

«The functioning of democratic institutions in Azerbaijan»

Azerbaijan: call for stronger parliamentary control over the executive, plus an independent judiciary

<http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6766&lang=2&cat=3>

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Monitoring

While welcoming the ongoing dialogue with the Azerbaijani authorities in the framework of the PACE's monitoring procedure, the Monitoring Committee has expressed a number of concerns regarding, in particular, checks and balances, the functioning of the judiciary and freedom of expression and association.

In particular, the committee regrets the fact that the recent constitutional changes could make the executive less accountable to parliament and that judicial independence vis-à-vis the executive remains inadequate. At the same time, the parliamentarians welcomed the President of the Republic's Executive Order on improvement of operation of the prison system and humanisation of criminal policies, and called on the authorities to quickly implement it.

Adopting a draft resolution based on a report by Stefan Schennach (Austria, SOC) and Cezar Florin Preda (Romania, EPP/CD), the committee expressed concern about reports linking the Azerbaijani government to a large-scale money laundering scheme occurring in the years 2012 to 2014, used inter alia to influence the work of members of the Parliamentary Assembly of the Council of Europe as regards the human rights situation in Azerbaijan. It urged the Azerbaijani authorities to start an independent and impartial inquiry into these allegations without delay and cooperate fully with competent international authorities and bodies on this issue.

The committee is also worried by the reported prosecution and ongoing detention of NGO leaders, human rights defenders, political activists, journalists, bloggers and lawyers, while welcoming the release in 2016 and 2017 of some so-called "political prisoners"/"prisoners of conscience". It called on the authorities to release those prisoners whose detention gives rise to justified doubts. It is also concerned about allegations of a restrictive climate for the activities of the extra-parliamentary opposition and limitations imposed on freedom of assembly.

The committee therefore calls on the Azerbaijani authorities to promptly ensure full implementation of the decisions of the European Court of Human Rights; strengthen parliamentary control over the executive; pursue the reforms of the judiciary and the prosecution service so as to ensure full independence of the judiciary from the executive; enable journalists to work freely without any pressure being exerted on them; and create an environment conducive to the activities of NGOs, including those expressing critical opinions.

The functioning of democratic institutions in Azerbaijan

<http://website-pace.net/documents/19887/3258251/20170907-AzerbaijanInstitutions-EN.pdf/1e6f0d15-1836-428b-a0c9-7f41ac8ece87>

Report¹

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Co-rapporteurs: Mr Stefan Schennach, Austria, SOC, and Mr Cezar Florin Preda, Romania, EPP/CD

A. Draft resolution²

1. The Assembly welcomes the readiness expressed by the authorities to engage in reform processes in the field of human rights and the rule of law and the ongoing dialogue with the authorities in the framework of the Assembly's monitoring procedure. However the Assembly insists that this should lead to concrete results. The Assembly stands ready to provide support for the reform processes and their implementation in compliance with European standards.

2. The Assembly reiterates that respect for the principle of the separation of powers is essential and emphasises the need to develop the oversight function of the parliament over the executive in Azerbaijan. The Assembly shares the view of the Venice Commission that recent constitutional changes could make the executive less accountable to parliament.

3. The Assembly considers that the justice system in Azerbaijan must be really independent, impartial and free from interference by the executive. As recommended and acknowledged by GRECO and the CEPEJ, the extensive powers granted to the Judicial Legal Council in matters related to the appointment, promotion and disciplining of judges are to be welcomed but there are still concerns regarding the Judicial Legal Council's composition and the fact that the executive branch continues to retain prerogatives for key senior appointments. While noticeable progress has been achieved regarding appraisal, training and ethics of prosecutors, the Assembly remains concerned about the presidential oversight of the Prosecutor's Office. **The Assembly**

¹ Reference to committee: Resolution 1115 (1997).

² Adopted on 7 September 2017 by the Committee

welcomes the progress in the procedure for the selection of new judges through which 60% of the sitting judges have been selected.

This is some kind of delusion. In Azerbaijan, there is not a single independent judge. What progress has the Assembly welcomed? This is an incorrect proposal, it is better to remove it.

4. The Assembly recalls that judicial independence and impartiality are prerequisites of a criminal justice system that is compliant with European standards. As underscored by the jurisprudence of the European Court of Human Rights, the Assembly notes with concern that much more effective measures have to be taken to strengthen judicial independence *vis-à-vis* the executive and prosecutors. Shortcomings highlighted by the European Court of Human Rights' jurisprudence concerning prosecutors' actions, endorsement by the courts of prosecution's requests, ineffective investigations, non-respect for presumption of innocence and of inequality of arms have also not yet been addressed.

5. While welcoming the ongoing reform initiated by the President of the Republic's Executive Order on "improvement of operation of the prison system, humanisation of criminal policies and extension of application of alternative sanctions and non-custodial preventive measures", the Assembly calls on the authorities to quickly adopt and apply the legislation required for its implementation. The Assembly remains concerned about allegations on the excessive use of pre-trial detention that should be the exception rather than the norm and on the absence of alternative sanctions. Changes in practice will primarily depend on the level of judicial independence and changes in the way law enforcement bodies work during investigations.

The political prisoners always received the wrongful and groundless pre-trial detention: Use of pre-trial detention from May till September 2017.

1. Gozel Bayramli, member of Popular Front Party –on May 26, 2017, Baku City Sabail District court gave of 3 months pre-trial detention
2. Afghan Muxtarli, journalist - on May 31, 2017, Baku City Sabail District Court gave of 3 months pre-trial detention
3. Aziz Orujov, journalist - on June 1, 2017 Baku City Nasimi District Court gave 4 months pre-trial detention

6. The Assembly is concerned by the reported problem of arbitrary application of criminal legislation to limit freedom of expression, as highlighted by the Committee of Ministers in the framework of its supervision of the European Court of Human Rights' judgments.

In 2013-2017, 20 journalists and bloggers were arrested on criminal charges (drug trafficking, hooliganism). There are so-called group of "prisoners of facebook",

young people who go to prison because of criticizing the policy of the authorities in Facebook. Today, we have 15 journalists and bloggers in prison:

1. Araz Guliyev, blogger on April 05, 2013 sentenced to 8 years in prison
2. Nidjat Aliyev, blogger on December 09, 2013 sentenced to 10 years in prison
3. Rashad Ramazanov, blogger on December 10, 2013 sentenced to 9 years in prison
4. Ilkin Rustamzadeh, blogger on May 06, 2014 sentenced to 8 years in prison
5. Seymur Hazi, journalist on January 29, 2015 sentenced to 5 years in prison
6. Djavid Shiraliev, journalist on May 20, 2015 sentenced to 5 years in prison
7. Asad Shakarli, journalist on May 16, 2016 sentenced to 10 years in prison
8. Tofik Hasanov, blogger on August 22, 2016 sentenced to 6 years in prison
9. Afgan Sadikov, journalist on January 12, 2017 sentenced to 2,5 years in prison
10. Elgiz Gahramanov, blogger, on January 16, 2017 sentenced to 5,5 years in prison
11. Mehman Huseynov, blogger on March 3, 2017 sentenced to 2 years in prison
12. Fikret Faramazoglu, journalist on June 14, 2017 sentenced to 7 years in prison
13. Elcin Ismayilli, journalist – on September 18, 2017 sentenced to 9 years in prison.
14. Afghan Muxtarli, journalist - on May 31, 2017, Baku City Sabayil District Court gave of 3 months pre-trial detention
15. Aziz Orujov, journalist - on June 1, 2017 Baku City Nasimi District Court gave 4 months pre-trial detention

7. The Assembly recalls its Resolution 2178 (2017) on the implementation of judgments of the European Court of Human Rights. It notes that more than 120 judgments of the Court against Azerbaijan have not yet or only partially been implemented. The Assembly notes that little progress has been made with regard to the implementation of certain groups of judgments, in particular concerning ill-treatment, violations of the right to a fair trial, freedom of expressions and freedom of assembly and association.

No progress was achieved. Torture became more severe In November 2015, 4 people died as a result of torture, and in April-May 2017, 7 people died as a result of torture. These are the names of these seven:

1. Mehman Galandarov, blogger was arrested on February 07, 2017, died after tortures on April 28, 2017, in Baku Detention Centre No. 1
2. Mehman Huseynov, born in 1987, was arrested on May 7, 2017 in his own house in Jamilli village of Tartar region. On May 16 his body was brought to his wife who is now raising her two little children alone.
3. Sahavat Binnatov was arrested on May 7, 2017 in his house in the village Jamilli of Tartar region. On May 17 the body of beaten to death Binnatov was returned to the family , also banned from burying him in the village cemetery. The place of burial is unknown.
4. Colonel Saleh Gafarov was arrested on May 12, 2017 in his own apartment. In four days- on May 16 his body was brought to the village and buried outside of the village by the police

5. Elchin Guliyev, resident of Tartar region was arrested on May 11, 2017. His body too was returned to the family on May 18.

6. Lieutenant Tamkin Nizamioglu, born in 1993, was arrested on May 12, 2017. His body was returned to his native village Darkand in Ordubad region (Nakhchivan) in the sealed coffin. His family was not allowed to see the body or to bury him.

7. Soldier Dayandur Azizli, born in 1993, was arrested on May 12, 2017. His body was returned by police July 20. His family was not allowed to see the body or to bury him.

But I think in reality died more than seven.

8. The Assembly is concerned about repressive actions against independent media and advocates of freedom of expression in Azerbaijan. These actions are detrimental to effective media freedom and freedom of expression, undermine the safety of journalists and create a climate of violence against those who express divergent views. The Assembly is particularly worried by the recent amendments to the laws on internet regulation and courts' decisions to block websites, and recalls the need for protection of fundamental rights in the digital area. The Assembly deplores the recent legislative changes, including criminal charges and prison sentences, concerning defamation on social media and reiterates its longstanding demand for decriminalisation of defamation.

9. While welcoming of the measures foreseen by the Presidential Order for the improvement of conditions in detention, the Assembly notes that prison overcrowding remains high and that living conditions in some prisons are still inadequate.

In addition to paragraph 7, I wrote about the death of 7 people from torture. There are not improvement of conditions in detention. "The measures foreseen by the Presidential Order for the improvement of conditions in detention" is just a bluff

There is no reform. Please give attention

Tortures in Gobustan prison in July –August 2017

The Gobustan prison is the prison for convicts for life imprisonment and for long periods of imprisonment. In Gobustan prison, prisoners are kept in cells. It is not allowed to walk, work, study prisoners there, meetings with relatives are rare.

In July- August 2017 Chief of the Gobustan prison Avtandil Agayev, his deputy Emin Jafarov, employees Ilkin Akhundov, Namig Agayev and workers named Rovshan, Igbal tortured the prisoners of so called " Nardaran case", sentenced to Gobustan prison. These officers personally tortured Abbas Huseynov, Taleh Bagirov, Jabbar Jabbarov and others.

A. Huseynov himself told the lawyer Yalchin Imanov about tortures.

On July 22, 2017 he and another convicted Jabbar Jabbarov were taken to the Gobustan prison. As soon as they were brought there, they were immediately handcuffed and dragged along the asphalt.

Huseynov, Jabbarov and another prisoner were put face to face with a wall and kept under the scorching sun. When Huseynov announced his rights, he was told that "here is Gobustan".

An employee named Rovshan, pointing at Huseynov, said: "This person says a lot, explain all to him," after which he was beaten with a truncheon by the ensign Ilkin Akhundov. Then Huseynov was thrown into the punishment cell. Despite the fact that the period of detention in the punishment cell expired on July 29, Huseynov was held there until August 5.

In the punishment cell, the situation is terrible; worms and insects crawl along the floor, the toilet is there and absolute uncleanness reigns.

On July 25, Major Namiq Guliyev struck Huseynov with his fists in the stomach and in the face, threatening to torture him with an electric shock and mockingly saying: "A truncheon is an inseparable friend of a prisoner." When Huseynov said that he would complain, the major said that "let you complain where you want." Moreover, an act was drawn up about the alleged insult of the prison staff by Huseynov.

