq.m (Article 91.2 of the Code of Enforcement of Punishments). About 3% of lifers were in solitary detention. 54% have mentioned that the cells were not equipped with all necessary items, 50% stated that windows size was under the European standard. The prisoners complained about the quality of food and the monotonous ratio.

55% to 77% of the questioned prisoners think that the conditions in the cells are “hazardous for the health and life of the prisoners”. 69% to 81.5% respondents considered the living conditions as inappropriate for life imprisonment. At the same time different reasons were named for the “peril”: small area for the cells, bad acoustic insulation, bad ventilation, the presence of the open, “Asiatic” type of toilet in the cell, ferro-concrete floor and ceiling (cold in winter, hot in summer, causes i.a. rheumatism). Some of the prisoners also mentioned that it is not only the construction

¹¹ See CAT/C/CR/30/1, 14 May 2003.

¹² FIDH Rapport. Mission Internationale d'Enquête. Après l'abolition de la peine capitale, les condamnés à perpétuité en danger de mort. Torture et mauvais traitements dans les prisons d'Azerbaïdjan. – Janvier 2007.

¹³ PACE Doc. 11226. Honouring of obligations and commitments by Azerbaijan. 30 March 2007.

¹⁴ Statistics by the HRCA

¹⁵ PRI. Life Imprisonment and Conditions of Serving the Sentence in the South Caucasus Countries. Project “Global Action to Abolish the Death Penalty” DDH/2006/119763/ - Tbilisi, 2009, pp.39-85.

of cells that is hazardous for their health but also the absence of sport activities, work, the presence of the psychological pressure caused by the closed space, the presence of violent, mentally ill neighbors, etc.

In different combinations, 85% made request in connection to the improvement of living conditions (bigger cell, domestic devices, more hygienic toilet, more frequent bath, high-quality food, conditions for self-cooking, outdoor sport, and medical service), 50% - providing job and education, 45% - getting help of the psychologist and a priest, 5% - increasing the number of visits, 5% - providing an isolated cell (one-bedroom cell). 5% of the questioned prisoners just do not want to be reminded of the crime they have committed and do not want other to pity them.

The survey revealed the problems connected to the medical service for the life sentenced prisoners. 43% to 66.7% have stated that they had no medical examination upon entering the Qobustan prison. 95% to 100% of the prisoners prove that the doctors do not visit them regularly on their own initiative, but come to the cells only if called. Only 7.4% to 9% of the questioned prisoners think that the quality of the medical service is good. At the same time 58% to 70.4% of respondents think that the quality is bad. 60% of the questioned prisoners think that there are no medicines and qualified medical personnel in prison infirmary, 25% expressed their doubt in their accessibility, and 15% has stated that the amount of the equipment and medicines is not enough.

In 2005-2008, the life prisoners conducted several hunger-strikes in order to attract international attention to their problems. The Commissioner for Human Rights of the Council of Europe T.Hammarberg who has visited the Qobustan Prison in 2007 especially noted the lifers problems in his report¹⁶ published on 20 February 2008 (§§ 56, 57, 58, 61). He concluded that: "*life imprisonment without the fair and serious possibility of release does raise human rights concerns*" and that without improving the living conditions of lifers "*by no means, should a life sentence become a slow, painful death.*"

Finally, the Parliament improved their conditions by law of 24 June 2008, which increased the number of visits in twice (6 short-term and 2 long-term visits yearly), allowed the TV sets in the cells and formal access to the court to challenge the prison punishments. However, the problem of a universal 25-years 'tariff' period before early release from life imprisonment remains, and the courts fail to review the life imprisonment automatically imposed in 1998 as result of previous death sentences. It is notable that whereas in 2008, there were up to 20 suicide attempts and killings in Qobustan including seven successful ones, no suicides and killings were recorded after the adoption of the law in question, as of 10 October 2009.

The belated medical assistance in prison is one of the main causes of deaths. That raises human rights concerns.

In the same time, in the case of *Alakram Hummatov v. Azerbaijan* (nos. 9852/03 and 13413/04, 29 November 2007, par.98) "the Government submitted that, generally, the alleged lack of medical treatment could not be considered as amounting to torture or to inhuman or degrading treatment or punishment within the meaning of Article 3 of the Convention." Obviously, this position of authorities opposing the existing case-law is still one of the main reasons for the lack of thorough investigation following cases of deaths in penitentiary medical institutions.

