



**Compliance of the Republic of Azerbaijan  
with the International Covenant On Civil And Political Rights**

**An alternative NGO report  
to the 118th Session UN Human Rights Committee  
(17 October 2016 - 04 November 2016)**

*Prepared by the Human Rights Center of Azerbaijan*

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## INTRODUCTION

This alternative report on the implementation of the International Covenant On Civil And Political Rights (ICCPR) was prepared by HRCA and reviews the issues covered by the Fourth periodic report of the Republic of Azerbaijan (CCPR/C/AZE/4).

HRCA is a non-governmental human rights organization (NGO) established in April 1993, registered in 1999 and engaged in monitoring human rights in Azerbaijan. Since 1998, it has submitted several NGO alternative reports to the UN Treaty Bodies and under the UPR.

The HRCA is a member of SOS-Network of the World Organization Against Torture (OMCT).

This report presents article-by-article information on the observance by the Republic of Azerbaijan of the provisions of the ICCPR.

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Azərbaycan İnsan Hüquqları Müdafiə Mərkəzi (The Human Rights Center of Azerbaijan)

P.O. Box 31, Main Post Office, Baku AZ1000, Azerbaijan, E-mail: hrca@mail.ru, aihmm@mail.ru

## General Comments

1. The situation with the implementation of ICCPR in Azerbaijan is seriously aggravated with the continuing conflict with neighboring Armenia over the Nagorno-Karabakh region, a former autonomy within the internationally recognized borders of Azerbaijan. The human rights situation at this area is fully out of the international monitoring due to reservation done by the Government of Azerbaijan during the ratification of the ICCPR and related to the occupation of about 20% of Azerbaijani territory by the armed forces of Armenia. The perpetrators of the human rights violations at this territory enjoy impunity.
2. However, the regional (European) bodies recognized that Armenia *de facto* has a jurisdiction over the occupied territories and responsible for the human rights violations there.<sup>1</sup> It is logical therefore to discuss the situation in Nagorno-Karabakh during the examination of state report of Armenia.
3. The monitoring of human rights at the rest of territories of Azerbaijan is significantly suppressed after the negative changes of the NGO, grant and tax legislation in 2013-2015. That created a hindrance for the normal activity of local and foreign NGOs. The visits of representatives of some international NGOs were prohibited.
4. On 18 July 2016, the President initiated a referendum on adoption of 29 amendments to the Constitution related to elections and other human rights issues. Its results are to be published until October 21, 2016.
5. No local independent experts (lawyers and NGO activists) were invited by the authorities to participate in the process of discussing draft laws.
6. Governmental reports on country's implementation of various human rights conventions, including the present report, are never published in local sources widely available for the general publics. Moreover, such reports are never discussed in the presence of independent experts.
7. Similarly, governmental press never publishes conclusions by various UN committees or their recommendations to improve the status of human rights in the country.
8. A series of already adopted legislative acts are modeled mainly after the European system of human rights protection, dealing to a lesser extent with issues covered by ICCPR. The situation discourages the prospective applicants to use the UN treaty bodies.

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<sup>1</sup> See the ECHR judgments: *Harutyunyan v. Armenia* (no. 36549/03, 28 June 2007), *Chiragov and Others v. Armenia* (no. 13216/05, 16 June 2015, GC), *Zalyan and Others v. Armenia* (nos. 36894/04 and 3521/07, 17 March 2016).

## A. Comments on Specific Articles of Covenant.

### Article 2

9. The fundamental guaranties provided by the Constitution are often violated by low-level law norms such as ministerial instructions. There also are allegations on the practice violating the rights guaranteed by the Constitution and the international covenants.

10. Formally, the population of Azerbaijan has an individual access to the Constitutional Court (CC). However, the access to the CC is complicated. Therefore only little number of cases is considered annually by the CC. For example, in 2014 were passed 30 decisions, in 2015 – 25. For comparison, the ECHR passed 48 and 46 judgments and friendly solution decisions respectively. That means that domestic CC is less accessible in practice than ECHR.

11. The inhabitants of Azerbaijan have a right to communicate the individual complaints to four UN Treaty Bodies (HR Committee, CAT, CERD, and CEDAW). However, both Code of Criminal Procedure and Code of Civil Procedure do not include any provisions about a procedure of implementation of the UN views on the individual complaints. Therefore, the population is *de facto* deprived the remedies provided by UN. Already passed views of UN Treaty Bodies were not executed.<sup>2</sup> That discourages the victims and their lawyers from complaints to the UN Treaty Bodies.

12. The similar situation is in the area of implementation of the ECHR judgments, in 7 of which was found violation of right for the effective remedies. While the pecuniary compensation always is provided, there is no change in the systemic problems. Therefore, the Parliamentary Assembly of Council of Europe (PACE) noted that in Azerbaijan “judgments revealing structural and other complex problems have not been implemented since ... January 2011.”<sup>3</sup>

### Article 3

13. The Article 25 of Constitution of Azerbaijan Republic provides that “men and women shall have equal Rights and Freedoms. Every person shall have equal rights and freedoms irrespective of sex.”

14. In practice, this guaranty is violated. The women are under-represented in the state bodies. For example, only 21 of 125 members of the Milli Mejlis (National Assembly) are women, or 16,8% (contrary to 13 women and 10,5% in previous Parliament).

15. Commenting this situation, the OSCE election monitoring mission noted that “women remained under-represented as candidates and in the higher levels of the election administration... A genuine effort should be made by political parties to increase the number of women in senior positions within their executive and administrative bodies. Parliament and state authorities should create the necessary conditions to promote and facilitate the inclusion of women in top government posts and in the higher levels of the election administration”.<sup>4</sup>

16. The ECHR found violation of the electoral rights of Yegana Hajiyeva, who had been a candidate for MP in 2010.<sup>5</sup>

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<sup>2</sup> See *Elif Pelit v. Azerbaijan* (CAT/C/38/D/281/2005, 1 May 2007), *Khilal Avadanov v. Azerbaijan* (CCPR/C/96/D/1633/2007, 25 October 2010), *Ali Quliyev v. Azerbaijan* (CCPR/C/112/D/1972/2010, 5 November 2014).

<sup>3</sup> PACE Resolution 2075 (2015). Implementation of judgments of the European Court of Human Rights, §6.

<sup>4</sup> OSCE/ODIHR Election Observation Mission Final Report, 7 November 2010:  
<http://www.osce.org/odihr/75073?download=true>

<sup>5</sup> *Bagirov Khalid and Others v. Azerbaijan* (Nos. 17356/11, 30504/11, 31959/11, 31996/11, 32060/11, 17 December 2015)

17. There is only one woman (2.6%) out of 38 ministers and heads of State committees.
18. In 2013, the women occupied 27,8% positions in the public administration system and took in this field of activity 67,2% (in 2007 - 80.8%) average salaries of men..
19. In Azerbaijan are 59 regions, 11 cities and 1 autonomous republic. All the heads of regional executive power are men. There are 44 deputy heads of local executive authority (i.e. even not in every region).
20. There are approximately 200 women's NGOs dealing with promotion and protection of women's rights.<sup>6</sup> However, they experienced the general problems of civil society (see notes under Article 22).

#### **Article 4**

21. On November 26, 2015, the Government had passed the special police operation in Nardaran village near Baku city. During cross-fire with the members of militant Islamist group "Movement for Muslim Unity" (MMU), 2 police officers and 5 militants were killed. Consequently, about 70 members of MMU were arrested in the village and other parts of Azerbaijan.
22. The Government announced the "special operative measures" on "restoration of Constitutional order" in Nardaran, which were similar to the state of emergency, which never was declared officially. They had no announced deadline and were intended "to continue until the full implementation of established tasks on provision of public security in village".<sup>7</sup> Majority of police posts were removed on February 10, 2016. On June 21, the President of Azerbaijan visited the village, its re-opened mosque, and met its elders.