For 17 days in Gobustan prison, Huseynov was pronounced four reprimands. On July 26, he was taken out of the punishment cell under the pretext of meeting with the commander. However, in the courtyard of the prison, he was tied to an iron post and held for 3 hours under the scorching sun, his hands clasped in handcuffs.

On July 29, despite the completion of the detention in the punishment cell, Huseynov was returned to the punishment cell on the pretext that there were "no places in the quarantine".

Abbas Huseynov said that on July 29, Taleh Bagirov, leader of the Movement "Muslim Unity", was brought to the Gobustan prison. He was kept in the next cell, and Huseynov heard how bad he was feeling. When Bagirov asked the warden Ilkin Akhundov to call a doctor, the warden began to insult the convict.

In response, Huseynov and Jabbarov began to protest, and other prisoners joined their protest, demanding that the warden be punished. A. Huseynov was threatened with sending to the so-called "tuberculosis zone" (prison for tuberculosis patients).

On August 5 Huseynov, in connection with the expiration of the "quarantine" term, was taken to the chief of the Gobustan prison Avtandil Agayev. When Huseynov began to talk about lawlessness, A. Agayev interrupted him and said: "Here is Gobustan - a place where rights end."

After that Huseynov was thrown to the floor, and Avtandil Agayev began to beat him with a truncheon. The chief of prison struck him 30-35 strokes, including on the head. After that Huseynov was put in a punishment cell for 8 days more. In the punishment cell he was knocked down, handcuffed on his arms and legs (actually crucified), and in this condition he was kept in a punishment cell for two days.

According to the lawyer Yalchin Imanov, there are many injuries and bruises on Huseynov's body - the back, the legs, the lower back and the knees. On the wrists and legs, there are traces of handcuffs. Huseynov moves with difficulty, limps on one leg and cannot sit.

On August 10, the lawyer of Abbas Huseynov appealed to the Garadagh District Court. Judge Fuad Huseynov refused to consider the complaint.

10. The Assembly takes note of the internal supervision mechanism of the Ministry of Interior which has led, over the last five years, to disciplinary measures against 1 647 police officers, of which 156 were dismissed from the service, 139 demoted and 1 351 given warnings. The Assembly encourages the authorities to establish a gender balance also among police officers. The Assembly reiterates that an independent, impartial and effective complaints system for allegations of ill-treatment by law enforcement officials is of fundamental importance for the enhancement of public trust and confidence in the law enforcement bodies and in the Azerbaijani justice system in general. It stresses the need to ensure that there is no impunity for misconduct or ill-treatment. It is of utmost importance that all allegations of torture and ill-treatment are promptly and thoroughly investigated. In this context, the Assembly deplores that to date, only four out of the ten reports on the visits of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) to Azerbaijan have been made public and that there are still six unpublished reports, concerning the periodic visits in 2011 and 2016 and ad hoc visits in 2004, 2012, 2013 and 2015.

All appeals to the courts about the use of torture are rejected by judges. August 10, 2017 judge of the Garadag District Court Fuad Huseynov dismissed the complaint of the lawyer of political prisoner Abbas Huseynov about torture in Gobustan prison .I wrote about these tortures in the appendix to paragraph No. 9

11. The Assembly welcomes the law on “Ethics Code of Members of National Parliament” to prevent corruption, which envisages measures on mandatory disclosure of conflicts of interests by MPs. However, the Assembly notes with great concern, reports linking the Azerbaijani government to a large scale money laundering scheme occurring in the years of 2012 until 2014, used inter alia to influence the work of members of the Assembly as regards the human rights situation in Azerbaijan. The Assembly urges the Azerbaijani authorities to start an independent and impartial inquiry into these allegations without delay and furthermore, cooperate fully with competent international authorities and bodies on this issue.

12. The legislative environment for the operation of non-governmental, non-commercial organisations, including the regulation of matters relating to their State registration, funding and reporting requirements has been restrictive and has been found not to be compliant with European standards by a number of Council of Europe bodies. The recent limited regulatory changes regarding grants do not fully address the legal barriers to the effective functioning and funding of NGOs. Based on existing legislation and practice, a number of local and international human rights NGOs have been prevented from operating, put under pressure and sometimes investigated. Some of the arrests, detentions and convictions of Azerbaijani human rights defenders appear to be the result of shortcomings in the NGO legislation and how it is implemented. In the light of the above, the Assembly calls on the authorities to continue the review of the law on non-governmental organisations with a view to addressing the concerns

formulated by the Venice Commission and creating a better environment for NGOs to carry out their legitimate activities including those expressing critical opinions. The Assembly welcomes the establishment of the Open Government Partnership Dialogue Platform in cooperation with the international community to strengthen cooperation, communication and partnership among State bodies and civil society organisations and contribute to further expansion of OGP principles and values in Azerbaijan. The Assembly calls on the authorities to invite all civil society organisations, NGOs and political parties to contribute to this platform. Recalling that NGOs enrich the democratic processes, the Assembly calls on the authorities to facilitate and encourage their work.

13. The Assembly is concerned by allegations of a restrictive climate for the activities of the extra-parliamentary opposition and limitations imposed on freedom of assembly. The legislation and practice governing public assemblies, which lacks foreseeability and precision, leads to public assemblies allegedly being banned, including arbitrary arrest and detention of protesters, which creates a negative effect on the exercise of the right to freedom of assembly.

14. While welcoming the release – sometimes through presidential pardon – in 2016 and 2017 of some so-called “political prisoners”/“prisoners of conscience”, which it considers a positive first step, the Assembly remains concerned by the reported prosecution and ongoing detention of NGO leaders, human rights defenders, political activists, journalists, bloggers and lawyers, based on alleged charges in relation to their work. The Assembly expresses its concern that new arrests following releases would diminish the positive signals given by the releases.

According to the list of the "Center for Protection of Political Prisoners" in September 2017 there are 145 political prisoners in custody. The largest group of political prisoners in September 2017 is peaceful believers - 88 people.

15. Taking all these concerns and developments into account, the Assembly calls on the Azerbaijani authorities to:

15.1. promptly ensure full implementation of the decisions of the European Court of Human Rights and cooperate more closely with the Committee of Ministers and Department for the Execution of Judgments of the European Court of Human Rights;

15.2. review the cases of the so-called “political prisoners”/“prisoners of conscience” detained on criminal charges following trials whose conformity with human rights standards has been called into question by the European Court of Human Rights, civil society and the international community, and use all possible means to release those prisoners whose detention gives rise to justified doubts and legitimate concerns; in particular but not exclusively Ilgar Mammadov, Ilkin Rustamzade, Mehman Huseynov, Afgan Mukhtarli, and Said Dadashbayli;

Currently, 15 journalists and bloggers remain in detention. The names of all 15 people I brought to paragraph № 6

And since 2007, in custody, innocently convicted 10 people from the so-called “ Said Dadashbeyli group”

1. Farid Agayev, in 2007 sentenced to 13 years in prison
2. Said Dadashbeyli, in 2007 sentenced to 14 years in prison
3. Jeyhun Aliyev, in 2007 sentenced to 14 years in prison
4. Rashad Aliyev, in 2007 sentenced to 14 years in prison
5. Mikail Idrisov, in 2007 sentenced to 12 years in prison
6. Jahangir Kerimov, in 2007 sentenced to 14 years in prison
7. Rasim Kerimov, in 2007 sentenced to 13 years in prison
8. Samir Gojayev, in 2007 sentenced to 13 years in prison
9. Beybala Guliyev, in 2007 sentenced to 13 years in prison
10. Emil Mehbaliyev, in 2007 sentenced to 12 years in prison

It is necessary to demand the release of all 10 people, not just one Saida Dadashbeyli

15.3. with regard to checks and balances: reinforce the application of the principle of the separation of powers, and in particular strengthen parliamentary control over the executive;

15.4. with regard to the judiciary:

15.4.1. pursue the reforms of the judiciary and the prosecution service so as to ensure full independence of the judiciary, especially from the executive, in order to restore public confidence in the justice system;

15.4.2. take the necessary measures to resolve the problems revealed by the judgments of the European Court of Human Rights as regards the independence, impartiality and fairness of criminal procedures;

15.4.3. refrain from using unjustified application of criminal law to limit freedom of expression;

15.4.4. ensure that pre-trial detention is only imposed as a measure of last resort and in line with the Council of Europe standards regarding necessity and proportionality and favour the application of less intrusive measures;

15.4.5. ensure also that no pressure is exerted on lawyers defending NGO representatives, political activists, human rights defenders and journalists;

In 2014 lawyers defending the rights of human rights defenders and journalists Khalid Bagirov and Alayif Hasanov were illegally expelled from the Bar Association. They must be returned to the Bar Association to the end of 2017.

15.4.6. set up a juvenile justice system;

15.5. with regard to media freedom and freedom of expression:

- 15.5.1. create conditions enabling journalists to carry out their work freely and ensure that no pressure is exerted on them;
- 15.5.2. ensure a genuinely independent and impartial review by the judiciary of cases involving journalists, fight against repression of independent journalists and ensure that there is no more prosecution of independent journalists and bloggers on allegedly trumped-up charges;
- 15.5.3. continue to step up efforts towards the decriminalisation of defamation in co-operation with the Venice Commission, and in the meanwhile remove high criminal sanctions, such as custodial sentences for defamation, from the Criminal Code;
- 15.6. with regard to freedom of association and political freedom:
 - 15.6.1. further amend the legal framework on the functioning and financing of civil society organisations in order to bring it into full compliance with Council of Europe standards;
 - 15.6.2. ensure that no pressure and repression is exerted against civil society organisations and their members and create an environment conducive for NGOs to operate;
 - 15.6.3. change the domestic legislation and practice on public assemblies to comply with the requirements of Article 11 of the European Convention on Human Rights and investigate the excessive use of force by the police against peaceful protesters;
- 15.7. with regard to conditions of detention and allegations of torture and ill-treatment by law-enforcement agents:
 - 15.7.1. guarantee the publication of all the unpublished CPT reports, and implement the recommendations contained in those reports;
 - 15.7.2. ensure effective investigation into all reported cases of alleged violations with a view to bringing the perpetrators to justice and take steps to establish an independent, transparent and effective complaints system for allegations of ill-treatment by enforcement officials.

Paragraphs 15.6.1 to 15.7.2 are of the nature of general recommendations. The authorities of Azerbaijan will simply ignore them.

June 23, 2015 PACE adopted Resolution 2062 (2015) on Azerbaijan, asked for the release of political prisoners, the authorities ignored this resolution.

It is necessary to write specifically, concrete :

- demand to release all 145 political prisoners until December 2017,
- Investigate the torture and murder of 7 people in April-May 2017.
- bring to responsibility the employees of law enforcement bodies, guilty in torture and murder.

If not, at the January session of the PACE will be discuss sanctions against Azerbaijan, depriving the right to vote of deputies from Azerbaijan.

B. Explanatory memorandum by Mr Stefan Schennach and Mr Cezar Florin Preda, co-rapporteurs

1. Introduction

1. On 23 June 2015, the Assembly adopted Resolution 2062 (2015) on the functioning of democratic institutions in Azerbaijan in which it condemned what it called “the crackdown on human rights in Azerbaijan” and called for an end to the “systemic repression” of human rights defenders, the media and those critical of the government, including politically motivated prosecutions. The Assembly called on the authorities to release all political prisoners, including those who have co-operated with the Parliamentary Assembly. The Assembly made a series of recommendations to the authorities of Azerbaijan as part of its ongoing monitoring of the country – including steps to reinforce democratic “checks and balances” in the system, ensure a fairer electoral framework, and further boost judicial independence.

2. On 9 December 2015, Mr Stefan Schennach was appointed rapporteur to replace Mr Tadeusz Iwiński and on 19 April 2016 Mr Cezar Florin Preda was appointed in replacement of Mr Agustín Conde. We have carried out a number of fact-finding visits since then: in April 2016 (Mr Schennach alone), June 2016, January 2017 and June 2017. The purpose of these visits was to assess the implementation of the recommendations made by the Assembly in June 2015.

