

## **Response**

### **of the Azerbaijani Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Azerbaijan**

**from 23 to 30 October 2017**

The Azerbaijani Government has requested the publication of this response. The CPT's report on the October visit to Azerbaijan is set out in document CPT/Inf (2018) 37.

Strasbourg, 18 July 2018

*Note: In accordance with Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, names of individuals have been deleted.*

## **Response to the issue raised in paragraph 9 of the Report (publication of the CPT reports)**

In June 2018 the Azerbaijani Government requested the CPT to publish the reports on its visits to Azerbaijan carried out in 2004, 2012, 2013, 2015, 2016 and 2017 together with the Azerbaijani Government's responses.

## **Response to the issues raised in paragraphs 11 - 13 of the Report (meeting with the prosecutors directly in charge of examination of cases of alleged ill-treatment)**

On 31 May 2018 high-level representatives of the CPT held a meeting, at the Office of the Prosecutor General, with prosecutors and investigators directly in charge of examination of a number of complaints indicated in the CPT reports and related to alleged ill-treatment. During the meeting, the CPT representatives had a detailed discussion of the mentioned cases and were able to study relevant case materials.

## **Response to the issues raised in paragraph 16 of the Report**

### Criminal proceedings

According to Article 148.1 of the Code of Criminal Procedure (CPC) of the Republic of Azerbaijan, a person suspected of committing an offence shall be detained if there is a direct suspicion that he committed the offence or other information giving grounds for suspicion that he committed the act provided for in criminal law.

Article 148.6 of the CPC states that except the case provided for in Article 148.7 of the CPC, the detention of a person on the basis of suspicion of committing a crime cannot last more than 48 hours. Until the expiration of the specified period, the detainee must be charged, and if there is a request of the prosecutor in connection with the detention, he must be brought before a court that must immediately consider the case and make a decision on the election of a preventive measure in the form of detention or his release.

Pursuant to Article 148.7 of the CPC, if a large number of persons suspected or accused in criminal cases, which are conducted under articles 102, 114, 120.2.11, 169, 214, 214-1, 214-3, 215.3, 217, 218, 219, 219-1, 220, 274, 275, 276, 277, 279, 280, 282 or 283-1 of the Criminal Code of the Republic of Azerbaijan, the special complexity of the case or the large amount of collected materials impede the implementation of the actions provided for by Article 148.6 of the CPC within 48 hours, that term shall be extended for a period not exceeding 48 hours by a court decision on the basis of a reasoned request of the investigator and the request of the prosecutor supervising the preliminary investigation.

Article 157.3 of the CPC indicates that a person arrested by a court decision may not be held in a temporary detention center for more than 24 hours and before the expiration of that period, he must be transferred to the remand center (the period of transportation of the person to the remand center by vehicles is not included in the specified period).

Compliance with these requirements of the CPC during the prosecution is subject to strict control.

According to the Order No.10/70 "On increasing the effectiveness of prosecutor's guidance of the preliminary investigation, strengthening supervision over investigation and inquiry and further improvement of activities in this field", issued by the Prosecutor General of the Republic of Azerbaijan on 28 June 2010, the lawfulness of the persons' bringing to district police stations and detention in temporary detention facilities is regularly examined by staff members of district and city prosecutor's offices, as well as by staff members of relevant divisions of the Prosecutor General's Office entrusted to supervise the inquiry and investigation, and when necessary, relevant documents are drawn up.

During these inspections, prosecutors meet with detained persons, examine the lawfulness and validity of their being taken to police stations and detention centers, ask them whether they had been subjected to torture or cruel, inhuman or degrading treatment. Thus, the implementation of real measures to prevent citizens from being arbitrarily arrested and to prevent any unlawful acts against them is ensured.

### Administrative proceedings

According to Article 89 of the Code of Administrative Offenses (CAO) of the Republic of Azerbaijan, the person who committed an administrative offence may be subjected to administrative arrest for 3 hours. At the same time, it is permitted to administer administrative detention in certain cases for 24 hours, 48 hours, and 3 days by the decision of the judge.