#### **Article 5**

23. The incarceration of political opponents creates some human rights concerns, in particular, in cases when the convicts use the violent means for allegedly democratic goals or peaceful means to undermine the democratic values.
24. For example, "a list of some 70 human rights defenders, journalists, political and religious leaders currently detained on a broad range of charges" received during the visit of UN Working Group on Arbitrary Detention (WGAD) to Azerbaijan in May 2016<sup>8</sup> includes some "religious activists" and "journalists" (41 of 76 names or 54%) who claim to be arrested for the peaceful exercise of freedoms of expression, religion, assembly and association. Some of these cases are described in more details in a complete version of the list.<sup>9</sup>
25. Some of them are the homophobic Islamist youth leading by the journalist Nijat Aliyev and propagating violence against the LGBTI people awaiting the hypothetic gay-pride in Baku related to the Eurovision-2012. Another Islamic journalist, Araz Quliyev with a group of Masalli residents protested against the "amoral" folklore festival being held in Masalli. They shout and threw stones to police. Some other "religious activists" are the members of the non-registered Islamic Party of Azerbaijan acting for Sharia law, etc.
26. The ECHR has some case-law related to the application of Article 17 of the European Convention on Human Rights (analogue of Article 5 ICCPR) to the cases of arrested Islamists,

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<sup>6</sup> Statement of Head of the State Committee on Family, Women and Children Issues, AzerTAG, 20 October 2014.

<sup>7</sup> TV interview by the Commander of Internal Forces of Ministry of Internal Affairs, Colonel-Lieutenant Shahin Mammadov, see Echo newspaper, 3.12.2015: <http://www.echo.az/article.php?aid=93054>

<sup>8</sup> Working Group on Arbitrary Detention Statement upon the conclusion of its visit to Azerbaijan (16-25 May 2016): <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20021>

<sup>9</sup> [http://eap-csf.eu/assets/files/List\\_of\\_Political\\_Prisoners\\_AZ-\(2\)-\(1\).pdf](http://eap-csf.eu/assets/files/List_of_Political_Prisoners_AZ-(2)-(1).pdf)

where the ECHR refused to admit their complaints against the violation of freedoms of expression, religion, association and assembly despite of peaceful means they used.<sup>10</sup>

27. In particular, in *Kasymakhunov and Saybatalov* (§§104-105), the ECHR noted: “It is not at all improbable that totalitarian movements might do away with democracy, after prospering under the democratic regime, there being examples of this in modern European history... The Court has accordingly defined as follows the limits within which political organisations can continue to enjoy the protection of the Convention while conducting their activities. It has found that a political organisation may promote a change in the law or the legal and constitutional structures of the State on two conditions: firstly, the means used to that end must be legal and democratic; secondly, the change proposed must itself be compatible with fundamental democratic principles. It necessarily follows that a political organisation whose leaders incite to violence or put forward a policy which fails to respect democracy or which is aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy cannot lay claim to the Convention’s protection against penalties imposed on those grounds”.

### Article 6

28. Azerbaijan Republic abolished a death penalty for all crimes by law of 10 February 1998. In the time, 128 prisoners were in the overcrowded death row.<sup>11</sup> The mortality among this subgroup of life prisoners is extremely high. Since 1998, 46 former death row inmates (or every third) died.

29. The life sentence can be applied to the convicts in the ages up to 65, while a life expectancy for men in Azerbaijan is 72 years. In the same time, a length of so called “tariff term”, i.e. a period serving before an opportunity to review a life sentence, is 25 years for all criminals. It means that a chance for early release is illusory for all lifers sentenced in age 47 and older.

30. For example, former death row prisoner Amirali Babayev, born 1935, was arrested in 60 years, died in November 2012 at his 77. Other former death row prisoner Vaqif Huseynov, born 1940, was arrested in 56 years and died in June 2015 at his 75. They could apply for release on parole only in 2021. Such convictions without opportunity of early release at least on humanitarian ground are equal a death penalty. The veteran of death row Fazil Tagiyev, born 1938, was arrested in 51 year, passed a tariff term and immediately died in March 2014 at his 76.

31. The Committee of Ministers of Council of Europe (CMCE) in its Resolution (76)2 recommends “that the governments of the member states ensure that a review... of the life sentence should take place, if not done before, after eight to fourteen years of detention and be repeated at regular intervals”.<sup>12</sup> The resolution formally is in force but is disregarded by the CoE member states.

### Article 7

32. Since 1 September 2000, when the torture became liable, no one perpetrator of torture was sentenced under this charge. However, after the repeating complaints of prisoners, some of prison personnel were reprimanded under other charges as some “transitional justice.”

33. The National Preventive Group (NPG) created by the Human Rights Commissioner has visited in 2014 the places of detention 365 times and met 1267 prisoners. However, no single

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<sup>10</sup> ECHR cases *Hizb ut-Tahrir and Others v. Germany* (No. 31098/08, 12 June 2012) and *Kasymakhunov and Saybatalov v. Russia* (nos. 26261/05 and 26377/06, 14 March 2013).

<sup>11</sup> See *A.A. v. Azerbaijan* (CAT/C/35/D/247/2004, 8 December 2005) and *Ali Quliyev v. Azerbaijan* (CCPR/C/112/D/1972/2010, 5 November 2014).

<sup>12</sup> Committee of Ministers of Council of Europe. Resolution (76) 2, par. 12.

case of torture or ill-treatment was revealed.

34. In her annual report 2010, the Ombudsman noted that “it is an indisputable fact that as a rule during investigations of all cases reflected in complaints regarding torture and other cruel, inhuman or degrading treatment or punishment such cases not proved... At the same time, due to other reasons some officials were brought to administrative responsibility and punished.”<sup>13</sup>

35. The NPG did not find any problems with medical treatment of imprisoned human rights activist Leyla Yunusova and signs of torture at bodies of youth activists Bayram Mammadov and Qiyas Ibrahimov. However, the ECHR<sup>14</sup> and the WGAD<sup>15</sup> came to opposite conclusions.

36. In 2015, the alleged violence in police stations resulted with the deaths of suspects. Some of the incidents had provoked mass disorders, e.g. in Terter town in February<sup>16</sup>, in Mingechevir in August<sup>17</sup> and in Sabunchu settlement in September.<sup>18</sup> As far as known, no policemen were accused of torture, and official version always excluded any torture of suspects. On 20 December 2015, the former Colonel of National Security Ministry Ilgar Aliyev committed suicide in Baku detention center No.1.<sup>19</sup>

37. There are few UN decisions against Azerbaijan on the individual cases related to the torture or ill-treatment. The case *Elif Pelit v. Azerbaijan* (CAT/C/38/D/281/2005, 1 May 2007) is related to the extradition to Turkey a person having refugee status in Germany. In *Khilal Avadanov v. Azerbaijan* (CCPR/C/96/D/1633/2007, 25 October 2010), the complaint related to the investigation of alleged tortures in police station in Azerbaijan. No single UN decision was executed.

38. The Code of Criminal Procedure does not provide an opportunity to quash a criminal case after the views adopted by the UN Treaty Bodies.

39. In sixteen judgments against Azerbaijan, the ECHR have found out violation of right not to be subjected torture and ill-treatment. At the moment, they are considered as fully executed and are under the supervision of CMCE.<sup>20</sup>

40. Some last relevant judgments passed in 2015-16: *Igbal Hasanov* (no. 46505/08, 15 January 2015), *Uzeyir Jafarov* (no. 54204/08, 29 January 2015), *Emin Huseynov* (no. 59135/09, 7 May 2015), *Hakimeldostu Mehdiyev* (no. 59075/09, 18 June 2015), *Hilal Mammadov* (no. 81553/12, 4 February 2016).