3. Since Resolution 2062 (2015) on the functioning of democratic institutions in Azerbaijan, the Assembly has adopted Resolution 2085 (2016) on “Inhabitants of frontier regions of Azerbaijan are deliberately deprived of water”. In addition, Mr Alain Destexhe has been tasked by the Committee on Legal Affairs and Human Rights with the preparation of a report on “Azerbaijan’s Chairmanship of the Council of Europe: What follow-up on respect for human rights?”.

4. In the light of our discussions with multiple interlocutors during our successive visits to Azerbaijan since last year, we decided to issue a report on the functioning of democratic institutions in Azerbaijan in order to take stock of developments since the Assembly’s last resolution of 2015. We are aware that it is impossible in such a short timespan to cover in detail all the developments currently taking place in Azerbaijan. We will therefore limit ourselves to some of the main issues and related reforms we discussed. Thus, we will look into the actual application of the principle of separation of powers, in order to understand the checks and balances in the country. The question of the independence of the judiciary is fundamental, as well as the related functioning of the criminal justice system. We will focus on the human rights situation in the country including the functioning of civil society and respect for political freedoms, the issue of the so-called “political prisoners”/“prisoners of conscience” but also prison conditions and allegations of ill-treatment by law enforcement officials. The developments regarding media freedom and freedom of expression will also be covered. We will not

deal with the electoral processes since the last report, as they were extensively discussed in the framework of the PACE observer visits and covered by the reports issued by them. We intend to provide a detailed and in-depth analysis of the situation with regard to all the commitments and obligations in the next report on the honouring of obligations and commitments by Azerbaijan.

5. During all our visits we met high officials including the President of the Republic, the Head of the Presidential Administration, the Minister of Justice, the Prosecutor General, the leadership and PACE delegation of the Milli Mejlis (parliament), the Minister of the Interior, the State Security Service, the chairmen and judges of the Supreme Court and the Constitutional Court, representatives of the Ombudsperson's Office, representatives of religious institutions and of the Bar Association. We also held meetings with extra-parliamentary opposition parties, civil society representatives, journalists, lawyers, representatives of the international community, and persons in detention, some of their family members and persons recently released.

2. Background

6. Our discussions focused mainly on systemic issues and ongoing reforms. In addition we discussed possible reforms to prevent some problematic situations from rising again in the future. In this context, we discussed with the authorities the possibility of addressing, in close cooperation with the Council of Europe, a number of priority areas including the independence of the judiciary, the criminal justice system, the NGOs legislation and practice as well as media freedom.

7. We also paid attention to some cases of specific human rights defenders, activists, bloggers, journalists and religious activists currently in detention. We will not go into the details of each and every individual case as the examples below well illustrate the systemic problems. During our visits, we welcomed the release of some human rights defenders, political activists, bloggers and journalists, which we considered a positive first step, and expressed the hope that other activists would also soon be released.

8. The presidential pardon decree signed on 17 March 2016 released 14³ human rights defenders/journalists/youth activists/political activists/NGO representatives, out of a total of 148 persons released. In addition, Rauf Mirkadirov, Intigam Aliyev and Khadija Ismayilova were released by the domestic courts that commuted their prison sentences into suspended sentences. On 16 March 2017, President Ilham Aliyev signed a new pardon decree, under which 412 individuals serving prison sentences were exempted from the remainder of their sentences. Among them are five people who were included

³ Namely human rights defenders: Taleh Khasmamadov, Rasul Jafarov, Anar Mammadli (Vaclav Havel Prize winner); chairman of the National Statehood party, Nemat Penahli; NIDA members: Rashad Hasanov, Rashadat Akhundov, Mammad Azizov; Musavat members: Tofiq Yaqublu, Yadigar Sadiqov, Akif Muradverdiyev (former government official); Journalists: Parviz Hasimov, Hilal Mammadov; bloggers Siraj Karimli and Omar Mammadov.

in the human rights organisations' list of so-called "political prisoners"/"prisoners of conscience".⁴ In the meantime, in spring 2017, two new names were added to the Amnesty International list of "prisoners of conscience" following new arrests.⁵

9. We discussed the situation of the so-called "political prisoners" mainly based on Amnesty International's list of "prisoners of conscience". We also looked at the Human Rights Watch (HRW) "list of cases of youth and political activists, journalists, bloggers, and others imprisoned in Azerbaijan on politically-motivated charges in recent years", which includes 38 names.⁶ We also took into account the other lists prepared by the civil society: the "Working Group on a Unified list of Political Prisoners in Azerbaijan" released in May 2017 a new list containing 146 names⁷; the list of so-called "political prisoners" in Azerbaijan prepared by the Monitoring Group of Human Rights Organisations in Azerbaijan, which contained 36 names; the list of so-called "political prisoners" compiled by Leyla Yunus (released in Russian in November 2016) reportedly containing 160 names.⁸

"...the list of so-called "political prisoners" compiled by Leyla Yunus" is the list of Center for the Protection of Political Prisoners .This Center includes Institute for Peace and Democracy, Monitoring Centre for Political Prisoners, Alliance Azerbaijan Without Political Prisoners . On September 23, 2017 (after the release of 15 people) there are 145 political prisoners in our list.

10. During our visits to the country, we had numerous meetings with persons in detention, namely Ilgar Mammadov in Prison 2 (three times), Ilkin Rustamzade in Prison 13 (twice), Seymur Haziyevev in Prison 17, Said Dadashbayli in Prison 15 (twice), Mammad Ibrahim in Prison 16, Mikail Idrisov in Prison 1, and Mehman Huseynov in Prison 14. We also met with the families of persons in detention. We had meetings with recently released persons, in particular Leyla Yunus, Arif Yunus Khadija Ismayilova, Rasul Jafarov, Intigam Aliyev, Tofiq Yagublu, Rashadat Akhundov, Siraj Karimov, Hilal Mammadov, Yadigar Sadigov, Rashad Hasanov who explained the legal and practical difficulties they were facing since their release.⁹

11. We also looked into the situation of the religious activists in detention. We gathered information through our meetings with representatives of religious institutions and with civil society. Civil society representatives claim that a substantial number of persons are detained because of their religious affiliations, as illustrated in their list of so-called "political prisoners". For their part, the authorities consider that these people

⁴ Namely exiled editor-in-chief of Azadliq newspaper Ganimat Zahid's relatives Rufat and Rovshan Zahidov, NIDA Civic Movement member, admin of Stop Sycophants Facebook page Abdul Abilov, and Azerbaijan Popular Front Party (APFP) activist Elvin Abdullayev, journalist and political activist Faraj Karimov.

⁵ Namely Mehman Huseynov, blogger and Chairman of the Institute for Reporters' Freedom and Safety (IRFS) and Afgan Mukhtarli

⁶ HRW also provided a list of dozens of journalists, lawyers, political activists and human rights defenders under "politically motivated travel bans".

⁷ The list is undersigned amongst others by Rasul Jafarov, Intigam Aliyev, Khadiya Ismayilova, Anar Mammadli.

⁸ The majority of whom are religious activists.

⁹ See chapter 5 below.

are not detained because of their religious activities but because of criminal offences committed.

The list of our Center for the Protection of Political Prisoners on September 23, 2017 includes 88 names of peaceful believers convicted on falsified charges because of criticism of Ilham Aliyev's policy.

12. We are aware of the so-called Nardaran case¹⁰ and we will look further into this matter during future visits.

On September 23, 2017, 64 people remain in prison of the so-called "Nardaran case." They were subjected to the most brutal torture. Taleh Bagirov and Abbas Hysejnov are torturing till September 2017 in Gobustan prison. They are peaceful Shia believers. Arresting them, condemning innocent, authorities are pursuing a policy of artificial radicalization of peaceful believers. Members of the religious movement "Muslim Unity" received from 10 to 20 years of imprisonment on the verdict of the Baku Grave Crimes Court on January 25, 2017. This verdict was condemned by Amnesty International, HRW, OMCT.

13. We extensively discussed with the authorities the so-called Said Dadashbayli group of cases, which consists of ten persons who have been detained since January 2007¹¹. We consider that this case does not fall under the category of so-called "religious prisoners". However, this case is highly problematic and we are looking very seriously into the concerns expressed unanimously by all the representatives of the civil society in Azerbaijan about the reported violations of due process in relation to this set of cases.

It is necessary to demand the immediate release of all 10 illegally convicted of the so called "Group of Said Dadshbeyli":

1. Farid Agayev, in 2007 sentenced to 13 years in prison
2. Said Dadashbeyli, in 2007 sentenced to 14 years in prison
3. Jeyhun Aliyev, in 2007 sentenced to 14 years in prison
4. Rashad Aliyev, in 2007 sentenced to 14 years in prison
5. Mikail Idrisov, in 2007 sentenced to 12 years in prison
6. Jahangir Kerimov, in 2007 sentenced to 14 years in prison
7. Rasim Kerimov, in 2007 sentenced to 13 years in prison
8. Samir Gojaye, in 2007 sentenced to 13 years in prison
9. Beybala Guliyev, in 2007 sentenced to 13 years in prison
10. Emil Mehbaliyev, in 2007 sentenced to 12 years in prison

¹⁰ On 25 January 2017, the Baku Serious Crimes Court sentenced 18 men associated with the Shiite Muslim Unity Movement in Nardaran to lengthy prison terms. According to Amnesty International, the trial did not meet international standards and was marred by torture allegations. The defendants' appeal is pending.

¹¹ Said Dadashbeyli lodged an application with the European Court of Human Rights in 2007 that was still awaiting first judicial decision (*Dadashbeyli v. Azerbaijan* application number 11297/09).

In January 2007, 11 people were arrested. When, they were kept in the MNS after their arrest, these people were tortured and one of them Emin Mammadov died under torture. They spent more than 10 years in prison without guilt !!! It is very important to demand the immediate release of all 10 people.

14. Lastly, in this context we expressed our concern regarding the recent arrest and detention of Nijat Amiraslanov (freelance journalist), Gozal Bayramli (deputy chair of the opposition Popular Front Party), Afgan Mukhtarli (abducted journalist and activist), Aziz Orujo (head of the online news service "Kanal 13"), as well as the case of Mehman Galandarov.

Mehman Galandarov was killed under torture on April 28, 2017 in Baku Detention Centre No. 1 No one is punished and there is no investigation.

3. Checks and balances

15. In Resolution 2062 (2015) the Assembly notes that the Azerbaijani institutional structure grants particularly strong powers to the President of the Republic and the executive. In addition to the limited competence of the Milli Mejlis under the Constitution, the Assembly draws attention to the fact that no genuine opposition forces are represented in parliament, which is detrimental to true political dialogue and effective parliamentary oversight. It recommends reinforcing the effective application of the constitutionally guaranteed principle of the separation of powers, and in particular strengthening parliamentary control over the executive and ensuring full independence of the judiciary, especially with regard to the executive.

16. We insist on the key principle of the separation of powers and emphasise the importance of the oversight function of the parliament over the executive. On 11 October 2016, the Central Election Commission announced the final results of the constitutional referendum of 26 September 2016, according to which all proposed constitutional amendments should be considered approved. On 12 October 2016, the President of the Republic signed an order related to the entry into force of the Referendum Act. In accordance with the order, the cabinet had to review and/or draft the normative and legal acts deriving from the constitutional changes within six-months, for submission to the President. On 21 February 2017, President Aliyev issued a decree appointing his wife Mehriban Aliyeva First Vice-President (a function established by the September 2016 constitutional amendments). On the same day, Ms Aliyeva was introduced to the country's Security Council by the President.

17. In its opinion of October 2016 on the draft modifications to the Constitution of Azerbaijan,¹² the Venice Commission expressed concern about the introduction of non-elected vice-presidents, who may be called on to govern the country, and about the

¹² [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)029-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)029-e)

President's prerogative to declare early presidential elections at his/her convenience. The Venice Commission raised some serious concerns about the extension of the term of the presidential mandate to seven years, given the already very strong position of the President and the new powers added by the reform. According to the Venice Commission, the new power of the President to dissolve parliament makes political dissent in parliament largely ineffective.. The Venice Commission considers that the new powers of the President are unprecedented even in a comparative respect and that they have reduced his political accountability and weakened parliament even further.