Furthermore, under Article 30 of the CAO, administrative detention is imposed by a judge for up to three months in exceptional cases, depending on the individual types of administrative offense.

It is to be noted that, within the reform conducted in Azerbaijan in recent years and aimed at humanization of criminal polices, the category of acts under 3 (theft, misappropriation and fraud) Articles of the Criminal Code was changed from criminal to administrative offense by increasing the amount (of damage) that causes criminal responsibility. Previously, the criminal offence of battery was decriminalized and introduced as an administrative offence. Criminal sanctions for those offences provided for up to 2 years of imprisonment. Taking account of these facts, the sanction in the form of up to 3 months of administrative arrest for these administrative offences should be regarded as adequate and proportionate.

### **Response to the issues raised in paragraph 17 of the Report**

Article 8 of the Law of the Republic of Azerbaijan “On ensuring the rights and freedoms of individuals held in detention facilities on remand” dated 22 May 2012 provides that, if it is necessary to conduct investigative actions or ensure the participation of a detained person in judicial proceedings at a place remote from the settlement in which the detention facility is located and his daily delivery seems impossible, a person taken into custody during pretrial proceedings on a reasoned decision of the prosecutor supervising the preliminary investigation, and during the judicial proceedings on a reasoned decision of the court can be transferred from the pretrial detention facility in place of temporary detention for a period not exceeding 10 days within one month. At the request of the detained person, the specified period can be extended by a motivated decision of the court to the end of the proceedings.

When transferring a detainee from a remand center to a temporary detention center and returning him back, he undergoes a medical examination.

The transfer of a detained person from a remand center to a temporary detention facility for the purpose of conducting operational search measures is prohibited.

The same requirements are set out in Articles 159-1.-159-1.6 of the CPC and provide that, an investigator who considers it necessary to transfer a detained person from a remand center to a temporary detention facility for the purpose of conducting investigative actions in a place remote from the settlement in which the detention facility is located submits a justified petition to the prosecutor in charge of the procedural management of the preliminary investigation. If the prosecutor supervising the preliminary investigation agrees with the need to transfer the accused from the remand center to the temporary detention facility, he makes an informed decision to transfer the accused from the remand center to a temporary detention facility with an indication of the period. If the prosecutor supervising the preliminary investigation concludes that the grounds for transferring the accused from the pretrial detention center to the temporary detention center are insufficient, he decides to reject the application.

The transfer of a detained person from a remand center to a temporary detention facility in connection with the need to ensure his participation in judicial proceedings is carried out during judicial review on the basis of the parties' petition.

On 15 July 2016, the district and city prosecutors were charged to keep the issue of return of detained persons from a remand center to a temporary detention facility under a strict control, and to ensure that accused persons are transferred to temporary detention facilities only if necessary and when certain actions cannot be conducted in detention facilities.

### **Response to the issue raised in paragraph 19 of the Report**

#### General comments (legislation)

The Republic of Azerbaijan has joined to numerous international instruments in the field of protection of human rights and freedoms, including the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention for the Prevention of Torture or Inhuman or Degrading Treatment and the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by so doing has undertaken obligations on adopting effective legislation and carrying out other measures to prevent torture.

A number of consecutive and purposeful steps were taken and institutional reforms were implemented in order to fulfill the said obligations.

First of all, it should be noted that according to Article 12 of the Constitution of the Republic of Azerbaijan, the supreme objective of the State is to ensure rights and freedoms of a person and a citizen, and a decent living standard for the citizens of the Republic of Azerbaijan.

In order to ensure that the provisions of the Constitution are fulfilled, specific provisions on law enforcement bodies have been defined in existing laws and other legal acts.

According to Article 8 of the CPC, the tasks of criminal proceedings are to protect the individual, society and the state from criminal attacks; protect the person from cases of abuse of official powers in connection with the actual or alleged commission of a crime; rapid disclosure of crimes, comprehensive, complete and objective clarification of all circumstances related to criminal prosecution; detecting and bringing to justice those who committed the crime; the administration of justice with a view to punishing persons accused of committing a crime with the establishment of their guilt and the rehabilitation of the innocent; apply criminal law measures against legal entities for crimes committed by individuals in favor of a legal entity or in order to protect its interests.