## Article 8

41. During the accession in the Council of Europe in January 201, Azerbaijan committed itself “to adopt, within two years of accession, a law on alternative service in compliance with European standards and, in the meantime, to pardon all conscientious objectors presently serving prison terms or serving in disciplinary battalions, allowing them instead to choose (when the law on alternative service has come into force) to perform non-armed military service or alternative civilian service”.<sup>21</sup>

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<sup>13</sup> The annual report of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan for 2010: <http://ombudsman.gov.az/view.php?lang=en&menu=73>

<sup>14</sup> See *Yunusova and Yunusov* (no. 59620/14, 2 June 2016, §§121-151).

<sup>15</sup> Working Group on Arbitrary Detention, cited above.

<sup>16</sup> Haqqin.az, 4 February 2015: <http://haqqin.az/news/38825>

<sup>17</sup> <http://www.contact.az/docs/2015/Social/082200127161en.htm>

<sup>18</sup> Minval.az, 28 September 2015: <http://minval.az/news/123496502>

<sup>19</sup> Turan News agency, 21 December 2016: <http://www.contact.az/docs/2015/Politics/122000140970en.htm>

<sup>20</sup> ECHR pending cases: current state of execution: [http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases\\_en.asp?CaseTitleOrNumber=&StateCode=AZE](http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=&StateCode=AZE)

<sup>21</sup> Opinion No. 222 (2000). Azerbaijan’s application for membership of the Council of Europe.

42. Despite the constitutional right to an alternative military service, it is reflected only in the Regulations “About order of passing an alternative service (labor duty) by the citizens of Republic of Azerbaijan” approved by the Presidential decree no.94 on 31 July 1992. However, the alternative service was not established, and decrees on the military draft do not mention the alternative service.

43. The male members of the congregation of Jehovah’s Witnesses are persecuted for the conscientious objection from a military service. For example, conscientious objector Fakhraddin Mirzayev, a Jehovah's Witness from Ganja rejected compulsory military service on grounds of religious conscience. He was sentenced on 25 September 2012 under Article 321.1 of the Criminal Code (“draft evasion”) to one-year sentence.<sup>22</sup> On March 12, 2013, Kamran Mirzayev, also Jehovah’s Witness, was convicted and sentenced to nine months’ imprisonment for his conscientious objection to military service. Later, a general amnesty brought his early release from prison.<sup>23</sup>

### Article 9

44. The law-enforcement agencies prefer to use the arrest as a measure of restraint in the cases where the possible punishment can exceed 2 years of imprisonment. There are numerous allegations that the police plant narcotics in politically sensitive criminal cases. Such practice secures a conviction even if a person is cleared of the main charge. Several of such persons were considered as the “prisoners of conscience” by the Amnesty International, e.g. bloggers Elvin Abdullayev, Abdul Abilov, Rashad Ramazanov; political activists Faraj Karimov, Murad Adilov, Qiyas Ibrahimov, Bayram Mammadov; relatives of political emigrants Rovshan Zahidov, Rufat Zahidov, Raji Imanov, Vakil Imanov.<sup>24</sup>

45. In May 2016, Azerbaijan was visited by the UN WGAD on invitation of the Government. While a final report would be published in 2017, the experts already published their preliminary findings.<sup>25</sup>

46. Well-known sample of use of drugs as pretext for arrest is the case of human rights activist and journalist Hilal Mammadov, which had been analyzed by the UN WGAD. On 2 April 2014, the WGAD adopted Opinions on his individual case, where confirmed that the detention of Hilal Mammadov is arbitrary. The Working Group was of the view that “the adequate remedy would be to immediately release Mr. Mammadov and accord him an enforceable right to compensation”.<sup>26</sup> Despite of this recommendation, Mammadov was released only on 17 March 2016, almost 2 years later.

47. The case of *Hilal Mammadov v. Azerbaijan* was also examined by the ECHR, which excluded from its consideration a complaint for violation of right to freedom due to the UN WGAD opinions.<sup>27</sup> It was first ever case when the opinion of UN special procedure did not support a complaint to the ECHR but partly competed with it. As result, Mammadov did not receive any compensation for violation of his right to freedom from the ECHR, while the WGAD Opinions on the matter were disregarded by the Government.

48. In general, the ECHR found out violation of right to freedom in 20 judgments, 15 of them in 2014-2016. No one judgment was duly executed: the monetary compensations were paid, while

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<sup>22</sup> [http://www.forum18.org/Archive.php?article\\_id=1755](http://www.forum18.org/Archive.php?article_id=1755)

<sup>23</sup> <https://www.jw.org/en/news/legal/by-region/azerbaijan/jehovahs-witnesses-in-prison/>

<sup>24</sup> <https://www.amnesty.org/en/countries/europe-and-central-asia/azerbaijan/report-azerbaijan/> ;  
<https://www.amnesty.org/en/latest/news/2016/06/azerbaijan-formula-1/>

<sup>25</sup> UN WGAD Statement: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20021>

<sup>26</sup> *Hilal Mammadov v. Republic of Azerbaijan*, Working Group on Arbitrary Detention, Opinion No. 59/2013, U.N. Doc. A/HRC/WGAD/2013/59 (2014)

<sup>27</sup> See the ECHR case *Hilal Mammadov v. Azerbaijan* (no. 81553.12, 4 February 2016)



the systemic problems were not fixed.

49. In this connection, there is necessary to mention a problem of “political prisoners”. The criteria of definition of this category of prisoners were adopted by the Parliamentary Assembly of Council of Europe (PACE) in October 2012.<sup>28</sup> The Assembly invited the competent authorities of all the member States of the Council of Europe “to reassess the cases of any alleged political prisoners by application of the above-mentioned criteria and to release or retry any such prisoners as appropriate.”

50. Despite the reassessment work never had been announced, the political prisoners’ issue is permanently discussed at the meetings of Joint Working Group on Human Rights created in 2005 and re-established in October 2014 on the initiative of the Secretary General of Council of Europe. The Group includes 10 activists of civil society as well as officials and members of Parliament. Since 2014, the Group initiated a release of 40 allegedly political prisoners from the different lists (including 32 prisoners from the list compiled by the HRCA).

51. At the moment, the various organizations are claiming that there is a rest of political prisoners in amount from 15 to 76. The list prepared by the HRCA includes 21 names. The bigger lists include the controversial groups of Islamists (see note on the Article 5).

52. The ECHR case-law against Azerbaijan includes 25 judgments adopted in 2006-2016 where the various aspects of the issue of alleged political prisoners were examined.<sup>29</sup> In some of them, the ECHR have found that the permitted restrictions to the rights and freedoms were applied “for purpose other than those for which they have been prescribed,” i.e. on political motivation.<sup>30</sup>

53. An insignificant number of persons freed due to lack of incriminating evidence (in 2010-2014, only 0,17-0,42% of defendants) indicates not the high competence on the part of law-enforcement agencies, but their presumption of guilt in dealing with the accused.

## Article 10

54. Since 2006, the prison conditions are regularly monitored by the Public Committee under the Minister of Justice, which includes up to 11 experts from civil society. However, it does not visit the prisons subordinated to other Ministries.

55. On 14 May 2013, the maximal term of administrative arrest increased from 15 days to 3 months, i.e. now it is equal to the minimal term of imprisonment in criminal order. It is implemented in the cell of district police departments which are not designed for such long sentences.

56. The post-trial prisons are close to their limits, some of them are overcrowded. For example, during last 4 years, the population of only prison for female convicts increased in twice. Even taking into account that every prisoner has own bed, the average living space in the old Soviet-style prisons is far from both European standard (6-7 sq.m) and national standard (4-5 sq.m). The typical is situation of Ali Insanov who is serving his sentence in Penal Facility no. 13 since 28 September 2007. His dormitory with common space 225 sq. m was designed to hold 128 inmates.<sup>31</sup> The ECHR found out that there has been a violation of right not be subjected to torture or to inhuman or degrading treatment or punishment.

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<sup>28</sup> PACE Resolution 1900 (2012). The definition of political prisoner.