18. Based on the above, we reiterate the Assembly's recommendation with regard to checks and balances to reinforce the effective application of the principle of the separation of powers, and in particular strengthen parliamentary control over the executive. As mentioned in its opinion, the Venice Commission stands ready to provide its expertise in this regard.

4. Independence of the judiciary

19. In its 2015 resolution, while welcoming the recent legal changes with regard to the judiciary, the Assembly encouraged the authorities "to further ensure full independence of the judiciary and, in particular, to prevent influence and interference by the executive branch".

20. The Minister of Justice informed us about the reforms regarding the selection procedure for judges and prosecutors, evaluation of judges, initial and continuous training of judges and prosecutors, postponement of the age of retirement for judges, salaries of judges as well as disciplinary proceedings. The selection procedure for the members of the Judicial Legal Council had been simplified and measures to increase its independence developed. We were informed that 20% of the sitting judges were women while 40% of the new candidates were women.

21. In its compliance report published in March 2017,¹³ while welcoming the extensive powers granted to the Judicial-Legal Council (JLC) in matters related to the appointment, promotion and disciplining of judges, the GRECO remains concerned that the JLC can be subjected to undue interference by the executive branch. It calls for the strengthening of the role of the judiciary within the JLC itself, and especially for it to be composed of a majority of judges directly elected or appointed by their peers and chaired by a judge. Recent positive developments include the introduction of dedicated training on integrity-related matters and counselling on ethics, as well as the inclusion of all the relevant provisions of the Code of Judges' Ethical Conduct in the evaluation of a judge's performance. Moreover, legislation was adopted in parliament to accelerate the JLC's decisions on lifting a judge's immunity. Yet, despite the progress made, the executive branch continues to retain excessive prerogatives for key appointments in the judicial system. More determined measures are thus required to ensure that the Judicial

¹³ <https://rm.coe.int/16806fe9f2>

Legal Council is involved in the appointment of all categories of judges and court presidents and a transparent and impartial system should be established for the appointment to senior positions.

All this is only the appearance of reforms in the judicial system. The head of the Judicial-Legal Council is the Minister of Justice, the cousin of the president and every judge knows that he must follow orders from the presidential administration. The judges themselves speak frankly about this. It is necessary to suggest imposing sanctions against judges, who have already delivered more than two custom-made sentences to political prisoners. Aliyev will never reform the judiciary.

22. As mentioned by GRECO, noticeable progress has been achieved regarding prosecutors: disciplinary offences and the Code of Ethical Conduct have been made more consistent and improvements have been made to the periodic appraisal system. A new set of objective criteria has been introduced for hiring law enforcement officers and new guidelines have been adopted on accessory activities. Better training opportunities are now offered on integrity-related matters. However, we share GRECO's concerns about the absence of any measure to remove the direct presidential oversight of the Prosecutor's Office. No action has been taken to address the concerns deriving from the fact that the Prosecutor General systematically informs the President (annually and upon request) of the Service's activities, including criminal cases under investigation. Subjecting the Prosecutor's Office to the concurrent oversight of the Head of State, and this without any safeguards, is clearly problematic. The same is true for the fact that the presidential authority retains the faculty to influence significantly the organisation/re-organisation of the prosecutorial services. The Prosecutor's Office is construed in Azerbaijan as an independent authority and it is essential that this be further guaranteed in law and practice.

How it is possible to write "noticeable progress has been achieved regarding prosecutors"? It was the General Prosecutor, who authorized and is authorizing the arrests of bloggers, journalists, human rights defenders.... The General Prosecutor organized torture and murder of citizens in May 2017 in the Terter region. And when journalists began to write about these murders, they were summoned to the General Prosecutor's Office and threatened with arrest for divulging state secrets. This is a very false statement about the « progress has been achieved regarding prosecutors».

23. We call on the authorities to pursue the reforms of the judiciary and the prosecution service to strengthen their independence and restore confidence in the justice system. We welcome the readiness expressed by the Minister of Justice of Azerbaijan to closely cooperate with the Council of Europe with regard to the justice reform.

5. Criminal justice system

24. In Resolution 2062 (2015), the Assembly was alarmed by reports by human rights defenders and international NGOs, confirmed by the Council of Europe Commissioner

for Human Rights, concerning the increase in criminal prosecutions against NGO leaders, journalists, lawyers and others who express critical opinions, based on questionable charges in relation to their work. The Assembly called on the authorities to end the systemic harassment of those who are critical of the government and to release those wrongfully detained.

25. The cases of *Ilgar Mammadov*¹⁴ and more recently *Rasul Jafarov v. Azerbaijan*¹⁵, are an illustration of the criticisms of selective justice in Azerbaijan. In its judgments, the European Court of Human Rights found that the applicants had been detained for purposes other than having committed an offence, and that there had accordingly been a violation of Article 18 of the Convention (limitation on use of restrictions on rights) taken in conjunction with Article 5 (right to liberty and security). The Strasbourg Court found, in particular, that the arrest and detention on remand of the applicants took place in the absence of any reasonable suspicion that they had committed an offence. It also found that the domestic courts had limited themselves in all their decisions to an automatic endorsement of the prosecution's requests without having conducted a genuine review of the lawfulness of the detention. Recalling that the charges brought against the applicants were not based on reasonable suspicion, the Court further found that the actual purpose of the impugned measures was to punish the applicants: for having criticised the government and for having attempted to disseminate what he believed to be true information which the government was trying to hide (in the case of *Ilgar Mammadov*); for his activities in the area of human rights (in the case of *Rasul Jafarov*¹⁶). Since 2014, 12 other applications were communicated by the European Court to the Azerbaijani authorities, with questions including the respect of Article 18 of the Convention.¹⁷

26. In these cases, the European Court of Human Rights explicitly stated that the domestic courts had limited their role to one of mere automatic endorsement of the prosecution's requests and that they could not be considered to have conducted a genuine review of the "lawfulness" of the applicant's detention (violation of Article 5 § 4 of the European Convention on Human Rights). The case of *Ilgar Mammadov* also concerns the violation of the applicant's right to the presumption of innocence on account of the statements made to the press by the Prosecutor General and the Minister

¹⁴ *Ilgar Mammadov v. Azerbaijan*, application no. 15172/13, judgment of 22 May 2014

¹⁵ *Rasul Jafarov s. Azerbaijan*, application no. 69981/14, judgment of 17 March 2016.

¹⁶ The Court found that the situation of the applicant could not be viewed in isolation and that several other notable human rights activists were similarly arrested and charged with serious criminal offences entailing heavy sentences of imprisonment. For the Court, this arrest and detention appeared to be part of a larger campaign to "crack down on human rights defenders in Azerbaijan, which had intensified over the summer of 2014".

¹⁷ *Intigam Aliyev*, No. 68762/14, communicated on 19 November 2014; *Yunusova and Yunusov*, No. 68817/14, communicated on 5 January 2015; *Khadija Ismayilova*, No. 30778/15, communicated on 26 August 2015; *Uzeyir Mammadli*, No. 65597/13 and *Rashad Hasanov*, No. 48653/13, both communicated on 14 December 2015; *Novruzlu*, No. 70106/13, *Azizov*, No. 65583/13, *Gurbanli*, No. 52464/13, the three communicated on 3 March 2016; *Abdul Abilov*, No. 41105/14, communicated on 21 April 2016; *Omar Mammadov*, No. 54846/14, communicated on 27 April 2016; *Khalid Bagirov*, No. 28198/15, communicated on 24 June 2016; *Ilgar Mammadov (II)*, No. 919/15, communicated on 20 September 2016.

of the Interior encouraging the public to believe that the applicant was guilty (violation of Article 6 § 2 of the Convention). The cases of *Farhad Aliyev and Muradverdiyev v. Azerbaijan*¹⁸ also concern a breach of the applicants' right to presumption of innocence on account of statements, made to the press by law-enforcement authorities, lacking the necessary qualifications or reservations and containing wording amounting to declarations that the applicant had committed certain criminal offences.

27. In the framework of the supervision of the execution of the judgment in the case *Ilgar Mammadov v. Azerbaijan*, the Committee of Ministers recommended that measures be taken to avoid criminal proceedings being instituted without a legitimate basis and to ensure effective judicial review of any such attempt by the Prosecutor General's Office. The Committee of Ministers also expressed concern about the repetitive nature of the breach of the presumption of innocence (Article 6 § 2) by the Prosecutor General's Office and members of the government, despite several judgments of the Court which, since 2010, had indicated the precise requirements of the Convention in this regard. The Committee of Ministers insisted on the necessity of rapid and decisive action to prevent similar violations.¹⁹

28. In the framework of the execution of the Court's cases *Mahmudov and Agazade v. Azerbaijan and Fatullayev v. Azerbaijan*, the Committee of Ministers adopted in December 2016 a decision²⁰ regretting that no information had been submitted since their last examination of this group of cases on any measure taken to address the problem of arbitrary application of criminal law to limit freedom of expression, in particular to strengthen judicial independence *vis-à-vis* the executive and prosecutors, and to ensure the legality of the action of the prosecutors.

29. On 13 April 2017, the European Court of Human Rights released its judgment in the case of *Huseynova v. Azerbaijan*²¹, related to the murder in 2005 of Mr Elmar Huseynov – a prominent independent journalist. The Court found a violation of Article 2 (right to life/investigation) due to the ineffectiveness and inadequacy of investigations. The Court found that there was a lack of evidence to prove the allegation that the State had in some way been involved in the murder of Ms Huseynova's husband, or that the authorities had known or ought to have known about a real risk to his life and had failed to take measures to protect him. However, the Court considered that the investigation into the murder had not been effective, adequate or prompt, having so far lasted more than 12 years. It identified a number of shortcomings in the investigation. The Court considered in particular that no adequate steps had been taken to explore whether Mr Huseynov's murder, apparently very carefully planned, could

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[http://hudoc.exec.coe.int/eng#{"EXECDocumentTypeCollection":\["CEC"\],"EXECAppno":\["37138/06"\],"EXECIdentifier":\["004-1629"\]}](http://hudoc.exec.coe.int/eng#{)

¹⁹ [http://hudoc.exec.coe.int/eng#{"EXECIdentifier":\["004-1866"\]}](http://hudoc.exec.coe.int/eng#{)

²⁰ https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016806c4616

²¹ *Huseynova v. Azerbaijan*, Application No. 10653/10, judgment of 13 April 2017 [not yet final]

have been linked to his work as a journalist, despite his strongly critical articles of both the Azerbaijani Government and the opposition.

After the murder of Elmar Huseynov in March 2005, in November 2011 journalist Rafik Tagi was killed, in August 2015 journalist Rasim Aliyev was killed. None of these murders were investigated. Doctors who did not render medical aid to Rafiq Tagi and Rasim Aliyev were not punished.

30. During our meetings with lawyers and civil society we were informed of the difficulties faced by lawyers defending human rights defenders and political activists, who are reportedly subject to pressure. Some of them have reportedly been disbarred from legal practice, have been prosecuted or have been called as witnesses in cases in which they are representing a defendant with a view to removing them from the case. In September 2016, the Commissioner for Human Rights intervened before the European Court of Human Rights in the case of *Bagirov v. Azerbaijan* concerning the disbarment of the applicant, an Azerbaijani lawyer who had been actively involved in the defence of human rights, from the Azerbaijani Bar Association, following remarks he had made at a hearing before the Sheki Court of Appeal in September 2014. According to the Commissioner for Human Rights, his disbarment exemplifies a more general practice whereby lawyers are prevented from pursuing their human rights defence work or punished for doing so. In the case of *Rasul Jafarov v. Azerbaijan*,²² the Court acknowledged the impediments faced by his lawyer when visiting him in prison and found violations of the right of individual petition based on the suspension of the licence of the applicants' representative (Article 34 of the Convention).