Article 10 of the CPC states that, courts and participants in criminal proceedings shall conform to the Constitution, the CPC and other laws of the Republic of Azerbaijan as well as provisions of the international agreements to which Azerbaijan is a party to. No one may be incriminated or charged with a view to prosecution as a suspect or accused person, detained, arrested, searched, taken by force or subjected to other coercive procedural measures, nor convicted, punished or subjected to other limitations of rights and liberties other than on the basis of the rules and principles established by the laws of the Republic of Azerbaijan which are in force and published.

Article 12 of the CPC stipulates that, the judicial authorities shall observe the rights and freedoms of a person and a citizen afforded by the Constitution to all participants in criminal proceedings.

During criminal proceedings everyone shall have the right to defend their rights and liberties as set down by the Constitution in any manner not prohibited by law.

Decisions on the temporary limitation of the rights and liberties provided for in the Constitution in connection with the application of coercive procedural measures may be taken only in case of necessity, in accordance with the CPC.

It shall be prohibited to use methods and means that may threaten life and health or the environment during criminal prosecution.

In addition, according to Article 13 of the CPC, it shall be prohibited to take decisions or allow acts during the criminal prosecution which debase the honour and dignity of the person or may threaten the life and health of the participants in the proceedings. During a criminal prosecution nobody shall be subjected to treatment or punishment that debases human dignity; held in conditions that debase human dignity; forced to participate in carrying out procedures that debase human dignity.

Article 14 of the CPC states that the right to liberty may be limited only in cases of detention, detention on remand or imprisonment in accordance with the law.

No one may be detained or arrested other than on the grounds provided for in the CPC and other laws of the Republic of Azerbaijan. Only a court decision shall permit the detention on remand of a person or placement in a medical or care institution by force.

The person detained or arrested shall be immediately informed of the reasons for detention or arrest, the nature of the suspicion or charge and his right not to give a statement and to seek legal aid from defense counsel.

The preliminary investigator, investigator, prosecutor or judge shall immediately release any person illegally taken into custody or arrested.

Article 15 of this Code states that search and personal examination, as well as other procedures which breach the right to inviolability of the person may not be carried out against the will of the person concerned or his legal representative without a court decision except in cases of detention and arrest. During the criminal prosecution the use of torture and physical and psychological force, including the use of medication, withdrawal of food, hypnosis, deprivation of medical aid and the use of other cruel, inhuman or degrading treatment and punishment; the imposition of long-term or severe physical pain or acts which are detrimental to health, or any similar ill-treatment; taking evidence from victims, suspects or accused persons or from other participants in the criminal proceedings using violence, threats, deceit or by other unlawful acts which violate their rights shall be prohibited.



The same principles are envisaged in the Criminal Code.

According to Article 9.2 of the Criminal Code, penalties and other criminal law measures applied to a perpetrator of a crime cannot have the nature or purpose of torture or other cruel, inhuman or degrading treatment.

Further, under Article 292 of the Criminal Code, knowingly unlawful detention, knowingly unlawful arrest or knowingly unlawful detention at the place of detention are punished by imprisonment for a certain period of time.

According to Article 293 of the Criminal Code (“Torture, cruel or inhuman or degrading treatment or punishment not considered torture”), cruel, inhuman or degrading treatment or punishment against a person committed by an official of a public authority in connection with the performance of his official duties or by another person acting in this capacity, or with his incitement or consent, or other persons in his Knowledge, are defined by the criminal law as punishable acts.

The “Note” to the Article indicates that in this **Article**, as **well as in other Articles** of the **Code**, “torture” means the infliction of severe physical pain or mental suffering in order to obtain information or a confession from the person himself / herself or another person or intimidation of him / her or another person, punishment for an act committed by him / her or by another person or in the commission of which he / she or another person is suspected, forced to commit an act against his / her will or for any reason based on discrimination.