<sup>29</sup> In the ECHR judgments of 2014-2016, a rights for freedom was violated in the cases of *Ganimat Zayidov* (no. 11948/08, 20 February 2014), *Ilgar Mammadov* (no. 15172/13, 22 May 2014), *Tofiq Yagublu* (no. 31709/13, 5 November 2015), *Hilal Mammadov* (no. 81553.12, 4 February 2016), *Rasul Jafarov* (no. 69981/14, 17 March 2016), *Leyla Yunusova and Arif Yunusov* (no. 59620/14, 2 June 2016).

<sup>30</sup> See e.g. ECHR case *Ilgar Mammadov v. Azerbaijan* (no. 15172/13, 22 May 2014); *Rasul Jafarov v. Azerbaijan* (no. 69981/14, 17 March 2016).

<sup>31</sup> Ali Insanov, cited above, §75

57. The measuring of dormitories by the HRCA activists gives the similar results in majority of penal institutions. The small barracks have 3-4,2 sq.m per inmate, while the big barracks - 1,6-2,5 sq.m. The penitentiaries for females and minors have about 2,5 sq.m. In Central prison hospital where minimal living space has to be 5 sq.m, it is in women's division 3,6 sq.m, in psychiatric division – 3,2-4,6 sq.m. In specialized penitentiary institution for tubercular patients no.3, the dormitories has a space 3,5 sq.m (only lifers have 7.5 sq.m). In the prison for cured tubercular patients no.17, the average space is 3.5 sq.m. In the dormitory for disabled inmates of penitentiary no.7, the living space is 2 sq.m. The quarantine blocks of penitentiary institutions have 3,2 -4,2 sq.m per inmate. The punishment cells of penitentiaries have 1,8-3,3 sq.m, and the norm (4 sq.m) is respected only in women's prison no.4 and in hospital.

58. In May 2016, the government announced of amnesty for 10,000 convicts, including 3,500 prisoners. However, the situation of overcrowding can be solved only by wide use of alternative punishments as well as construction of new prisons in provinces.

59. The situation of life prisoners raises some specific concern. It is crucial that the minimum period of sentence or the minimum period before any review should not be so long that the purpose of any conditional release could no more be achieved. (See notes on Article 6).

60. Life imprisonment without the fair and serious possibility of release does raise human rights concerns. Especially in combination with “maximum security” conditions, they could amount to inhuman or degrading treatment. Azerbaijan must strengthen efforts to improve the living conditions of lifers. The prisoners should be given possibilities to participate in purposeful activities and education. They should not be more isolated from the outside world than necessary.<sup>32</sup>

61. The HR Committee concluded in the case of lifer *Ali Quliyev v. Azerbaijan*<sup>33</sup> that the author's conditions of detention in the period from the entry into force of the Optional Protocol for the State party, until 24 June 2008 violated his right to be treated with humanity and with respect for the inherent dignity of the human person, and were therefore contrary to article 10, paragraph 1. However, even this single decision was not implemented. The applicant was not provided an effective and enforceable remedy, and the Committee's views were not translated into the official language, published and widely distributed.

## Article 12

62. In Spring 2014, dozens activists of civil society were prohibited from leaving Azerbaijan under the pretext that they are suspects or witnesses in the criminal case filed against about 20 domestic and foreign NGOs which have received a “suspicious” foreign funding.

63. Only 2 years later, in April 2016, Alimammad Nuriyev, the head of the Commission of law and monitoring of the Council of State Support to NGOs under the President of Azerbaijan, declared the removal of arrest from the bank accounts of many NGOs, and lifting of restrictions of movement.<sup>34</sup>

64. Some critics of the Government who emigrated to Europe to continue their journalist activities (Emin Milli, Gunel Movlud, Qanimat Zahid) were punished in 2015 by purposeful arrests of their relatives: Nazim Agabayov (already released), Rovshan Zahidov, Rufat Zahidov, Raji Imanov, Vakil Imanov.<sup>35</sup> In some cases, the relatives preferred to refuse from them to avoid the problems (23 relatives of E.Milli, mother of G.Movlud).

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<sup>32</sup> CommDH(2008)2. Report by the Commissioner for Human Rights, Mr Thomas Hammarberg on his visit to Azerbaijan 3-7 September 2007. [https://wcd.coe.int/ViewDoc.jsp?p=&id=1251577&direct=true#P241\\_47631](https://wcd.coe.int/ViewDoc.jsp?p=&id=1251577&direct=true#P241_47631)

<sup>33</sup> *Ali Quliyev v. Azerbaijan* (CCPR/C/112/D/1972/2010, 5 November 2014).

<sup>34</sup> <http://www.contact.az/docs/2016/Chetin%20sual/042000153565en.htm>

<sup>35</sup> Turan News Agency, 30 July 2015: <http://www.contact.az/docs/2015/Politics/073000124611en.htm>

65. In one case, a journalist and rights defender Emin Huseynov, who has refused from the citizenship of Azerbaijan and emigrated to Switzerland in June 2015, later appealed to the ECHR claiming that deprivation of citizenship was forcible.<sup>36</sup>

### Article 13

66. Two spouses, the Iranian nationals, actively involved in political activities related to the advocacy of minority rights of ethnic Azerbaijanis in Iran, and came in Azerbaijan in 2003 and 2006. They applied for the refugee status because of persecution by the Iranian security forces (Etelaat), and received it. One of spouses was imprisoned in Azerbaijan in 2009-2011 being convicted of drug-related crimes committed in Azerbaijan. After his liberation, the State Migration Service requested in November 2011 to revoke the applicants' refugee status and expel them from the country. The spouses applied to the ECHR. However, the Government expressed by way of unilateral declaration its acknowledgement of the fact of violation, and proposed a monetary compensation.<sup>37</sup>

### Article 14

67. Violation of a right to fair trial is one of most often allegations in the human rights practice in Azerbaijan. It was found out in half (55 of 117) judgments of the ECHR. In all these cases, the pecuniary compensation was paid, but the unfair judges were not punished, at least just for these violations.

68. While the state must provide every indigent client with a lawyer free of charge, it gives such lawyers a rather symbolic pay, which makes them unmotivated and eager to accept bribes from an interested party. Many of the accused prefer not to have a lawyer at all, rather than lawyer provided by the state. In some cases, the Government force the suspects to use the free lawyer under the pretext of lack of time, despite the person would like to hire a lawyer on his own choice. The case-law of ECHR gives many samples of such practice.<sup>38</sup>

69. The HRCA shares the opinion passed after the WGAD interviews with detainees in Azerbaijan in May 2016. In particular, the UN WGAD "observed that: 1) many persons arrested and detained had never had the chance to see a lawyer; 2) the vast majority of them were provided with a State lawyer selected without their involvement; 3) most of the detainees were not afforded the opportunity to meet with their lawyer in private at any stage of the process and/or only met with their lawyers during interrogations and court hearing even when accused of the most serious offences. Such a practice undoubtedly bypasses critical steps of the criminal process. A high number of testimonies collected during the mission point out that the only advice given to detainees by State lawyers was to cooperate with investigators and to confess the offence they had been incriminated for. Some detainees interviewed were not even aware of their possibility to be legally assisted during judicial proceedings or of their right to appeal a court decision".<sup>39</sup>

70. In July 2015, the Nizami district court of Baku city disbarred the lawyer Khalid Bagirov for his emotional speech at the hearing on the politically motivated case. That affected at the defence of several other clients of him considered as "prisoners of conscience" by the Amnesty

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<sup>36</sup> Turan News Agency 14 January 2016: <http://www.contact.az/docs/2016/Want%20to%20Say/011400143454en.htm>

<sup>37</sup> M.J. and S.M. v. Azerbaijan (no. 814/13, 8 April 2014)

<sup>38</sup> See e.g. ECHR cases *Ibrahimov and Others v. Azerbaijan* (nos. 69234/11, 69252/11 and 69335/11, 11 February 2016); *Hajibeyli and Others v. Azerbaijan* (nos. 5231/13, 8193/13, 8204/13, 8468/13, 14226/13, 14249/13, 17447/13, 17569/13, 17575/13, 17626/13, 31201/13, 45211/13 and 51930/13, 30 June 2016).