31. In its 2015 resolution, the Assembly expressed concern about the excessive recourse to pre-trial detention and called on the Azerbaijani authorities to take the necessary measures to ensure that pre-trial detention is not imposed without considering whether it is necessary and proportionate, or whether less intrusive measures could be applied. Several judgments of the European Court of Human Rights found a violation of Article 5 of the Convention with respect to Azerbaijan²³.²³ During our meetings with them, the President of the Republic, the Minister of Justice, and the General Prosecutor as well as the Chairperson of the Supreme Court acknowledged the need to reduce reliance on prison sentences for mid-range offenders. Our discussions also focused on the need to establish a probation service in Azerbaijan, to develop alternative sanctions and to limit imprisonment to certain crimes and shorten the length of sentences. On 10 February 2017 the President of the Republic of Azerbaijan signed the Executive Order on "improvement of operation of the prison system, humanisation of criminal policies and extension of application of alternative sanctions and non-custodial preventive measures". This executive order covers a wide range of issues such as *inter alia*

²² Op.cit.

²³ The violations of Article 5 of the Convention concerning arrest and detention on remand are currently being examined by the Committee of Ministers of the Council of Europe in the context of the Farhad Aliyev group of cases. [Нарушения Статьи 5 Соглашения относительно ареста и содержания под стражей на арестованном в настоящее время исследуются Комитетом Министров Совета Европы в контексте группы Фархада Алиева случаев.](#)

alternatives to pre-trial detention, decriminalisation of a number of offences and improvements in the management of penitentiary institutions. Roundtables were organised at the initiative of the Supreme Court, and a working group consisting of officials from the Ministry of Justice, the General Prosecutor's Office and the Supreme Court was set up. According to the Minister of Justice, changes to the criminal code are under preparation concerning decriminalisation of certain acts in the economic sphere, alternative sanctions, alternative punishments, release on parole and conditional sentencing, and the use of preventive measures as an alternative to arrest. In the meantime, the President reportedly²⁴ submitted to the parliament a bill on humanisation of criminal legislation including modification of 140 articles of the criminal code. The legislation necessary for the application of the Presidential Decree needs to be adopted without delay and – most importantly – the changes will then have to be properly implemented.

32. While welcoming this positive development, we reiterate that judicial independence and impartiality, which are amongst the most challenging issues for in Azerbaijan, are a prerequisite for a criminal justice system that is compliant with European standards. We wish to reiterate that pre-trial detention should be the exception rather than the norm, as provided for by European and international standards, including the Committee of Ministers Recommendation (2006)13 on the use of remand in custody. True change in practice will first of all depend on the level of judicial independence and changes in the way law enforcement bodies work during the course of investigations.

33. Persons we met who had been recently released told us about the legal and practical difficulties they have faced since their liberation.. Some of them had been pardoned, others conditionally released by a court judgment; while a pardon clears the individual's criminal record, conditional release through a court decision implies constraints such as presentation at a police station, a travel ban, prohibition of exercising public functions or working, freezing of bank accounts, etc. They also complained about their offices being illegally locked and the confiscation of documents (in particular the confiscation by the General Prosecutor's Office of the files of the cases that Intigam Aliyev was bringing before the European Court of Human Rights). We were told by a number of our interlocutors from the civil society and from independent media that the bank accounts of their organisations as well as those of their employees were still frozen and that they were prevented from leaving the country, although there were no court decisions ordering a travel ban or the freezing of their bank accounts. We raised this issue with the General Prosecutor, with the Chairman of the Constitutional Court and with the Minister of Justice and we were told that such measures could only be based on court decisions.

34. On 17 May 2017, the Commissioner for Human Rights issued a statement on the four-year anniversary of the arrest of Ilkin Rustamzade, a blogger and youth activist,

²⁴ <http://en.azvision.az/news/68156/azerbaijani-president-submits-to-parliament-bill-on-humanization-of-criminal-legislation.html>

imprisoned since 17 May 2013. He also referred to the cases of Ilgar Mammadov. He mentioned that Bayram Mammadov and Giyas Ibrahimov had been sentenced to ten years of prison on drug charges respectively in December and October 2016 after having been arrested in May 2016 for spraying graffiti on a statue of the former president. The arrest of Mehman Huseynov was also mentioned. He reiterated his call to the Azerbaijani authorities to uphold their human rights obligations and release immediately all persons in detention because of views they have expressed or legitimate civic activity.

35. We remain concerned regarding the absence of a separate juvenile justice system in Azerbaijan. There is hardly any difference between the treatment of children and adults by the criminal justice system. Children are detained without any consideration of alternatives to detention such as educational measures, referral to social services and probation. We discussed with the authorities the need for a comprehensive juvenile justice system based on the development of a wide range of measures to ensure the best interests of the child, such as care, guidance and supervision, counselling, probation, foster care, educational programmes, and other alternatives to institutional care. We welcome the work being carried out in the framework of pilot projects supported by donors and the will expressed by the authorities to establish a juvenile justice system, and we sincerely hope that this will be done soon.

6. Prisons and law enforcement: conditions of detention and allegations of ill-treatment

36. We were informed by the Minister of Justice of the other measures foreseen by the Presidential Order mentioned above to improve conditions of detention, notably the modernisation of penitentiary infrastructures, strengthened control over prison conditions, training of staff, increasing transparency and preventing corruption. We were told that new penitentiary institutions have been built in the Nakhchivan Autonomous Republic and Sheki. The construction of institutions for women and minors is under way in Ganja and Lankaran, Zabrat Settlement of Baku and Umbaki. The Minister of Justice also informed us of the recent amnesty laws aimed at reducing prison overcrowding. While acknowledging the measures taken to improve conditions of detention, including the building of new prison facilities, we are concerned by the high level of overcrowding and the poor living conditions in some prisons.

Terrible conditions of detention and torture in Gobustan prison. I described this situation in the appendix to paragraph No. 9 : Tortures in Gobustan prison in July –August 2017.

Mr. Stefan Schennach visited Gobustan prison on September 16, 2017. We do not know with whom he met in prison. But he did not meet with Abbas Huseynov and Taleh Bagirov, who were tortured in this prison by the Chief of the Gobustan prison Avtandil Agayev, his deputy Emin Jafarov. Lawyer Yalchin Imanov met with T.Bagirov and A.Huseynov 22 September and wrote that they did not meet with Mr. Stefan Schennach.

37. More particularly, we are alarmed by the insufficient material and sanitary conditions of detention in Prison 13. One of the dormitories that we visited (during our January 2017 visit) accommodated 123 inmates on very narrow (50 cm) double bunk beds. The dormitory was apparently not equipped with a proper heating system (very cold in winter) or with air-conditioning (reportedly suffocating in summer). The sanitary annex adjacent to the dormitory was composed of only one urinal and two toilets lacking privacy, as well as three washbasins which were dirty and in a poor state of repair. Access to showers did not appear to be sufficient. The prison is located on wetlands causing humidity in the barrack-like buildings. Furthermore, the only access road is in a dire state of repair with deep potholes due to heavy truck traffic convoys from the SOCAR extraction site nearby. Concerning the prison for women that we visited during one of our previous visits, we were informed of problems in accessing menstrual products while in prison which causes hygiene problems but is also a source of tension between inmates. All female inmates should be freely provided with feminine hygiene products.

38. We ask the authorities to authorise the publication of all CPT²⁵ reports, recalling the clear message given by the Committee of Ministers in February 2002 encouraging “all Parties to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to authorise publication, at the earliest opportunity”. So far, only four out of the ten reports on the CPT’s visits to Azerbaijan have been made public. There are still six remaining unpublished reports, concerning the periodic visits in 2011 and 2016 and ad hoc visits in 2004, 2012, 2013 and 2015.

39. We express our concern over the death of Azerbaijani blogger Mehman Galandarov, who was found hanged in his cell in Baku Detention Centre No. 1 on 28 April 2017 ([this official version is not thrush. I stay myself in Baku Detention Centre No. 1 It is impossible to hang yourself in this cell](#)), and we call on the Azerbaijani authorities to conduct an effective investigation into the circumstances of his death in custody. Until now we have been given only partial replies to our questions and we still wish to receive information regarding the investigations into this case. We recall the State’s heightened responsibility to protect the human rights of persons in detention. On 4 May 2017, the European Court of Human Rights ruled that the Azerbaijani Government had violated the right to life (Article 2 of the Convention) of Mahir Mustafayev²⁶, in that it both failed to protect his life and failed to conduct an effective investigation into the circumstances of his death in custody (he died from severe burns as a result of a fire in his cell in December 2006). In the context of prisoners, the Court has repeatedly emphasised that persons in custody are in a vulnerable position and that the authorities have a duty to protect them. As a general rule, the mere fact that an individual dies in suspicious circumstances while in custody should raise an issue as to whether the State

²⁵ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

²⁶ Judgment in the case *Mustafayev v. Azerbaijan* (application no. 47095/09), 4 May 2017 (not yet final)

has complied with its obligation to protect that person's right to life.²⁷ It is incumbent on the State to account for any injuries suffered in custody, an obligation which is particularly stringent when an individual dies.²⁸

26 June, 2017- The European court has started consideration on the occasion of the death of Elshad Babayev .Elshad Babayev died from torture in 2014 in prison number 14 . In October 2015 - died the only witness in the Elshad Babayev case Y.Nuriyev . The investigation is not carried out .

40. We remain concerned about reports of torture and ill-treatment of journalists, bloggers, human rights defenders and youth activists during arrest or when in custody. We are particularly worried by the case of Mehman Huseynov, blogger and Chairman of the Institute for Reporters' Freedom and Safety (IRFS). We discussed his case with the authorities as well as with the Ombudsperson's office. We met with Mehman Huseynov in Prison 14. We must insist again on the need to truly investigate his allegations of ill-treatment and torture and to hold accountable those responsible. We expressed our amazement and regret at his conviction for slander for having denounced ill-treatment and torture, and at his current detention.

41. The Minister of the Interior informed us about the internal supervision mechanism of his Ministry: over the last five years 1 259 violations of rights and freedoms by law enforcement agents were reportedly identified. The related investigations led to disciplinary measures against 1 647 police officers, of which 156 had been dismissed from the service, 139 demoted, and 1 351 given warnings.

42. In our meetings with the Ombudsperson's office, we were informed that 23 people work for the National Preventive Mechanism and carry out numerous visits of places of detention. While welcoming the establishment of the National Preventive Mechanism within the Ombudsperson's office in 2011, we are concerned about the mechanism's limited effectiveness in preventing torture and ill-treatment and other violations in places of deprivation of liberty.

43. We reiterate that an independent, impartial and effective complaints system for allegations of ill-treatment by law enforcement officials is of fundamental importance for the enhancement of public trust and confidence in the police and in the justice system and for ensuring that there is no impunity for misconduct or ill-treatment, as provided by the 2011 guidelines of the Committee of Ministers on eradicating impunity for serious human rights violations²⁹. It is of utmost importance that all allegations of torture and ill-treatment are promptly and thoroughly investigated. An independent,

²⁷ See *Slimani v. France*, no. 57671/00, § 27; *Geppa v. Russia*, no. 8532/06, § 70, 3 February 2011; and *Karsakova v. Russia*, no. 1157/10, § 48, 27 November 2011.

²⁸ 28 *Salman v. Turkey* [GC], no. 21986/93, § 99; *Shumkova v. Russia*, no. 9296/06, § 89, 14 February 2012; *Çoşelav v. Turkey*, no. 1413/07, § 53, 9 October 2012).

²⁹ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cd111

transparent and effective complaints system for allegations of ill-treatment by enforcement officials should promptly be established in Azerbaijan.

On August 10, 2017 judge of Garadagh District Court Fuad Huseynov dismissed the complaint of lawyer Yalchin Imanov about torture against Abbas Huseynov in Gobustan prison. In September 2014 lawyer Alayif Hasanov apply to court about tortures against Leyla Yunusova in Baku Detention Centre No. 1. The lawyer was punished and expelled from the Bar Association.