Article 15 of the Law on ensuring the rights and freedoms of persons held in detention facilities on remand indicates that, detainees or arrested persons are entitled to detention with guaranteed personal security and not to be subjected to torture and inhuman or degrading punishment or treatment.

According to Article 27, persons detained or imprisoned should in no case be subjected to torture and inhuman or degrading treatment or punishment. They should not be held in conditions that infringe their dignity.

Article 22.3 of the Law provides that, complaints against torture and inhuman or degrading treatment, as well as written information about bodily injuries resulting from torture and allegedly obtained as a result of torture and inhuman or degrading treatment, shall be promptly sent to the prosecutor supervising the preliminary investigation.

The Prosecutor General of the Republic of Azerbaijan by its Order No. 10/117 assigned special officers in the territorial prosecutor's offices to supervise the enforcement of the laws in places of detention (temporary detention centers, pretrial detention facilities).

On 27 January 2018, the Prosecutor General and the Minister of the Interior addressed the heads of all their local structures with a circular letter concerning additional measures to protect the rights of detained or arrested persons. They required ensuring a full and comprehensive investigation of all allegations of torture, cruel, inhuman or degrading treatment or punishment, and bringing the **criminal offenders** to responsibility.

This issue was discussed at the Operational Meeting of the Ministry of Internal Affairs held in April 2018, and a relevant decision consisting of 44 paragraphs was adopted and submitted for execution.

General comments (National Preventive Mechanism, disciplinary measures, criminal investigations)

Members of the National Preventive Group conduct direct unrestricted monitoring of the temporary detention centers. During the last 5 years and 5 months of 2018, they monitored temporary detention centers 1413 times; they did not establish any fact of torture of detained persons by the police officers.

All temporary detention centers of the Ministry of Internal Affairs have been equipped with video surveillance systems; boards with hotline phone numbers of the Ombudsman institution and the Azerbaijan Committee against Tortures were placed and special telephone devices were installed in TDCs in order to enable persons to submit complaints of torture and other violations.

Further, 40 employees of temporary detention facilities were removed from the Ministry of Internal Affairs, 6 persons were dismissed from their offices and 199 persons were subjected to disciplinary sanctions due to negligence in implementation of their duties related to treatment of detained persons.

In May 2018, Baku city Garadagh District Prosecutor's Office instituted a criminal case under Article 293.2 (“Torture, cruel or inhuman or degrading treatment or punishment not considered torture, committed by a public official in connection with his service duties”) of the Criminal Code in connection with A. M. A.’s complaint of alleged torture by police officers. At the same time, Sumgayit city Prosecutor's Office instituted a criminal case in connection with R. S. A.’s complaint of unlawful arrest and detention, exposure to torture and injuries inflicted by police officers. The investigation of both cases is underway.

**Response to the issue raised in paragraph 23 of the Report (allegations of ill-treatment by staff of State Customs Committee, the State Border Service and the Armed Forces)**

In 2017, the Office of the Prosecutor General investigated 7 cases related to alleged ill-treatment by officials of the State Customs Committee. The collected materials and evidences did not confirm facts of torture or ill treatment in those cases, and institution of criminal proceedings was rejected under Articles 39.1.1 and 212 of the CPC.

As concerns the allegations of ill-treatment by staff of Armed Forces (Terter case), 7 persons were charged under Articles 133 and 341 of the Criminal Code, and their cases were submitted for a court trial. Currently, Office of the Military Prosecutor conducts investigation of a criminal case against 6 more persons.

**Response to the issue raised in paragraph 25 of the Report (individual cases)**

***R. H. S.***

The initial examination of R. S.’s complaint, conducted by the Ministry of Internal Affairs, confirmed the fact of physical violence by the police officers against R. S. On 26 March 2018, E. R., operative officer of the Binagadi District Police Department’s Police Station No. 40 was dismissed from the Ministry of Internal Affairs. 7 more persons were subjected to disciplinary sanctions for not preventing violation of the rights of the detained person in timely manner, committing procedural violations, not correctly compiling the relevant reporting documents (4 persons were reprimanded, 2 persons received serious reprimand, and 1 person received a warning for non-compliance with the service duty).