<sup>39</sup> Working Group on Arbitrary Detention, cited above.

International. Simultaneously, the Presidium of the Bar Association decided to exclude the lawyer Alaif Hasanov. The reason for the exclusion was the judgment on defamation case initiated against him by the cellmate of his client Leyla Yunus after his interview in media about the conflict between two inmates.<sup>40</sup>

71. In relation to the independence of the legal profession, the WGAD was “concerned by the information received regarding certain disciplinary measures and in particular the suspension and subsequent disbarment by the judiciary of two lawyers involved in cases of political activists. The Working Group has not received any information which could objectively justify those disciplinary sanctions and is convinced that such decisions negatively affect the independence of the lawyers”.<sup>41</sup>

72. The unique situation was created by the arrest of human rights defender Intiqam Aliyev on 8 August 2014. He had represented before the ECHR the interests of at least 29 applicants, therefore his arrest and consequent seizure of the confidential files raised a question about a hindrance by the State in the present cases with the effective exercise of the applicants’ right of application to the ECHR.<sup>42</sup>

73. Other lawyer and human rights defender Asabali Mustafayev, who currently represents before the ECHR the applicants in 71 cases and won 22 cases only in 2016, since 2014 is under the criminal investigation on alleged tax evasion.<sup>43</sup>

#### **Article 17**

74. In October 2015, the Minister of National Security was dismissed and charged, 20 MNS officers were arrested. Later, the Prosecutor’s Office stated that they are guilty of wiretapping of at least 65 businessmen.<sup>44</sup> It is a sample of intervention of responsibly state officials into the privacy of citizens.

75. In the past, an intimate life at least 4 journalists was videotaped and demonstrated by TV and in social networks. Most illustrative is a sample of journalist Khadija Ismayilova, who had been taped in bedroom in 2011. The guilty persons never were found and punished, and the victim, who later was arrested herself, lodged several complaints to the ECHR.<sup>45</sup>

#### **Article 18**

76. Since the “Arabic Spring” (late 2010), the Government is strengthening a state control over the religious extremists, including their arrests. According to the HRCOA accounts, at least 421 religious extremists (58% of them Sunni, 42% Shi’a Moslem) are in detention at 1 July 2016. Sufficient group (72 people) were arrested after the cross-fire of members of clandestine organization “Muslim Unity Movement” with police in Nardaran village near Baku.

77. Many mosques avoids from the official registration because that demands to subordinate to the Caucasian Muslim Board (CMB) as a precondition. In several occasions, a state closed such mosques.

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<sup>40</sup> Turan News Agency, 04 July 2015: <http://www.contact.az/docs/2015/Social/070400122135en.htm>. Also, see the ECHR case *Yunusova and Yunusov v. Azerbaijan* (no. 59620/14, 2 June 2016)

<sup>41</sup> Working Group on Arbitrary Detention cited above.

<sup>42</sup> See ECHR cases *Annagi Hajibeyli v. Azerbaijan* (no. 2204/11, 22 October 2015), *Gaya Aliyev and Others v. Azerbaijan* (nos. 29781/11, 29808/11, 30372/11, 30473/11, 30478/11 and 30487/11, 16 June 2016), *Soltanov Sakhavat and Others v. Azerbaijan* (nos. 30362/11, 30581/11, 30728/11, 30799/11 and 66684/12, 16 June 2016).

<sup>43</sup> Turan News Agency, 1 July 2016. <http://www.contact.az/docs/2016/Social/070100160843en.htm>

<sup>44</sup> APA News Agency, 7 February 2016: <http://ru.apa.az/news/309633>

<sup>45</sup> The ECHR cases *Khadija Ismayilova* (no. 30778/15) communicated on 26 August 2015; *Khadija Ismayilova* (no. 35283/14) communicated on 7 January 2016

78. One of latest cases is closure of 4 of 5 mosques in Nardaran village near Baku in November-December 2015, after a police operation against the Islamist underground there. There was announced that “Rahima Khanim”, “Qulam Ali”, “Kichik” and “Aga” mosques in Nardaran were closed as non-registered by the CMB. Later, in January 2016, the State Committee on Work with Religious Entities informed on intention to register a parish of “Rahima Khanim” Mosque.<sup>46</sup> There were arrested Nuhbala Rahimov and Atamali Nur, the akhunds (priests) of “Huseyniyye” (non-registered) and “Juma” (only registered) Mosques of Nardaran respectively.

79. There are allegations that the Sunni mosques are especially targeted. For example, majority of Sunni mosques in Baku (“Abu Bekr”, “Shahidlar”, etc.) were closed since 2008 on various pretexts. In Ganja city, the only Sunni Muslim mosque was forcibly closed in 2009. In May 2014, the Sunni mosque in Mushfiqabad near Baku, and in February 2015, other Sunni Mosque in Qobustan village near Baku were forcibly transferred to new, Shi’a leadership. The mosques are no longer specifically Sunni.<sup>47</sup> Most of the 50 Nakhichevan mosques forcibly closed in November 2014 have reopened, but under new leadership allegedly “closer to the authorities”.<sup>48</sup>

80. In violation of principle of separation of state and religion, the Government decided in June 2015 that 2 mosques, “Shahidlar” (closed Sunni one) and “Heydar” would be used for “the protocol events” and administered by the secular Executive Power of Baku city. The Government decided not to re-establish the parish of the “Shahidlar” Mosque.<sup>49</sup>

81. After the change of legislation, all religious literature have to be censored by state and distributed only through the places which have a special permission. The violation of the law is punished. Despite an absence of some list of prohibited books, come of them are banned under unformal censorship regime.<sup>50</sup> For example, on February 18, 2015, two female Jehovah's Witnesses, Irina Zakharchenko and Valida Jabrayilova, were arrested for distribution of the congregation publications in Pirallahi<sup>51</sup> and released one year later after the court changed imprisonment to a fine. On 26 February 2015, five Sunni Muslims, including Mubariz Qarayev, imam of the “Lezgin Mosque” in Baku's Old City were arrested. Later, they were sentenced for imprisonment for selling non-censored religious literature.<sup>52</sup>

82. In the case of “Islam-Ittihad”, the members of this NGO, who had been the parishioners of one mosque, were accused of being engaged in “religious activities”. For example, they discussed the organization of pilgrimages to holy shrines and the Caucasus Muslim Board’s “monopoly” in this field. Consequently, the NGO was closed. However, neither the Law on Non-Governmental Organizations, nor the Law on Freedom of Religion, provided any kind of definition of what constituted “religious activity”. Accordingly, the ECHR considered that “the lack of any definition of the term “religious activity” made it impossible for the applicants to foresee what constituted “religious activity” in order to carry out their activities in line with domestic law. The domestic authorities were thus given an unlimited discretionary power in that sphere”.<sup>53</sup>

## Article 19

83. In contrary to the repeated recommendations of domestic and international human rights NGOs to decriminalize defamation in Azerbaijan, the Parliament spread the relevant criminal

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<sup>46</sup> APA, 21 January 2016. <http://ru.apa.az/news/308515>

<sup>47</sup> Forum 18, 24 February 2015. [http://www.forum18.org/archive.php?article\\_id=2042](http://www.forum18.org/archive.php?article_id=2042)

<sup>48</sup> Forum 18, 16 . [http://www.forum18.org/archive.php?article\\_id=2038](http://www.forum18.org/archive.php?article_id=2038)

<sup>49</sup> *Echo* newspaper, 17 June 2016 : <http://echo.az/article.php?aid=102117>

<sup>50</sup> Azerbaijan: religious freedom survey, 16 July 2015. [http://www.forum18.org/archive.php?article\\_id=2081](http://www.forum18.org/archive.php?article_id=2081)

<sup>51</sup> Forum 18, 23 February 2015. [http://www.forum18.org/archive.php?article\\_id=2041](http://www.forum18.org/archive.php?article_id=2041)

<sup>52</sup> Turan News Agency, 17 March 2015. <http://www.contact.az/docs/2015/Social/031700110053en.htm>

<sup>53</sup> *Islam-Ittihad Association and Others v. Azerbaijan* (no. 5548/05, 13 November 2014)

legislation (Articles 147 – slander and Article 148 – insult) to the publications in the internet by law of 14 May 2013.