¹⁶ CommDH(2008)2. Report by the Commissioner for Human Rights, Mr. Thomas Hammarberg on his visit to Azerbaijan 3 - 7 September 2007

For example, former political prisoner **Farida Kunqurova** was re-arrested on 5 October 2007 after her release from detention for alleged possession of drugs (Article 234.4.3 of Crime Code). She declared a hunger-strike and died on 18 November 2007. Although the authorities found no guilt of medical personnel, the human rights defenders referred to the instruction of the Ministry of Justice of 02 February 2002 about forced feeding of hunger-strikers if the hunger-strike endangers the life. The Penitentiary Service informed the public about the death after ten days, and at the moment of publication, one week after the burial, the act of post mortem expertise was not yet ready. Consequently, no criminal case was opened.

The 68-years old Chief of Talysh Cultural Center and editor-in-chief of Talyshi Sedo newspaper **Novruzali Mamedov** was arrested in February 2007 and sentenced to 10 years. He reportedly suffered from a number of illnesses, including high blood pressure, bronchitis, neuritis, and a prostate tumor and died on 17 August 2009. He was demanding medical assistance since January 2009. In March 2009, the domestic court decided that he had to be transferred to a hospital. However, he was only transferred on July 28 to the central prison hospital in a very bad condition, after the intervention of Special Representative of the Secretary General of Council of Europe V.Kotek and Human Rights Commissioner of Azerbaijan E.Suleymanova. The prison doctors refused the assistance of external expert proposed by V.Kotek, although they later reportedly called the local civil doctor. Against this background, the position of the authorities not to launch the prosecution of prison personnel and doctors was faced by criticism of domestic and international human rights organizations.

In the mentioned case of life prisoner **Shakir Rzakanov**, he complained to the court for the small size of his window, 5,5 times narrower than required by the Rule 37 of the “Internal Order Rules” approved by the order of the Minister of Justice. However judge decided after examination of the cell and confirmation of this claim that there was no ill-treatment because this window was sufficient for ventilation and daylight, and that there was future plans to transfer the life prisoners in a more appropriate place.

In general, the prisoners never won their cases in domestic courts against the prison administration, even if there were no political motives. The human rights defenders explain that by the decisive role of the Ministry of Justice in reforming the domestic judiciary, including examination, training, appointment and punishment of judges.

Ill-treatment in Armed Forces

The situation is difficult in the army where suicides and unnatural deaths are spread more widely than in prisons. The press service of the Ministry of Defence has reportedly no statistics on the deaths in cross-shootings since cease-fire on 12 May 1994.¹⁷ According to media publications, 361 military died in the army from 2003 to 2009, of whom 144 died in field conditions and 217 without relation to field operations¹⁸.

Because of the lack of civil control, the causes of mortality in the army are not clear. However, the families of perished soldiers named in some cases the ill-treatment or bullying (so called *dedovschina*) as a cause of suicides. The latest of such cases happened on 02 July 2009, when the father of soldier **Shahriyar Askerov** asserted that he was driven to suicide by ill-treatment from older soldiers. The Ministry of Defence responded that the soldier had mental problems, without explanation on how it became possible to draft the ill person into the army.

¹⁷ *Ayna* newspaper, 01.08.2009

¹⁸ *Bizim Yol* newspaper, 04.08.2009

Anyway, cases of investigation of bullying have increased. For example, when the soldier **Orkhan Veliyev** was driven to suicide in February 2009 in a military unit in Terter region, the criminal case was opened under Article 125 CrC (driving to suicide). In March 2009, five military servicemen were sentenced to 3 to 4,5-years imprisonment for beating young soldiers in the Alyat hospital.¹⁹ Very characteristic was that initially military officials denied the fact although it was taped by mobile phone. In August 2009, five servicemen of the National Army were sentenced under Articles 150.1 (sexual violence), 274 (high treason), 228 (illegal storage of arms), 338 (violation of the duty rules), 341 (misuse of power), 349 (deliberate elimination of military property) of the Criminal Code. According to unofficial information, all the accused committed violence against other soldiers and recruited them as spy in favor of Armenia.²⁰