Further, in May 2018, Office of the Prosecutor of Binagadi District of Baku city instituted a criminal case under Article 293.2 (“Torture, cruel or inhuman or degrading treatment or punishment not considered torture, committed by a public official in connection with his service duties”) based on the materials collected in connection with R. S.’s complaint of his alleged beating and injuries inflicted by police officers. The investigation is ongoing.

*A. A. E.*

On 12 October 2017, A. A. E. was accused under Articles 177.2.2 (repeated theft) and 177.2.3 (burglary) of the Criminal Code by the Investigation Department of the Lankaran City/District Police Department. A. E. was arrested by the court decision of 14 October 2017 and brought to the Baku Pretrial Detention Center of the Penitentiary Service of the Ministry of Justice. Medical examination of A. E. revealed injuries consisting of swellings under his left foot, left ankle and parietal area of the head. A. G.– Assistant to the Prosecutor Lankaran District carried out an investigation based on the information of the Pretrial Detention Center received on 19 October 2017.

During the investigation, A. E. stated that on 11 October 2017, at about 18 p.m., when he was alone on a bridge in Gumbashi village of Lankaran District, several police officers in plain clothes approached him and forced him to get into the police car. According to A. E., while in the car, they punched him several times in the head, which resulted in hematomas. After that the police officers took him to the Liman Police Station and there, in one of the rooms, two policemen started to hit his soles with a truncheon and punch him in the head and other parts of the body. He was able to recognize only a policeman named R. out of those police officers who beat him.

R. M., Senior Police Investigator of the Liman Police Station of LankaranCity/District Police Department, indicated in his statement that on 1 October 2017 an application regarding a theft from the house of K. M., a resident of Narimanabad settlement, of items priced at 1,500 manats (AZN) by an unknown person or persons was filed with the Liman Police Station. A. E. was suspected of committing the theft. On 12 October 2017, R M. together with officers F. K. and E. F., approached A. E. the bridge in Gumbashi village, introduced themselves, and asked them to follow them to the Liman Police Station. During the oral questioning at the Police Station, A. E. stated that on 1 October 2017 committed the theft from

K.M.'s house. He also confessed that on 8 October 2017 he stole 200 AZN from the house of S. S. The police officers did not subject him to physical violence or any other form of ill-treatment.

E. M., Investigator of the Investigation Unit of the Lankaran City/District Police Department, K. B., Chief of the Liman Police Station, T. F., local police officer of the Liman Police Station, police officers F. K., I. R. F. G. in their statements confirmed the circumstances indicated by R. M., and indicated the police officers had not used force against A. E. and that he did not complain to them of any use of force against him.

T. A. A. indicated in his statement that he had not previously known A. E. On 12 October 2017, when he was standing next to the bridge in Gumbashi village, he saw that a man of 40-45 years fell when he tried to run away from the police officers. At that time, police officers did not use force against the man. Also, a few days before the incident, he has seen that man fighting with an unknown person. He recognized A. E.

J. I., therapist of the Lankaran District's Central Hospital, indicated in his statement that when he examined A. E. the Liman Police Station, the latter did not say anything about violence by the police officers, and when asked why he was limping, A. E. answered that he fell and was injured by inadvertence.

According to the Forensic Examination Report dated 16 October 2017, bruises were found on A. E.'s body in the area of head and right foot. Those injuries could be caused by a hard and blunt object (or objects). The injuries were received approximately 4 or 5 days before 16 October 2017. The degree of the injuries could not be established due to the fact that they had not caused any harm to A. E.'s health.

On 18 December 2017, institution of a criminal case was rejected under Articles 39.1.1 and 212 of the CPC as the investigation did not confirm A. E.'s statement that he had been subjected to physical violence by the police officers of the Liman Police Station of Lankaran City/District Police Department.