84. As result, several civil society activists were punished for their publications in the social networks. For example, a journalist Khadija Ismayilova was fined for slander for publication at her web-page some scanned document provided by the Azerbaijani political emigrant.<sup>54</sup>

85. Several opposition bloggers (Elvin Abdullayev, Abdul Abilov, Rashad Ramazanov) were punished for their critical publications in social networks under the drugs-related charges. Consequently, the Amnesty International (AI) considered them as “prisoners of conscience.”<sup>55</sup>

86. The arrests for journalism remain to be one of painful problems in Azerbaijan. For example, the journalists Hilal Mammadov and Khadija Ismayilova who had been arrested in 2012 and 2014 and considered as “prisoners of conscience” by the AI, were released only in 2016 (see notes to the Articles 9, 17, 27).

87. On 29 August 2014, a journalist Seymur Hazi who is one of the leading analysts of the opposition newspaper “Azadliq” and reporter of online TV “Azerbaijan Saati,” was approached by some man who insulted him and began to beat. When the journalist responded, immediately appeared the police and detained Hazi. On 30 January 2015, he was sentenced for 5-years imprisonment.<sup>56</sup>

88. The relatives of the journalists working for the online TV in Azeri language (Meydan TV, Azerbaijan Saati) also are under the pressure. Four of them were arrested and considered as the “prisoners of conscience” in 2015 (Rovshan Zahidov, Rufat Zahidov, Raji Imanov, Vakil Imanov.) (See notes to the Articles 9 and 12).

89. The daily “Zerkalo – Ayna” was deprived a state funding and forced to stop its edition after the arrest of its correspondent in Turkey Rauf Mirqadirov who was considered as a “prisoner of conscience” by the AI. On 28 December 2015, he was found guilty of high treason and spying and sentenced for 6-years imprisonment. However, on 17 March 2016 his sentence was changed to a suspended one, and he was released.

90. After the arrest of leading employee of the Baku office of “Azadliq Radiosu” (RFE/RL) Khadija Ismayil on 5 December 2014, the office was raided, sealed and shut down on December 26. All employees were interrogated, the travel ban was established for the former Baku bureau chief Babek Bakirov.<sup>57</sup>

91. In 2010-2016, the ECHR has adopted 13 judgments related the various aspects of journalist activities: arrests for defamation or under the false accusations to punish for journalism, violent attack for publication, refusal of registration of journalist NGO, access to elections, beating during opposition rallies. No one of these judgments is considered by the Council of Europe as fully executed.

## Article 20

92. During the recent examination of the seventh to ninth periodic reports of Azerbaijan under the CERD, Committee on the Elimination of Racial Discrimination expressed its concern, that the State party has not taken measures to examine why there have been very few complaints of racial discrimination. It expressed again its concern at the near absence of court cases and

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<sup>54</sup> Turan News Agency, 23 February 2015. <http://www.contact.az/docs/2015/Social/022300107578en.htm>

<sup>55</sup> <https://www.amnesty.org/en/countries/europe-and-central-asia/azerbaijan/report-azerbaijan/> ;  
<https://www.amnesty.org/en/latest/news/2016/06/azerbaijan-formula-1/>

<sup>56</sup> Turan News Agency, 30 January 2015. <http://www.contact.az/docs/2015/Politics/013000104781en.htm>

<sup>57</sup> Azadliq Radiosu, 24 February 2015. <http://www.azadliq.org/a/26763625.html>

complaints lodged to the Ombudsperson relating to racial discrimination during the reporting period.<sup>58</sup>

93. The main problem in this area is a lack of clear legal definition of racial and national (ethnic) hostility, humiliation and national advantage. The relevant Article 283 of Criminal Code may be misinterpreted and misused to arrest individuals that have expressed dissent opinions. Two such individuals, the journalists Eynulla Fatullayev and Hilal Mammadov have been imprisoned and pardoned after spending in prison 4 years of their sentences.<sup>59</sup>

94. The CERD also regretted that no representative of over officially registered 40 NGOs related to ethnic minorities took part in the dialogue with the Committee. It is obviously related to the financial difficulties of NGOs after the change of relevant legislation since 2013. (See the notes on the Articles 22).

95. As for religious hatred, since the “Arabic Spring”, Azerbaijan faced many occasions, when it was expressed in the eve of international events like Eurovision in 2012, European Games in 2014, Formula-1 contest. In this context, there can be noted also a participation of Azerbaijani citizens in the guerilla in Afghanistan and Islamic State operations in Iraq and Syria. At the moment, at least 421 persons are imprisoned under related accusations. (See the notes on the Articles 5 and 18).

## Article 21

96. The Government allows opposition rallies in principle but still restricts them in fairly central and easily accessible parts of the capital or of large agglomerations. In the same time, the authorities enable there the pro-governmental rallies with no restrictions.

97. The ECHR has examined several applications related to the Government’s reaction for the suppression of non-allowed rallies in Baku city in 2011-2013. In all these cases, the violation of right to freedom of peaceful assembly was found, but the judgments were not duly executed.<sup>60</sup>

98. The ECHR found that the applicants were victims to arbitrary measures (arrest and custody), which had pursued aims unrelated to the formal grounds relied on to justify the deprivation of their liberty, and involved an element of bad faith on the part of the police officers. They were in fact detained in order to prevent their participation in the demonstration and to punish them for having participated in opposition protests. The dispersal of the demonstration and the arrests could not but have the effect of discouraging them from participating in political rallies. Those measures had a serious potential also to deter other opposition supporters and the public at large from attending demonstrations and, more generally, from participating in open political debate.

99. The Human Rights Commissioner of Council of Europe stresses that “the NGO community complained about the difficulty for the LGBT community to have places for meeting. They described meeting places known of the police, where law enforcement agents had come and randomly arrested and beat up people... Such practices are clearly unacceptable”.<sup>61</sup>

100. In 2012, in the eve of the Eurovision song contest, the European LGBT allegedly planned to hold a traditional gay-pride. These rumors provoked the aggressive reaction of Iran. The

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<sup>58</sup> Committee on the Elimination of Racial Discrimination. CERD/C/AZE/CO/7-9, 13 May 2016

<sup>59</sup> See the ECHR judgments on the cases *Eynulla Fatullayev* (no. 40984/07, 22 April 2010) and *Hilal Mammadov* (no. 81553.12, 4 February 2016)

<sup>60</sup> See e.g. ECHR cases *Gafgaz Mammadov v. Azerbaijan* (no. 60259/11, 15 October 2015); *Ilham Huseynli and others v. Azerbaijan* (nos. 67360/11, 67964/11, 69379/11, 11 February 2016); *Ibrahimov and others v. Azerbaijan* (nos. 69234/11, 69252/11, 69335/11, 11 February 2016)

<sup>61</sup> CommDH(2008)2. Report by the Commissioner for Human Rights, cited above.

prominent Shiite clergyman Ayatollah Mohsen Mojtaba Shabestari declared that “the dance party [Eurovision] and the [gay] pride will attract all sorts of anti-Islamic groups and perverts.” He demanded that the Azerbaijani authorities cancel the “Zionist” and “gay” festival or face the full wrath of the people and God. A senior Iranian lawmaker, Mohammad Esmayeel Kossari, also warned that Azerbaijan will “regret” hosting such events.<sup>62</sup> Just ahead of the festivities, Iran summoned the envoy of host country Azerbaijan and announced it had withdrawn its ambassador from Baku to protest “insults to the sanctities” of Islam and the alleged planning of a “gay parade” to accompany the event.<sup>63</sup>

101. As result, the Iran-oriented Islamist group led by the journalist Nijat Aliyev campaigned against the LGBT, disseminating these materials and CDs containing the speeches of arrested theologians. They were arrested in May 2012. (See notes on Article 5)

## Article 22

102. The National Program for Action to Raise Effectiveness of the Protection of Human Rights and Freedoms in the Republic of Azerbaijan, adopted on 27 December 2011, provides that state institutions have to cooperate with local NGOs in implementation of the document (Actions 1.2, 2.12, 2.18, 3.2, 4.1, 5.2, 6.3).