Such military crimes as leaving the military unit, desertion, killing of alleged perpetrators also indicate an unhealthy situation in the army. The Military Prosecutor Khanlar Veliyev reported on 24 July 2009 that although crime detection over the first half of 2009 was allegedly of 98.6%, the number of deliberate murders and violations of the charter increased.²¹

There is a number of news about the deliberate murders allegedly related to the ill-treatment of soldiers. For example, in October 2008, military officer Teymurkhan Salimov killed **Ruslan Teymurov** who did not want to fulfill his orders. In April 2009, he was sentenced to 13 years of imprisonment under Article 120.2.4 (deliberate grave murder). On 29 March 2009, a soldier Yasaf Qasimov murdered 2 comrades in military unit in Terter region. He was accused under Article 120.2.4 of the Criminal Code (cruel murder) and 120.2.7 (murder of two and more people.)²² On May 23, 2009, a sergeant shot four soldiers with a sub-machine gun in Shamkir region.²³ In May and July 2009, there were incidents with shootings of five and two military servicemen by soldiers of the Fizuli military region (in the frontline).²⁴

There also are cases where the victims of bullying crossed the frontline and handed themselves to the Armenians as a way to escape from ill-treatment. Such voluntary returnees from the captivity are routinely prosecuted for high treason and other related military crimes.

The former Prisoners of War **Ruslan Bekirov**, **Khayal Abdullayev** and **Hikmet Tagiyev** who had been in Armenian captivity from 15 February to 7 May 2005, were sentenced to 11-12 years imprisonment in March 2006 for high treason (Art. 274 CrC), desertion (Art. 334.3), violation of order of duty (Art. 338.1), excess of authority (Art. 341.3).²⁵ **Vusal Qaradjayev** was in Armenian captivity 16 days in December 2006. After his return, he officially complained about ill-treatment and named four perpetrators.²⁶ However, he was arrested after high return and accused of high treason (Article 274) and violation of order of duty (Art. 338.1).²⁷ **Eldaniz Nuriyev**, who was captured on 31 December 2006 and returned after 16 days was arrested and accused under Articles 274, 338.1 and 334.3 (desertion) CrC.²⁸ On 23 January 2009, the former prisoner of war **Vusal Eybatov** was sentenced to 11 years imprisonment for high treason (Article

¹⁹ *Turan News Agency*, 05.03.2009

²⁰ *Turan News Agency*, 06.08.2009

²¹ *Turan News Agency*, 24.07.2009

²² *Turan News Agency*, 31.03.09

²³ *Turan News Agency*, 10.06.2009

²⁴ *Turan News Agency*, 22.07.2009

²⁵ *Day.az News Agency*, 18.03.2006, source: <http://www.day.az/news/society/44342.html>

²⁶ *Gundelik Azerbaijan newspaper*, 03.02.2009.

²⁷ *Day.az News Agency*, 13.02.2008, source: <http://www.day.az/news/society/70804.html>

²⁸ *Day.az News Agency*, 08.02.2008, source: <http://www.day.az/news/society/69962.html>

274 CrC). He was in captivity three weeks in April-May 2008.²⁹ This list does not exhaust all cases of prosecution of former Prisoners of War.

Therefore, some captured Azerbaijani soldiers fearing the persecution in Azerbaijan request asylum in third country. The first occurrence of such a case took place in 1999, the last one in January 2008 (**Samir Mammedov**, who was captured on 24 December 2006). To date, one more prisoner of war (**Rafiq Hasanov**) who handed himself to Armenians on 08 October 2008 expressed the intention not to return. He explained his act by harassment of other soldiers and refused to return to Azerbaijan. On 10 May 2009, another Azerbaijani soldier, **Anar Hadjiyev** went into Armenian captivity reportedly because of the same problem, and his intentions are still unclear.

Because of this position of the authorities recalling Stalin-era attitude towards the Soviet prisoners of war, the International Working Group on search of missed in operations of the Nagorno-Karabakh conflict stopped its activities on search and liberation of Azerbaijani POWs.