Political prisoners Rufat Safarov and Javid Shiraliyev, who serve prison sentences in Prison No. 9, have been on hunger strike for an indefinite period since September 21, 2017. The protesters protest against the lawlessness in Prison No. 9, including inhuman treatment of the prisoners, unjustified custody in the punishment cell, division of the inmates into privileged and not privileged, and corruption.

7. Media freedom and freedom of expression

44. In Resolution 2062 (2015), the Assembly expressed deep concern about the increasing number of reprisals against independent media and advocates of freedom of expression in Azerbaijan and deplored the arbitrary application of criminal legislation to limit freedom of expression, in particular the reported use of different criminal laws against journalists and bloggers. It recommended taking all the necessary measures for ensuring a genuinely independent and impartial review by the judiciary of cases involving journalists and others expressing critical opinions of the authorities.

Today on September 23, 2017, 15 journalists and bloggers, convicted for criticizing Ilham Aliyev's policy are imprisoned:

1. Araz Guliyev, blogger on April 05, 2013 sentenced to 8 years in prison
2. Nidjat Aliyev, blogger on December 09, 2013 sentenced to 10 years in prison
3. Rashad Ramazanov, blogger on December 10, 2013 sentenced to 9 years in prison
4. Ilkin Rustamzadeh, , blogger on May 06, 2014 sentenced to 8 years in prison
5. Seymour Hazi, journalist on January 29, 2015 sentenced to 5 years in prison
6. Djavid Shiraliev, journalist on May 20, 2015 sentenced to 5 years in prison
7. Asad Shakarli, journalist on May 16, 2016 sentenced to 10 years in prison
8. Tofik Hasanov, blogger on August 22, 2016 sentenced to 6 years in prison
9. Afgan Sadikov , journalist on January 12, 2017 sentenced to 2,5 years in prison
10. Elgiz Gahramanov, blogger, on January 16, 2017 sentenced to 5,5 years in prison
11. Mehman Huseynov, blogger on March 3, 2017 sentenced to 2 years in prison
12. Fikret Faramazoglu , journalist on June 14, 2017 sentenced to 7 years in prison
13. Elcin Ismayilli, journalist – on September 18, 2017 sentenced to 9 years in prison.
14. Afghan Muxtarli, journalist - on May 31, 2017, Baku City Sabail District Court gave of 3 months pre-trial detention
15. Aziz Orujov , journalist - on June 1, 2017 Baku City Nasimi District Court gave 4 months pre-trial detention

45. In the 2017 World Press Freedom Index, Reporters Without Borders ranked Azerbaijan 162nd out of 180 countries, concluding that “independent journalists and bloggers are thrown in prison if they do not first yield to harassment, beatings, blackmail, or bribes. Some independent media, such as Zerkalo and Azadlig, have been completely economically stifled. Others, such as Radio Azadlig, have been closed by force. In response to international pressure, the regime released the most famous imprisoned journalists at the start of 2016 but arrested others in the months that followed.” Azerbaijan is rated Not Free in Freedom of the Press 2017, and Partly Free in Freedom on the Net 2016.³⁰

46. Some of the media representatives we met complained about economic and financial pressure exerted by the authorities. They claim that the allocation of State advertising and State subsidies is not conducted transparently and that financial losses caused by state control of the advertising market and distribution networks have led to the closure of a number of media outlets. Opposition outlets are also subject to other forms of economic pressure, including exorbitant fines resulting from defamation suits. We received reports of interference with media freedom through revocation of licences. On 5 April 2017, the Supreme Court of Azerbaijan heard a cassation appeal against the decision of the National TV and Radio Council to abolish the licence of the ANS radio station, which had been deprived of a broadcasting license in September 2016 after ANS ran a preview of an interview with Fethullah Gülen. The Gülen-linked newspaper Zaman-Azerbaijan and Zaman.az webpage were also shut down. Azadliq, the main opposition newspaper in Azerbaijan, has reportedly³¹ been forced to stop publishing following the arrest (after arrest) and sentencing of their financial director, Faiq Amirli, who is accused of being an imam in the Gülenist movement³², and ongoing financial pressures from State-owned or affiliated companies.

47. In its Interim resolution of June 2016 on the execution of the judgments of the European Court of Human Rights in the cases *Mahmudov and Agazade and Fatullayev v. Azerbaijan*³³ revealing the problem of the arbitrary application of criminal legislation to limit freedom of expression, the Committee of Ministers called on the authorities to strengthen judicial independence *vis-à-vis* the executive and prosecutors, ensure the legality of the action of prosecutors. The issue of freedom of expression in Azerbaijan indeed needs to be considered in relation with the lack of independence of the judiciary. The Commissioner for Human Rights³⁴ as well as the Committee of Ministers have repeatedly stated that the arbitrary application of criminal legislation to limit freedom of expression raises serious concerns in particular on account of the reported use of

³⁰ <https://freedomhouse.org/report/freedom-press/2017/azerbaijan>

³¹ <https://www.coe.int/en/web/media-freedom/all-alerts/-/soj/alert/22403534>

³² Faiq Amirli was sentenced by Sabail district court of Baku on 24 July 2017 to three years and three months of imprisonment and a fine of 39,050 AZN on charges of inciting religious hatred and tax evasion.

³³ Interim Resolution CM/ResDH(2016)145 on the execution of the judgments of the European Court of Human Rights in the case Mahmudov and Agazade against Azerbaijan Fatullayev against Azerbaijan adopted by the Committee of Ministers on 8 June 2016 at the 1259th meeting of Ministers’ Deputies.

³⁴ See for example: [https://rm.coe.int/ref/CommDH\(2016\)6](https://rm.coe.int/ref/CommDH(2016)6)

different criminal laws against journalists and bloggers. The Commissioner stressed the need to take measures to ensure a genuinely independent and impartial review by the judiciary of cases involving journalists and others expressing critical voices.

48. In March 2017, amendments to the laws on internet regulation were adopted, giving new powers to the government and domestic courts to block websites. A bill of amendments to the laws on “Information, Informatisation and Protection of Information” and “Telecommunications” was adopted, prohibiting the posting of material promoting violence, religious extremism, terrorism, and ethnic, racial, or religious hatred or calling for the forceful seizure of power. The amendments also ban online distribution of false information and material that is offensive or violates privacy. The new legislation authorises the Azerbaijani Government, subject to judicial review, to ban sites for posting content deemed to promote violence, hatred, or extremism, violate privacy, or which constitute slander.

49. The Sabail District Court in Baku decided on 12 May 2017 to block the websites of five news outlets: Radio Free Europe/Radio Liberty’s (RFE/RL) Azerbaijani Service (azadliq.org), Meydan TV (meydan.tv), Azadliq Daily (azadliq.info), Turan TV (kanalturan.com), and Azerbaijani Hour (Azerbaycansaati.com and Azerbaycansaati.tv). The ruling came in response to a decree by the Communications and High Technologies Ministry, which had limited access to the sites since 27 March 2017 through an order from the Prosecutor-General’s Office stating that the outlets pose a threat to Azerbaijan’s national security. These developments have been seen by the civil society as evidence that Azerbaijan does not enjoy freedom on the internet and as an attempt to silence independent reporting in the country.³⁵

50. The internet has radically transformed the way we access information and communicate, creating new opportunities for strengthening democracy, but also restricting human rights. There is a need to effectively protect human rights on the net, by shaping the internet as a safe and open environment, respectful of freedom of expression, freedom of assembly and association, diversity, culture and education. The Council of Europe has issued guidelines to member States to make sure that any restrictions to freedom of expression, such as through internet blocking and filtering, comply with Article 10 of the European Convention on Human Rights. The Committee of Ministers adopted a recommendation on internet freedom,³⁶ recalling that any national decision or action restricting human rights and fundamental rights on the internet must comply with international obligations. We insisted in our meetings with the authorities on the importance for these standards to be duly taken into account in legislative processes.

³⁵ <https://freedomhouse.org/article/azerbaijani-court-bans-independent-media-websites>

³⁶ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806415fa

51. In its Resolution 2141 (2017) on attacks against journalists and media freedom in Europe,³⁷ the Assembly “recalling the decision adopted by the Committee of Ministers on 6-8 December 2016 on Mahmudov and Agazade group of cases against Azerbaijan [...] regrets the absence of information on measures taken to ensure the adequacy of legislation on defamation and expresses, in this context, grave concern in the face of recent legislative amendments to the Criminal Code introducing new defamation offences subject to imprisonment, irrespective of whether incitement to violence or hatred is involved.” The parliament adopted at the end of 2016 amendments to the Criminal Code extending the application of liability for discrediting the honour and dignity of the President to include expressions made online.³⁸ The amendments also expand the criminal provisions on slander and insult to online expression by introducing aggravated responsibility for using fake usernames or accounts. The penalties include prison sentences.³⁹ On 31 May 2017, the Parliament⁴⁰ further reinforced the punishment for discrediting the honour and dignity of the President of the Republic in the media or the Internet. In particular, amendments foresee an increased punishment of up to five years of imprisonment and/or a fine of 1500-2500 manats (previously 500-1000 manats). If such expressions are placed on fake accounts and profiles, the fine is increased to 2000-3000 manats (previously 1000-1500 manats).

52. We reiterate the recommendations of the Assembly in its 2015 resolution to speed up efforts towards the decriminalisation of defamation, in co-operation with the Venice Commission. The recent conviction to two years’ imprisonment of the blogger Mehman Huseynov for defamation⁴¹ is unacceptable. Defamation should never be a criminal matter, but jailing Mehman Huseynov for denouncing police brutality is a particularly telling development.

53. A positive development in 2016 was the release of several imprisoned journalists. The presidential amnesty of 17 March 2016 freed journalists Parviz Hashimli, Hilal Mammadov, and Tofiq Yagublu, and bloggers Siraj Karimli and Omar Mammadov. Journalist Rauf Mirgadirov was conditionally released the same day. In May 2016, the Supreme Court suspended investigative journalist Khadija Ismayilova’s prison sentence but she still remains on probation, with a ban on professional activities and a travel ban. However, these releases did not signal a genuine opening up towards media freedom as

³⁷ See the full text of the resolution here.

³⁸ Amended Article 323.1 of the Criminal Code (smearing or humiliating the honour and dignity of the President of the Azerbaijan Republic in public statement, publicly shown content or mass media) provides for an extension of defamation against the President to expression on the Internet. The penalty will be a fine from 500 to 1,000 manats, or correctional labour up to two years, or imprisonment for a period of 2 years.

³⁹ New Article 148-1 of the Criminal Code: content constituting libel or insult produced from fake profiles or accounts is punishable by a fine of 1000 to 1500 AZN, community service for 360 to 480 hours, corrective labour for up to two years, or imprisonment for up to one year.

⁴⁰ <http://www.contact.az/ext/news/2017/5/subsc/politics%20news/en/62748.htm>

⁴¹ <https://www.coe.int/en/web/media-freedom/all-alerts/-/soj/alert/22168695>

a number of other media professionals were detained, arrested, or convicted during the same year.

Currently, 15 journalists and bloggers convicted for criticizing Ilham Aliyev's policy are imprisoned

54. The most recent alerts in the Council of Europe Platform to promote the protection of journalism and safety of journalists⁴² include the re-arrest of Azerbaijani Director of Internet Television Aziz Orujov; the sentencing of Azerbaijani Chief Editor of News Website Fikret Faramazoglu to seven years on extortion charges; the abducting, detention and prosecution of Azerbaijani journalist Afgan Mukhtarli; the sentencing of freelance journalist Nijat Amiraslanov to 30 days imprisonment; the sentencing of Mehman Huseynov to two years on defamation charges; the pre-trial detention of Elchin Ismayilli, charged with extortion and abuse of a position of influence; and the arrest and pre-trial detention for three months of Azerbaijani Journalist and editor in chief Afgan Sadikhov. The Platform still includes the case of the death, on 9 August 2015, of journalist Rasim Aliyev, Chairman of the Institute for Reporters Safety and Freedom (IRSF), who succumbed to his wounds after being severely beaten because of what he had written about soccer player Javid Huseynov. On 1 April 2016, a Baku court convicted five men, including Javid Huseynov, to sentences of 9 to 13 years of prison for grievous bodily harm causing the death of Rasim Aliyev. On 12 October 2016, Baku Appeal Court reduced Javid Huseynov's sentence from four years to one year two months, and as the latter term had already been served, the footballer was released. According to IRFS,⁴³ the medical personnel at City Clinical Hospital allegedly failed to provide the necessary medical care to Rasim Aliyev. An application was sent to the European Court of Human Rights in this regard. The Platform also mentions the State Fund for the "Support of Mass Media Development in Azerbaijan" providing free government housing grants to some journalists.⁴⁴ Several media representatives and journalists have criticised this State initiative as undermining journalists' independence.