103. However, the formal recognition of role of NGOs was accompanied by the policy directed to strengthen control over domestic NGOs and representations of foreign NGOs by the state as well as *de facto* to outlaw the non-registered NGOs. The attention to the issue is well-illustrated by the fact that in 2010-2014, the Parliament and President adopted the changes in the legislation on NGO, grants and taxation on 12 February 2010, 13 April 2010, 07 March 2012, 15 February 2013, 17 December 2013, 17 March 2014, 17 October 2014, 28 October 2014, i.e. every several months, and sometimes twice per month.

104. In this activity, the Parliament of Azerbaijan avoided from cooperation with the European Commission for Democracy through Law (Venice Commission). On 29 September 2014, the Commission started a preparation of opinion on the amendments to the Law of the Republic of Azerbaijan on Non-Governmental Organizations (Public Associations and Funds). According to its practice, the Commission’s experts had to visit Azerbaijan in order to hold meetings with the representatives of the relevant authorities and civil society organizations. However, despite initial confirmation of the proposed dates for the visit, no information about the program of the visit and no invitations have been received and the visit had to be cancelled. After the letter dated 15 October 2014 to the authorities, asked their support and assistance for the organization of this visit, the new amendments were enacted by Parliament on 17 and 28 October 2014 and signed by the President while the Opinion was under preparation.

105. On 15 December 2014, the Venice Commission prepared its opinion no.787/2014 on the basis of available information.<sup>64</sup> It concluded “that the recent amendments to the Law on NGOs and to several other legal acts (Law on Registration, Law on Grants, Code of Administrative Offences) have not addressed many of the recommendations contained in the 2011 Opinion of the Venice Commission. The procedure of registration of NGOs has not been simplified in any substantive way, branches and representations of foreign NGOs are still object of specific, and problematic, regulation, and NGOs can still be dissolved for misgivings which are not serious enough to justify the imposition of the most severe sanction... Branches and representations of foreign NGOs have been put into a yet more disadvantaged position with respect to other NGOs:

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<sup>62</sup> Eurasianet, 21 May 2012. <http://www.eurasianet.org/node/65433>

<sup>63</sup> Spiegel Online, 23 May 2012. <http://www.spiegel.de/international/europe/tehran-protests-eurovision-gay-parade-in-baku-a-834709.html>

<sup>64</sup> Cdl-Ad(2014)043. Opinion 787/2014. European Commission for Democracy through Law (Venice Commission) 15 December 2014. [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)043-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)043-e)



additional reporting obligations, special penalties, limited validity of the agreements signed with the state and the excessive discretion of the state authorities to intervene in the matters of their internal life (obligatory content of their internal documents etc.). Moreover, new obligations are imposed on NGOs with respect to the receipt of grants and donations and to reporting to the state authorities. Again, some of these obligations seem to be intrusive enough to constitute a prima facie violation of the right to freedom of association... Globally, the cumulative effect of those stringent requirements, in addition to the wide discretion given to the executive authorities regarding the registration, operation and funding of NGOs, is likely to have a chilling effect on the civil society, especially on those associations that are devoted to key issues such as human rights, democracy and the rule of law. Like the Council of Europe Commissioner on Human Rights has, the Venice Commission finds that the amendments, in an overall assessment, “further restrict the operations of NGOs in Azerbaijan”.

106. As result of changed legislation, about 20 NGOs were prosecuted, and several civil society activists were arrested for alleged financial offences. Some activists escaped from Azerbaijan, one was deprived his citizenship before his emigration. Absence of the state bodies’ approval of already agreed grant contracts de facto froze the activities of well-known NGOs.

107. The cases of three human rights defenders (Rasul Jafarov, Leyla Yunusova and Arif Yunusov) who had been arrested in 2014, were examined by the ECHR.<sup>65</sup> Several more were communicated.<sup>66</sup>

108. It is necessary to note that in 2007-2014, the ECHR adopted 6 judgments on the refusal of registration of NGOs. The CMCE still does not consider the judgments as executed.

### Article 23

109. In 2015, Azerbaijan introduced a pre-marital medical examination. During 9 months, the blood of 107,500 persons were examined. There were discovered 6,222 carriers of thalassemia, 71 AIDS patients, 328 people suffering by syphilis.<sup>67</sup>

110. The premature marriages still are the problem. If in 1990, there were 155 mothers in age of 15-17 years, then in 2014, there were registered 3,296 such cases.<sup>68</sup> Taking into account that the sexual intercourses with persons under 16 are liable (Article 152 of Criminal Code), the low number of registered sexual criminals (32) raises the human rights concerns.<sup>69</sup>

111. The women rights defenders reported about the massive spreading of illegal marriages, usually without registration or concluded by the mosques. However, the head of State Committee on the problems of family, women and children reported in December 2015, that during 2 years, 11 regional branches of the Committee revealed only 20 early marriages and prevented 17 of them.<sup>70</sup>

### Article 24

112. On 30 May 2014, the law “On citizenship” has been changed. One of changes was related to the citizenship of children. Previously, the birth at the territory of Azerbaijan was a ground for acquisition of the citizenship of the Azerbaijan Republic. Now, a child born in the territory of the Azerbaijan, if both parents are foreigners or one parent of whom is a foreigner and the other one

<sup>65</sup> ECHR cases *Rasul Jafarov v. Azerbaijan* (no. 69981/14, 17 March 2016); *Leyla Yunusova and Arif Yunusov v. Azerbaijan* (no. 59620/14, 2 June 2016)

<sup>66</sup> ECHR cases *Intigam Aliyev* (nos. 68762/14 and 71200/14), *Leyla Yunusova and Arif Yunusov* (no. 68817/14)

<sup>67</sup> APA News Agency, 04 March 2016. <http://ru.apa.az/news/311592>

<sup>68</sup> State Statistical Committee, [http://www.stat.gov.az/source/demography/az/003\\_4.xls](http://www.stat.gov.az/source/demography/az/003_4.xls)

<sup>69</sup> State Statistical Committee, [http://www.stat.gov.az/source/crimes/az/003\\_1.xls](http://www.stat.gov.az/source/crimes/az/003_1.xls)

<sup>70</sup> Minval.az, 16 December 2015. <http://minval.az/news/123523599>

is a stateless person, shall not be a citizen of the Republic of Azerbaijan.

113. As previously, a child whose parent is a citizen of Azerbaijan; a child born in the territory of the Republic of Azerbaijan, both parents of whom are stateless persons; a child, who lives on the territory of Azerbaijan and both parents of whom are unknown, shall be a citizen of Azerbaijan Republic.

## Article 25

114. During the Parliamentary elections of 1 November 2015, the OSCE PA and OSCE/ODIHR, which traditionally had monitored the general elections, refused to monitor these elections after the OSCE office in Baku had been closed in June 2015.<sup>71</sup> The European Parliament also refused to deploy own observation mission because of bad human rights records.