²⁹ *Day.az* News Agency, 23.01.2009, source: <http://www.day.az/news/society/144749.html>

RECOMMENDATIONS

In view of the above, the authors believe that the following steps should be recommended by the Committee Against Torture to the Azerbaijani authorities to reduce the risk of torture in Azerbaijan:

A. Legislative measures

- The definition of torture in domestic criminal law should be brought in line with the internationally accepted definition, as in article 1 of the Convention;
- The domestic civil and criminal procedural norms should be amended by the procedure of review of cases after positive decisions of the UN Treaty Bodies;
- Azerbaijan's inter-state treaties on extradition and mutual legal assistance should be brought in line with international and domestic law in respect of preventing the handover of de facto political emigrants and also of persons against whom torture and the death sentence might be applied. In particular, it is essential to ensure that public information is provided about such cases, even where national security is concerned;
- To give detainees the possibility to challenge extradition decisions; and to ensure that they receive prompt and effective legal assistance;
- To permit the use of independent forensic examination in the cases of alleged torture or ill-treatment as evidenced in civil and criminal cases;
- Official instructions and other statutory instruments must be adopted to promote the monitoring of places of detention, which are not subordinated to the Ministry of Justice and the participation of representatives of civil society in their reform;
- The law of criminal procedure must be amended to provide compensation to any victims of torture and ill-treatment, not only acquitted ones; the false confessions given under coercion shall not be a basis to refuse the compensation of damage;
- Instructions must be elaborated to determine levels of compensation in accordance with the type and severity of the consequences of torture and cruel treatment.

B. Institutional measures

- The remand centre of the Ministry of National Security should either be closed or transferred to the jurisdiction of the Ministry of Justice;
- The new institution for life prisoners in Umbaki settlement has to take into consideration the CPT standards;
- The free legal aid system has to be developed to permit the effective defense of poor detainees, including Supreme Court. The fees paid to government-appointed lawyers must be increased and brought in line with the standard average fee, while safeguarding detainees' ability to select a lawyer among several candidates and, if they wish, to change their lawyer;

- Establishment of civil society structures at the Ministries of Interior, Natural Security, Defense, Education, Public Health to monitor the places of deprivation of liberty;
- Effectiveness of the National Prevention Mechanism has to be increased through the involvement of non-governmental experts.

C. Administrative measures

- Measures must be taken to ensure the effective cooperation between government bodies responsible for holding citizens in custodial facilities and local and international human rights organizations in dealing with the issues of torture and ensuring that detention conditions are more decent;
- The investigative and judicial authorities must ensure an appropriate response to the reports of human rights organizations, publications in the media and public statements in trials alleging torture. In particular, they must ensure the full and impartial investigation of such reports and statements and the exclusion of any evidence, which has been obtained with the use of torture and cruel treatment;
- All reports of the CPT on visits of Azerbaijan must be authorized for publication;
- Effective punishments must be handed down on all officials who ignore complaints of torture;
- Wide publicity must be given to cases of punishments being handed down on persons guilty of torture and to the available procedures for lodging complaints of torture;
- Persons involved in inflicting torture and cruel treatment on detainees must not be employed in any capacity in the law enforcement agencies and the judicial system;
- The conduct of forensic examinations must be mandatory for persons complaining of the use against them of torture and effective punishments must be handed down on government-employed doctors who refuse to certify traces of torture or who knowingly give false findings;
- To ensure a case-by-case review of life sentences which were the result of the abolition of the death penalty and allow the persons concerned to benefit from the retroactive application of the most favourable criminal law provisions adopted in 2000;
- The confidentiality of complaints of prisoners to the European Court of Human Rights and domestic bodies responsible for supervision of penitentiary institution has to be secured; no circumstances can justify the administrative punishment of prisoners for such complaints;
- All circumstances related to the reported ill-treatment in military units and in captivity must be taken into consideration as mitigating ones during prosecution of military servicemen returning from Armenian captivity;
- Where there is convincing evidence of the use of torture, adequate compensation must be paid to its victims. The just satisfaction paid to the injured party at the basis of decision of European Court of Human Rights has to be considered as not final but complimentary one to the compensation provided by domestic court.