55. During our last visit we extensively discussed the situation of Afgan Mukhtarli, expressing our worries regarding his alleged abduction in Georgia and unlawful transfer to Azerbaijan, and regarding his current detention in Azerbaijan. We share the concerns expressed by the General Rapporteur on Media Freedom and the Safety of Journalists' regarding the intensification of repression against the independent press in Azerbaijan aimed notably at silencing investigative journalists such as Afgan Mukhtarli and support his calls on the Azerbaijani authorities to release him.⁴⁵ The European Court of Human Rights is considering an application from Afgan Mukhtarli within its priority policy.

⁴² <https://www.coe.int/en/web/media-freedom/azerbaijan>

⁴³ <https://www.irfs.org/wp-content/uploads/2016/10/The-Unsolved-Murder-of-Rasim-Aliyev.pdf>

⁴⁴ A first "Journalists' House" built in the Bibiheybat settlement of Baku by state budget funds was commissioned in 2013. A total of 156 journalists were allotted apartments there. The second "Journalists' House" will host 255 journalists. Broadcasting companies were allowed to nominate up to 10 candidates; daily newspapers and news agencies up to six candidates; weekly publications, news portals and websites up to three candidates.

⁴⁵ <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6694&lang=2&cat=21>

56. We also discussed the case of Aziz Orujov, director of internet television Kanal 13, who was re-arrested on 1 June 2017 in Azerbaijan. On 2 May 2017 he was found guilty by a court for disobedience to a lawful order by a police officer and sentenced to 30 days. On 1 June 2017, two hours before his expected release, he was taken to the Serious Crimes Investigation Department, charged with illegal entrepreneurship with large income and abuse of official power, and put in pre-trial detention for four months.⁴⁶ This case seems to be symptomatic of a worrying trend of adding new charges against the person in order not to release him at the end of the completed sentence.

8. Civil society and political freedoms

57. The issue of the functioning and funding of the civil society remains of concern. Over the past few months, the Azerbaijani government has introduced some changes to regulations governing the work of NGOs. However, the changes are limited to only certain rules and do not address the fundamental legislative obstacles identified by the Assembly itself as needing to be amended.

58. In Resolution 2062 (2015), the Assembly called on the authorities to review the law on NGOs with a view to addressing the concerns expressed by the Venice Commission and to creating an environment conducive to the work of civil society. It considered as extremely worrying that the shortcomings in the country's NGO legislation had negatively affected the NGOs' ability to operate. The strict control of NGOs by State authorities was likely to interfere with the right to freedom of association guaranteed by Article 11 of the European Convention on Human Rights. In this regard, the Assembly condemned the crackdown on human rights in Azerbaijan where working conditions for NGOs and human rights defenders had significantly deteriorated and some prominent and recognized human rights defenders, civil society activists and journalists were behind bars. The Assembly called on the authorities to review the law on NGOs in line with the Venice Commission's recommendations. In Resolution 2096 (2016),⁴⁷ the Assembly reiterated its call on Azerbaijan to amend its legislation on NGOs in accordance with the recommendations of the Venice Commission.

59. In our discussions, we repeatedly encouraged the authorities to cooperate with the Venice Commission in reforming the legislation on NGOs. The Venice Commission already issued two opinions (in 2010⁴⁸ and 2014⁴⁹) on the NGO legislation, recommending the simplification and decentralisation of the registration process, the adoption of specific measures to ensure full respect of the legislative requirements and to prevent *contra legem* practices, as well as to limit the grounds for refusal of registration to serious deficiencies. The Venice Commission also considered that the

⁴⁶ <https://www.coe.int/en/web/media-freedom/all-alerts/-/soj/alert/27247008>

⁴⁷ Resolution 2096 (2016) How can inappropriate restrictions on NGO activities in Europe be prevented?

⁴⁸ [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)035-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)035-e)

⁴⁹ [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)

requirement for international NGOs to create local branches and representations and obtain State registration, as well as the related limitations should be reconsidered. Foreign funding of NGOs should be authorised unless there are clear and specific reasons not to do so, and the procedure for obtaining the right to give a grant for international organisations, if maintained, should be associated with clear criteria and procedural indications clearly laid down in the legislation. According to the Venice Commission, provisions allowing unwarranted interferences into the internal autonomy of NGOs, i.e. reporting obligations and State supervision of NGOs' internal organisation and functioning should be removed.

60. The various aspects of the legislation relating to NGOs in Azerbaijan together with its application in practice have been found not to be compliant with European standards by a number of Council of Europe bodies.⁵⁰ Civil society representatives as well as representatives of the international community in Baku said that despite the adoption of amendments to the NGO legislation in 2015,⁵¹ and 2016⁵², the legal framework had not improved and the legal barriers to effective functioning of NGOs remained in place. According to them the amendments to the NGO legislation adopted over the last three years also restricted funding of civil society organisations by foreign donors. NGOs cannot operate effectively without registration because of the practical obstacles. Yet, registration still remains a challenge for NGOs and it is difficult to register as either a domestic or a foreign NGO in Azerbaijan. We were told that Azerbaijani NGOs have a limited capacity to comply with all the requirements, including reporting requirements, as well as registration of any change to their founding documents. Foreign NGOs risk liability for operating local branches without State registration which implies entering into an agreement with the government based on vague criteria. These rules grant broad discretion to the government leading to an important number of denials of registration. Access to funding has also been affected by the legislation as donor organisation and donor recipients have to obtain approval from the authorities. We were told by a number of representatives of the civil society that the above circumstances have forced a number of NGOs to operate on the fringes of the law without registration so as to be able to continue securing funding for their activities, putting them under threat of punishment for non-compliance and facing possible criminal prosecution. Since 2014, a large-scale prosecution was launched against domestic and international NGOs. There were arrests, interrogations and convictions of

⁵⁰ Venice Commission, CDL-AD(2011)035, op. cit., paragraph 117; Venice Commission CDL-AD(2014)043, "Opinion on the Law on non-governmental Organisations (Public Associations and Funds) as amended of the Republic of Azerbaijan", adopted by the Venice Commission at its 101st Plenary Session (Venice, 12-13 December 2014); Report of 6 August 2013 by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Azerbaijan from 22 to 24 May 2013 CommDH(2013)14; Report of 23 April 2014 of the Commissioner for Human Rights "Observations on the human rights situation in Azerbaijan: An update on freedom of expression, freedom of association, freedom of assembly, and the right to property", CommDH(2014)10.

⁵¹ Law on amendments to the "registration law" of 6 October 2015.

⁵² Law of 4 March 2016 amending the code of administrative offenses.

employees and NGO leaders, closure and seizures of bank accounts, and travel bans. Tax inspections of NGO activities were carried out and heavy penalties were given. As a result, many NGOs closed down or left the country.

61. The authorities themselves acknowledge some problems regarding the implementation of the NGO legislation including the legislation on grants. We were told by the authorities that a Government-Civil Society Dialogue Platform had been established with the participation of NGO and State agency representatives. State financial support was reportedly provided to NGOs through the State Council for Support to NGOs, under the auspices of the President of the Republic. Yet, organisations exclusively funded by the State might have difficulties in maintaining their independence. We were also told by the authorities that discussions were being held with civil society institutions to improve the working conditions for NGOs, and that the NGO legislation was being reformed, notably regarding the rules on registering grant agreements and the provision of grants by foreign donors. According to the civil society, these changes have slightly mitigated certain problematic aspects of the regulatory framework but most of them remain.

There are no independent NGOs in Azerbaijan that can work with an official registration and has bank account. All the NGOs operating in the country stay under the control of the authorities.

62. The most recent changes concerning grants were adopted in January 2017 by the Cabinet of Ministers⁵³ as a follow-up to the October 2016 Presidential Decree on Simplification of Registration of Foreign Grants in Azerbaijan calling for the application of a “one stop shop” approach for foreign grants registration. And yet, the Law on Grants and the Law on State Registration and the State Register of Legal Entities remain unchanged. While simplifying some procedures for registration of foreign grants and reducing the number of required documents, these changes do not address the legal requirement for NGOs to register grants, nor eliminate the requirement for the Ministry of Finance to provide an opinion on the expediency of each grant from a foreign donor. In addition the multi-step complex registration procedure for grants and foreign donors remains in place. NGOs still need to register all changes, including minor changes, to their founding documents and obtain a registration certificate every two years; NGOs must register grants with the Ministry of Justice; foreign donors are required to register every grant individually and an opinion on the purposefulness (expediency) of the grant remains a requirement. More importantly, the regulatory changes do not address the legal barriers to the effective functioning of NGOs.

63. As highlighted by the jurisprudence of the European Court of Human Rights, there are long-standing problems with the State registration of NGOs in Azerbaijan, concerning which the Court found violations of Article 11 of the Convention concerning

⁵³ Cabinet of Ministers’ decisions N°4 and N°12 of 11 and 24 January 2017 introducing changes to the Rules for Registration of Grant Agreements (Decisions) and the Rules for Foreign Donors’ Acquisition of the Right to Give Grants on the Territory of the Republic of Azerbaijan.

arbitrary delays in State registration of NGOs, denials of registration and cancellation of registration.⁵⁴ Even after the reforms to the registration procedures, the European Court of Human Rights was still receiving new applications concerning the refusal of the government to register NGOs, which were communicated to the government.⁵⁵ According to the Court, in the case of *Rasul Jafarov v. Azerbaijan*⁵⁶ of March 2016,⁵⁷ the new onerous regulations, coupled with the reportedly intransigent and arbitrary manner in which they were applied by the authorities, made it increasingly difficult for NGOs to operate. A number of recent amendments to various legislative instruments introduced additional registration and reporting procedures and heavy penalties. The Court noted that the legislative environment regarding the operation of non-governmental, non-commercial organisations, including the regulation of matters relating to their State registration, funding and reporting requirements, had grown increasingly harsh and restrictive.

64. We were informed that the Extractive Industries Transparency Initiative (EITI),⁵⁸ a coalition of governments, companies, and non-governmental groups, fostering open public debate about the use of oil, gas, and mining revenues, decided to suspend Azerbaijan. It considered that “it lacks an enabling environment for civil society, a violation of the initiative’s requirements on multistakeholder engagement,” and gave the authorities a deadline until July 2017 to improve the situation. The Azerbaijani authorities subsequently decided to withdraw from the EITI.

65. The worries already expressed by the Assembly in June 2015 with regard to the negative effect of the NGO legislation on the existence of NGOs and their ability to operate and get funding can only be confirmed with the current legislation and practice. As reported by the Commissioner for Human Rights,⁵⁹ as a result of the legislative changes, not only a number of local and international human rights NGOs have been prevented from operating, but they have also been put under pressure, dissolved and often investigated and prosecuted. A number of the arrests, detentions and conviction of Azerbaijani human rights defenders appear to be the result of shortcomings in the NGO legislation and how it is implemented.

⁵⁴ *Ramazanova and Others v. Azerbaijan*, no. 44363/02, 1 February 2007; *Nasibova v. Azerbaijan*, no. 4307/04, 18 October 2007; *Ismayilov v. Azerbaijan*, no. 4439/04, 17 January 2008; and *Aliyev and Others v. Azerbaijan*, no. 28736/05, 18 December 2008.