115. However, more than 30 international missions presented, including the delegations of PACE, CIS and OIC. In particular, the mission of PACE comprised 28 members.<sup>72</sup> The PACE Mission concluded that the elections were held in accordance with the Election Code of Azerbaijan, which provides a legal framework for the democratic conduct of elections. “It is the consensus of this Mission that election day was calm and peaceful across the country. The voting process was observed to be adequate and generally in line with international standards. Voters had full and unimpeded access to polling stations and there were no incidents reported by the observers. The observation mission therefore congratulates the Azerbaijani people for their peaceful and orderly conduct during this electoral process. The Central Election Commission contributed to the transparency of the process by releasing updates from the opening of the polls until the end of the counting and tabulation of the results... It can be stated that the preparation for the elections and the voting processes were professionally and technically well organized. Observers noted improvements in the access of voters to information, the inclusiveness of voter registration and the quality of electoral materials.

116. The Mission did not report any major or systemic violations of the Election Code. No acts of pressure on voters or any other incidents in or near the polling stations were observed. There was no police presence around the polling stations or any campaign and electoral materials nearby. A welcome development was the introduction of web cameras in 20 per cent of polling stations, as specifically requested by the Venice Commission.”<sup>73</sup>

117. However, PACE EOM observed minor ballot stuffing in a few polling stations. Some shortcomings mainly related to gaps in the expertise of electoral staff were observed, not however influencing the final result. Three members of Mission later spread their concurring opinion calling the elections “not free, undemocratic and unfair.” They stressed that in the context of violations of freedom of speech, assembly and expression it is impossible to speak about fair elections.<sup>74</sup>

118. In result of elections, 71 of 125 seats won the members of ruling Party of New Azerbaijan. The Parliament has a biggest number of female MPs during entire independence period (21 or 16,8%).

119. On 18 June 2016, there were conducted by-elections in the 90th Agdash constituency. There were 7 candidates, including 5 non-partisans. Some 500 domestic and international observers monitored the elections. After the candidate of YAP won, the competitors accused one other of violations. The results are to be approved by the Constitutional Court.

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<sup>71</sup> Turan News Agency, 5 June 2015. <http://www.contact.az/docs/2015/Politics/060500118371en.htm>

<sup>72</sup> Turan News Agency, 3 November 2015. <http://www.contact.az/docs/2015/Politics/110300135188en.htm>

<sup>73</sup> <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5856&lang=2&cat=31>

<sup>74</sup> Turan News Agency, 4 November 2015. <http://www.contact.az/docs/2015/Politics/110300135273en.htm>

## Article 27

120. During its accession in the Council of Europe in January 2001, Azerbaijan took the obligations: to sign and ratify, within one year of its accession, the European Charter for Regional or Minority Languages; to adopt, within three years of its accession, a law on minorities which completes the provisions on non-discrimination contained in the constitution and the penal code and replaces the presidential decree on national minorities; to adopt, within two years of accession, a law on alternative service in compliance with European standards and, in the meantime, to pardon all conscientious objectors presently serving prison terms or serving in disciplinary battalions, allowing them instead to choose (when the law on alternative service has come into force) to perform non-armed military service or alternative civilian service.<sup>75</sup> At the moment, no one of these obligations was implemented.

121. The scientist and minority rights defender, editor-in-chief of newspaper “Tolyshi Sedo” (only newspaper in Talysh language<sup>76</sup> in Azerbaijan) Novruzali Mammadov was arrested by agents of the Ministry of National Security on 2 February 2007. Consequently, he was accused of espionage for Iran at the basis of testimonies given by the worker of newspaper, former employee of MNS and sentenced for 10-years imprisonment. Being ill, he requested in-patient medical assistance, was refused and won a suit against the prison administration. The court decision became final on 16 April 2009, but was ignored. He was placed in the medical department of the penitentiary establishment only in 3 months and died on 17 August 2009. The consequent litigation against the prison personnel guilty of non-execution of court decision on hospitalization on N.Mammadov did not give a result. At the moment, the case is pending before the ECHR.<sup>77</sup>

122. Five years later, in June 2012, the same former MNS employee gave incriminatory testimonies against Hilal Mammadov, who became an editor-in-chief of “Tolyshi Sedo”. He was accused of espionage and illegal drugs’ possession and sentenced for 5-years imprisonment, while the MNS informer was pardoned and released from detention. The UNWGD examined this case and found his arrest arbitrary.<sup>78</sup> Later, the ECHR found out that he was tortured during the arrest.<sup>79</sup> While H.Mammadov was pardoned and released, no perpetrator was brought to justice.

123. The religious minorities experience some problems. For example, the male members of the congregation of Jehovah’s Witnesses being conscientious objectors have no opportunity to serve at the alternative service. (See also notes to Article 8).

124. On 21 June 2015, the parishioners of Georgian Orthodox Church of St.George in Qah region of Azerbaijan were deprived their priest, Archimandrite Demetre (Tetruashvili), who was not permitted to enter Azerbaijan.<sup>80</sup> After this date, he visited the churches in Azerbaijan only two times. According to the requirements of law “About freedom of religion,” the foreigners cannot deal with religious ministry in Azerbaijan. Therefore, the Georgian Catholicos Ilia II appealed to the President of Azerbaijan with request on Azerbaijani citizenship for Fr. Petre Khumarashvili.<sup>81</sup>

## B. Recommendations

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<sup>75</sup> Opinion No. 222 (2000). Azerbaijan’s application for membership of the Council of Europe

<sup>76</sup> Persian-language minority divided between Azerbaijan and Iran

<sup>77</sup> ECHR case *Novruzali Mammadov and others v. Azerbaijan* (no. 35432/07), communicated on 27 August 2014

<sup>78</sup> A/HRC/WGAD/2013/59 (2014). *Hilal Mammadov v. Republic of Azerbaijan*, Working Group on Arbitrary Detention, Opinion No. 59/2013, 2 April 2014.

<sup>79</sup> ECHR case *Hilal Mammadov v. Azerbaijan* (no. 81553.12, 4 February 2016).

<sup>80</sup> Haqqin.az, 27 June 2015. <http://haqqin.az/news/47882>

<sup>81</sup> Forum 18, 26 January 2016. <http://www.pravoslavie.ru/90071.html>

**Art.2**

- To ensure an execution of the UN Treaty Bodies' and Special Procedures' opinions/views on the individual complaints against Republic of Azerbaijan;

**Art.2,7,10**

- To implement the already adopted opinions/views on the individual complaints against Republic of Azerbaijan;
- To investigate properly all allegations on torture and, if they would be confirmed, to bring the perpetrator(s) to justice;

**Art.3**

- To promote more balanced representation of women in the public administration system, especially at the top-level positions;

**Art.6**

- To adopt the flexible "tariff" term for review of life sentences related to the age of convicts;

**Art.7**

- To improve the procedure of medical examinations of suspects including a liability for falsification of records;

**Art.8,27**

- To adopt a law on alternative service as obliged under the Opinion 222 (2000);

**Art.9**

- To use more widely the measures of restraint without incarceration;

**Art.10**

- To use more widely the alternative punishments and early release of prisoners, including lifers;
- To build the new prisons in provinces basing at modern standards;

**Art.14**

- To improve a quality of free legal aid by more generous payment for their service;

**Art.18**

- To compile a list of prohibited (extremist) religious literature;
- To provide the clear definition of "religious activity";

**Art.19**

- To decriminalize defamation in Azerbaijan;

**Art.20**

- To provide the clear definition of "racial and national (ethnic) hostility, humiliation and national advantage";

**Art.21**

- To improve the national legislation on freedom of assemblies taking into account the findings of the regional bodies;

**Art.22**

- To improve the national legislation on freedom of associations taking into account the

findings and recommendations of the regional bodies;

**Art.23**

- To oppose effectively to the premature marriages and the sexual intercourses with persons under 16;

**Art.27**

- To implement the obligation adopted during the Azerbaijan's accession in the Council of Europe, in particular: to sign and ratify the European Charter for Regional or Minority Languages, and to adopt a domestic law on minorities.