The criminal case on charges against A. E. under articles 177.2.2 and 177.2.3 of the Criminal Code was submitted to the Lankaran District Court for examination. The court found A. E. guilty and he was sentenced to 2 years and 6 months of imprisonment.

***R. M. G.***

On 24 August 2017, R. M. G., charged with articles 181.2.1 (extortion committed by a group of persons) and 181.2.3 (extortion committed with use of violence) of the Criminal Code, was delivered to the Baku Pretrial Detention Center from the Temporary Detention Center of the Binagadi District Police Department of Baku city. R. G.'s medical examination revealed injuries in the form of bruises in the back and front part of the right thigh, the primary healing of a wound on the front area of the left knee, swelling in the back area of the left thigh and hemorrhage in the right eye. This information was submitted to the Office of the Prosecutor of Binagadi District. A. A., Senior Investigator of the Office of the Prosecutor of Binagadi District carried out an investigation based on this information.

During the investigation, R. G. indicated in his statement that on 22 August 2017 officers of the Binagadi District Police Department's Police Station No. 4 detained him together with V. A., his acquaintance, and took them to the police station. The reason was a complaint filed by Y. S. who stated that R. G. and V. A. had robbed him and broke into his house to extort money from him. According to R. G., after they were brought to the police station, the Chief of the station, his deputy and other police officers tied his hands and legs with scotch tape, beat him and demanded to give testimonies corresponding to those given by Y. S., the complainant. Despite that, he refused to give such a testimony. At that time, V. A., who was beaten by the police officers in another room, gave the testimony demanded from him.

R. G. refused to undergo a forensic medical examination because the injuries he received as a result of the beating healed up.

Z. O., local police officer of the Binagadi District Police Department's Police Station No. 4, indicted that special investigative activities conducted by the police station's officers in connection with Y. S.'s complaint of robbery committed on 18 August 2017 in Binagady settlement, revealed that the said offence was committed by V. A. and R. G., residents of Zagatala District. On 21 August 2017, at about 7 p.m., they were detained in the territory of Binagadi settlement and taken to the police station. The said persons in their preliminary testimonies acknowledged the commission of the criminal offence and on the same day they were transferred to the investigative division of the Department. While at the police station, no physical violence or any other form of violence was used against R. G. or V. A. He had no information regarding the injuries revealed on their bodies.

Y. Y., Deputy Chief of Binagadi District Police Department's Police Station No. 4, Investigators R. A. and O. S. confirmed Z. O.'s statement.

According to the Forensic Examination Report dated 16 October 2017, no injuries or traces of injuries were found during the examination of R. G.'s body. According to the medical documents, during the medical examination of R. G. conducted on 24 August 2017 at the Baku Pretrial Detention Center, bruises on the left shoulder and on both thighs, the bruises on the front and back surfaces of the rib cage, on both shoulder blades, on the left arm and right elbow joint was found. These injuries were caused by a hard and blunt object, and they were received approximately 6-8 days before the medical examination at the Baku Pretrial Detention Center. The degree of those injuries could not be established due to the fact that neither of them had caused any harm to R. G.'s health.

On 12 December 2017, institution of a criminal case was rejected under Articles 39.1.1 and 212 of the CPC as the investigation conducted did not confirm R. G.'s statement that he had been beaten and subjected to torture by the police officers Binagadi District Police Department's Police Station No 4.

The criminal case on charges against R. G. under articles 181.2.1 and 181.2.3 of the Criminal Code was submitted to the Baku Court on Serious Crimes for examination. The court found R. G. guilty and he was sentenced to 10 years of imprisonment.