⁵⁵ НОВОСТИ – АЗЕРБАЙДЖАН – © TURAN NEW AGENCY

⁵⁶ [http://hudoc.echr.coe.int/eng#{"itemid":\["001-161416"\]}](http://hudoc.echr.coe.int/eng#{)

⁵⁷ *Rasul Jafarov v. Azerbaijan*, Application no. 69981/14, judgment of 17 March 2016

⁵⁸ The EITI requires member governments to foster “an enabling environment for civil society” and to “refrain from actions which result in narrowing or restricting public debate in relation to implementation of the EITI.”

⁵⁹ See in particular Commissioner for Human Rights’ Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights. Application No. 30778/15, *Khadija Ismayilova v. Azerbaijan*.

66. NGOs enrich democratic processes and need to be encouraged not impeded. We call on the authorities to facilitate the work of NGOs and to promptly bring the legislative framework on NGOs and related practice fully into line with Council of Europe standards.

67. The extra-parliamentary opposition parties have complained about the absence of any political dialogue between them and the ruling majority, and the restrictive climate for their activities. They deplored in particular the limitations imposed on freedom of expression and freedom of assembly and the lack of access to the public media. The Chairman of the Popular Front Party denounced the repression against his party members. The Executive Secretary of the Republican Alternative Movement (REAL) complained that the case against him on charges of illegal entrepreneurship and abuse of office was still opened and that he was subject to travel ban. Our attention was drawn in particular to the restrictions to the exercise of the right to peaceful assembly, notably the need to ask for permission in practice instead of the advanced notification required by law, as well as the alleged violent responses to peaceful protests and arrest of demonstrators including during the pre-referendum campaign in September 2016.

Currently, on September 23, 2017, 7 members of opposition parties and movements remain in detention. The lawyers of our Institute for Peace and Democracy conduct monitoring of all trials with politic motivation. These sentences are illegal, unreasonable, unfair and inhumane:

1. Ilgar Mamedov - on March 17, 2014 sentenced to 7 years in prison
2. Asif Yusifli –on July 31, 2015 sentenced to 7,5 years in prison
3. Mamed Ibrahim – on March 15, 2016 sentenced to 3 years in prison
4. Fuad Gahramanli - on January 25, 2017 sentenced to 10 years in prison
5. Fuad Ahmedli –on July 16, 2017 sentenced to 4 years in prison
6. Elnur Farajev – on May 3, 2017 sentenced to 3 years in prison
7. Gozel Bayramli – on May 26, 2017 received of 3 months pre-trial detention

68. In its case law with regard to Azerbaijan, the European Court of Human Rights⁶⁰ stresses its serious concern about the lack of foreseeability and precision of the legislation governing public assemblies, and about the possibility of public assemblies being abusively banned or dispersed. In particular, the system of notification set out in Article 49 of the Azerbaijani Constitution has been replaced in practice by a system of authorisation. The Court also notes that interference with the applicants' right to freedom of peaceful assembly, in the form of their arbitrary arrest and detention, or a prior ban, can have a chilling effect on other opposition supporters and on the public at large. The *Gafgaz Mammadov group v. Azerbaijan*,⁶¹ pending execution before the Committee of Ministers, raises a complex problem stemming from the non-compliance of the domestic legislation on public assemblies with the requirements of Article 11 of

⁶⁰ *Gafgaz Mammadov v. Azerbaïdjan*, Application N° 60259/11, judgment of 15.10.2015; nine similar judgments were classified as clones of the Gafgaz Mammadov group before the Committee of Ministers. See also recent Court's recent judgment in the cases *Mirzayev and Others v. Azerbaijan* (nos. 12854/13, 28570/13, and 76329/13) of 20 July 2017 [not yet final].

⁶¹ [http://hudoc.exec.coe.int/eng#{"EXECIdentifier":\["004-1743"\]}](http://hudoc.exec.coe.int/eng#{)

the Convention, and in its last decision of 6-7 June 2017 the Committee of Ministers urged the authorities to provide without further delay a comprehensive action plan on individual and general measures taken.

53 civil society activists were detained on September 21-22, 2017 on the eve of the opposition rally on September 23

69. Commenting on the situation in Azerbaijan, the Commissioner for Human Rights has repeatedly stated⁶² that no authorisation should be required for the holding of public demonstrations and that the system of notification should be applied in accordance with European standards. Due process standards must be respected in proceedings brought against participants in “unauthorised” demonstrations. Participants in peaceful assemblies should not be sanctioned for the mere fact of being present at and actively participating in the demonstration in question, provided they do not do anything illegal or violent in the course of it. There should be no disproportionate sanction undermining the fundamental right to peaceful assembly.

70. Based on the above, we call on the authorities to revise the law and practice with a view to ensuring the right to freedom of assembly and that any restrictions comply with Article 11 of the European Convention on Human Rights.

9. Execution of the judgments of the European Court of Human Rights

71. In view of all of the above, we stress the utmost importance of ensuring full implementation of the judgments of the European Court of Human Rights, which is a strict obligation on all Council of Europe member States. We highlight the Council of Europe’s readiness to help find solutions to the outstanding problems that impede the full execution of the Court judgments by the Azerbaijani authorities, and we support the Secretary General’s initiative under Article 52 of the Convention in this regard.

72. We met with Ilgar Mammadov several times in Prison 2 and we discussed his case with the authorities. In the framework of the supervision of the execution of the case *Ilgar Mammadov v. Azerbaijan*,⁶³ at its December 2016 meeting, the Committee of Ministers firmly reiterated that the continuing arbitrary detention of Ilgar Mammadov constituted a flagrant breach of the obligations under Article 46, paragraph 1, of the Convention and affirmed their determination to ensure the implementation of the judgment by actively considering using all the means at the disposal of the Organisation, including under Article 46, paragraph 4 of the European Convention on Human Rights, which was reiterated in the decision of 6-7 June 2017. The Committee of Ministers regretted that Mr Mammadov remained detained and urged the authorities to

⁶² <http://www.coe.int/en/web/commissioner/-/azerbaijan-stop-reprisals-against-human-rights-defenders>

⁶³ *Ilgar Mammadov v. Azerbaijan*, application no. 15172/13, judgment of 22 May 2014

follow all other possible means capable of fully executing the judgment ensuring Mr Mammadov's unconditional release without any further delay.

It should be pointed out that it is necessary to apply sanctions against Azerbaijan, depriving the right to vote of deputies from Azerbaijan. Only after this Ilgar Mammadov will be released.

73. Regarding the case of *Rasul Jafarov v. Azerbaijan*,⁶⁴ we raised the issues of the payment of the just satisfaction awarded and of the reopening of the criminal proceedings. The applicant complained about the failure to pay the just satisfaction awarded as well as the rejection by decisions of the Supreme Court of his requests for the reopening of the criminal proceedings. In its decision of 6-7 June, the Committee of Ministers asked for information in writing on the payment of the just satisfaction and on the rejection of Rasul Jafarov's request for the reopening of the criminal proceedings against him. In our meeting with the Supreme Court, we were surprised to hear from the Supreme Court that they had not received any request in this case. We also met with Rasul Jafarov who confirmed that two Supreme Court decisions were adopted respectively on 26 August 2016 and 27 January 2017 rejecting his requests for reopening. Concerning the payment of just satisfaction, Rasul Jafarov told us that he has so far only received 5 500 euros in three instalments (2 000 euros paid in April 2017, 2 000 euros paid in May 2017 and 1 500 euros paid in June 2017) out of a total amount of 32 448 euros due. We were informed by lawyers and civil society representatives of the existence of a number of other cases in which the Azerbaijani Government has not paid compensation as ordered by the European Court of Human Rights judgments.⁶⁵

Also ECHR on June 2, 2016 has the decision "The case of Yunusova and Yunusov v. Azerbaijan"⁶⁶ on the payment of compensation in the amount of 13.000 euros for each, total 26.000 euros. But even a year later, they received each for 3,000 euros, only 6,000 euros.

74. During our 2016 visits, we discussed the initiative related to the draft constitutional law, along the lines of the Russian Constitutional Court Law, presented to the parliament during the 2016 spring session. This draft law "on the possibility of the implementation by the Republic of Azerbaijan of the decision of the interstate body for the protection of human rights and freedoms" would reportedly give the Constitutional Court new powers in relation to the definition of the possibility of execution of decisions passed by international organisations on human rights and freedoms in Azerbaijan. We were informed that the draft was the initiative of a single MP and that it needed 63 signatures in order to be put on the agenda. Such a proposal would also require a constitutional change with a qualified majority of 95 votes, and a delay of six

⁶⁴ *Rasul Jafarov s. Azerbaijan*, application no. 69981/14, judgment of 17 March 2016.

⁶⁵ Mr Asabali Mustafayev, a lawyer representing a number of applicants to the European Court of Human Rights, mentions 27 cases.

⁶⁶ Case of Yunusova and Yunusov v. Azerbaijan (*Application no. 59620/14*). - <https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001-163330&filename=CASE%20OF%20YUNUSOVA%20AND%20YUNUSOV%20v.%20AZERBAIJAN.pdf>

months between the two readings. We expressed our concern regarding this initiative that would impede the unconditional implementation of decisions of the European Court of Human Rights, which is a binding obligation on all members of the Council of Europe. During our last visit in June 2017, we were reassured that the draft was not any longer pending in parliament.

10. Conclusion

75. We welcome the liberation of some of the so-called “political prisoners”/“prisoners of conscience” in 2016 and 2017, but we remain concerned about new arrests in recent months. We hope that more persons will be released in the months to come.

It is necessary to demand the release of all 145 innocent people, who still stay in prison, and not to apply with hope that a few more people will be released. The arrests continue! It is necessary to demand stop of repression. PACE should demand compliance with the law, rule of law and not ask the dictator pardon for innocent people!

76. The principle of the separation of powers is essential and it is important to develop the oversight function of the parliament over the executive in Azerbaijan.

77. We take note of the planned justice reform. We emphasise that the justice system needs to be truly independent, impartial and free from interference by the executive.

78. The criminal justice system must be transparent, accountable and respect the presumption of innocence as well as the principle of equality of arms. We welcome the ongoing reform initiated by the President of the Republic’s Executive Order on “improvement of operation of the prison system, humanisation of criminal policies and extension of application of alternative sanctions and non-custodial preventive measures” and we call on the authorities to quickly pursue its formal legislative adoption and implementation. We reiterate that judicial independence and impartiality is a prerequisite for a criminal justice system that is compliant with European standards. The issue of freedom of expression in Azerbaijan also needs to be considered in relation with the lack of independence of the judiciary. The arbitrary application of criminal legislation to limit freedom of expression raises serious concerns in particular on account of the reported use of different criminal laws against journalists and bloggers. We reiterate the Assembly’s call to speed up efforts towards the decriminalisation of defamation.

If there is no threat of sanctions. Azerbaijani authorities will ignore all appeals, calls

79. It is of utmost importance to establish an independent, transparent and effective complaints system for allegations of ill-treatment by law enforcement officials so as to ensure that there is no impunity for misconduct or ill-treatment, which is of fundamental importance for the enhancement of public trust and confidence in the

criminal justice system. Conditions of detentions need to be improved in line with the CPT's recommendations, which should be made public without delay.

On August 10, 2017 judge of Garadagh District Court Fuad Huseynov dismissed the complaint of lawyer Yalchin Imanov about tortures against Abbas Huseynov in Gobustan prison.

In September 2014 lawyer Alaif Hasanov apply to court about tortures against Leyla Yunusova in Baku Detention Centre No. 1. The lawyer was punished and expelled from the Bar Association.

80. There needs to be a true reform of the restrictive norms governing the operation and funding of NGOs and their implementation so as to allow for the functioning of a vivid civil society and ensure respect for freedom of association. Respect for political freedom and notably freedom of assembly is also at stake.

81. The implementation of judgments of the European Court of Human Rights and in particular those affecting persons in detention, including Ilgar Mammadov, is of the utmost importance.