### ***E. E. M.***

On 6 October 2017, at about 3.30 a.m., E. E. M., while being in the state of average alcoholic intoxication, climbed on the window sill of the kitchen room of A. M.'s apartment in Bakikhanov settlement of Baku city in an attempt to commit a theft (previously, a criminal case has been instituted against E. M.; he has been charged of theft and a search warrant has been issued in his name). After this information was received by the Sabunchu District Police Department's Police Station No. 13, E. G., investigator of the police station, A. M., local police officer of the police station, R. M., operative officer of the police station arrived at the place. E. M. tried to flee and hid in the entrance of a residential building. When A. M., who was in the police uniform, approached E. M. and demanded him to follow to the police station, the latter stabbed A. M. with a souvenir knife. A. M. received a wound in the left elbow area and a non-penetrating wound in the abdomen.

On 6 October 2017, E. M. was detained as a suspect. On 7 October 2017, he was charged with Article 315.2 of the Criminal Code (“Resistance to a representative of authority with the use of force endangering his / her health or life”). On the same day he was arrested following the Sabunchu District Court’s decision.

According to the Forensic Examination Report of 7 October 2017, injuries in the form of excoriations in the forehead, left elbow joint, right shoulder, right forearm, right hand, joints of both knees and right ankle areas, and bruise under the left eye and shoulder area. These injuries were caused by a hard and blunt object (objects); they were received on 6 October 2017, and the degree of the injuries could not be established due to the fact that they had not caused any harm to E. M.’s health.

The investigation established that E. M. received the injuries at the time of apprehension after he resisted the police officers using the force endangering their health.

According to Article 37.1 of the Criminal Code, causing of harm to a person during his apprehension with the purpose of bringing him before a competent authority or preventing new offences shall not constitute a criminal offence, if all other means did not produce the needed result and the force used was not excessive.

Institution of a criminal case was rejected under Articles 39.1.1 and 212 of the CPC due to the absence of *corpus delicti*.

Based on the evidences gathered during the investigation, on 30 January 2018, a new indictment under Articles 177.2.1, 177.2.3; 29, 177.2.2; 29, 177.2.3 and 315.2 of the Criminal Code was brought against E. M. On 8 February 2018, his case was submitted to the Sabunchu District Court for consideration. By the court judgment E. M. was sentenced to 4 years and 6 months of imprisonment.

### **Z. Y. A.**

Z. Y. A. was indicted under Article 234.4.3 (illegal acquisition or possession of narcotics in large quantities with the purpose of sale) of the Criminal Code, his case being investigated by the Yardimli District Police Department. His complaint about alleged beating by the Chief and Deputy Chief of the Police Department, was examined by V. M., the Yardimli District Prosecutor.



During the investigation Z. A. indicated that, on 10 June 2017, when he was detained by the officers of the Yardimli District Police Department, the police officers named M. and E. slapped him, but he did not receive any injuries.

A. B., the Chief of the Yardimli District Police Department indicated that on 10 June 2017 he received a report on illegal traffic in narcotic drugs and on the basis of information he instructed the staff to carry out necessary operational and search activities. As a result of the operative and search activities, Z. A., a resident of Yardimli town, was detained on a suspicion of illegal drug trafficking and searched. As the result of the search, 200.044 grams of heroin and 2000.3 grams of opium were found and seized. A. B. denied any illegal actions against Z. A. while he was kept at the police department.

M. M., Deputy Head of the Yardimli District Police Department, E. N. and S. N., operative officers, gave explanatory statements similar to A. B.'s statement.

The Forensic Examination Report No.80 dated 23 September 2017 indicated that no injuries or traces of injuries were found during the examination of Z. A.

The investigation did not confirm Z. Y. A.'s statements that he was subjected to beating and torture by the Yardimli District Police Department's police officers, and the institution of a criminal case was rejected by the decision taken on 25 September 2017 pursuant to Article 39.1.1 and Article 212 of the CPC.

Preliminary investigation of the criminal case against Z. A. under Articles 32.5, 206.3.2, 234.4.1 and 234.4.3 of the Criminal Code has been completed and sent to the Lankaran Grave Crimes Court for consideration. By a court judgment he was sentenced to 10 years' imprisonment.

### ***N. M. G.***

On 23 July 2017, at approximately 1:30 a.m., the residents of Shirvan city N. M. G., S. M. R. and A. A. H., the residents of Shirvan city, grossly violated public order and committed malicious hooliganism in the park located on the M.A. Rasulzade Avenue of Shirvan city. They also inflicted bodily injuries on M. H., S. Y. and Y. H., the patrolling police officers of the Shirvan Police Department, who arrived at the scene. Further, they damaged the police car by breaking its window. The Criminal Investigation Unit of the Shirvan city Police Department instituted a criminal case under Article 221.2.1 (hooliganism committed by a group of people) of the Criminal Code, and conducted the investigation.

On 23 July 2017, N. G., S. R. and A. H. were detained as suspects.

On 25 July 2017, the case was submitted to the Shirvan City Prosecutor's Office and a joint investigative group was established due to presence of constituent elements of the offence provided for in Article 315 ("Resistance to a representative of authority") of the Criminal Code in the actions of N. G., S. R. and A. H. The same day N. G. was charged under Articles 221.2.1 and 315.1 of the Criminal Code. Shirvan City Court issued a 3 months arrest warrant.

On 4 October 2017, after completion of the investigation, the criminal case was submitted to Shirvan City Court for consideration. By that court's judgment N. G. was sentenced to 1 year of imprisonment.

During the investigation of the criminal case, N. G. stated in his testimony that on 22 July 2017, at about 11 p.m., the police officers who arrived in the park in Shirvan city punched him, and struck him down to the ground, then put him in the luggage compartment of the car and brought to the police department.

According to the Medical Examination Report of 28 July 2017, injuries in the form of excoriations on the upper 1/3 part of the left arm and on the left elbow joint were revealed on the body of N. G. The injuries were caused by a blunt object (objects); and they could have been inflicted on 23 July 2017. The degree of the injuries could not be established due to the fact that they had not caused any harm to N. G.'s health.

The institution of a criminal case was rejected by the decision taken on 22 September 2017, taking into account the fact that the injuries on N. G.'s body resulted from his resistance to the police officers while getting into the police car.

### ***S. J. R.***

S. J. R. has been accused under Articles 177.2.1, 29, 177.2.3 (attempted theft) of the Criminal Code. Medical examination, conducted after S. R. was delivered from the Pretrial Detention Facility No. 3 of the Penitentiary Service of the Ministry of Justice from the Temporary Detention Center of the Surakhani District Police Department revealed injuries in the form of a punctured wound of the right side of the nose, excoriations on the rear part of the right elbow joint and the right knee, a cut on the left hand's thumb. According to S. R., he received those injuries by his negligence. This information was submitted to the Surakhani District Prosecutor's Office which conducted an investigation.

During the investigation, S. R. indicated that, on 1 June 2017, when he tried to commit theft from a grocery store in Ramana settlement, he was caught by the store owner who then called the police officers. S. R. was brought to the Surakhani District Police Department. S. R. further stated that a day before his detention, that is, on 31 June 2017, when he was going home, he felt and got injuries. He had no complaints in this connection.

E. M., duty officer of the Temporary Detention Center of the Surakhani District Police Department, in his statement noted that on 1 June 2017, when he was on duty, S. R. was brought to the department. His medical examination revealed injuries of the nose, the right elbow, the thumb of the left hand and the right knee. E. M. drew up a record of that fact. S. R. explained that he had received the injuries a day earlier on his way home. S. R. was not subjected to any kind of ill-treatment while he was kept at the police department, neither did he complain of ill-treatment by the police officers who brought him to the department or other persons.

According to the Medical Examination Report of 15 July 2017, the injuries in the form of scars on the left hand, nose and top of the head, and a scar on right knee joint were revealed S. R.'s body. The injuries were caused by a hard object (objects), and were received approximately 1-2 months before the examination. The injuries can be characterized as light injuries causing short-term damage to health.

The investigation established that S. R.'s injuries had been received before he was detained as a suspect; the investigation did not establish any fact of ill-treatment by the police officers against S. R. On 31 July 2017, institution of the criminal case was rejected pursuant to Articles 39.1.1 and 212 of the CPC.

The criminal case against S. R. under Articles 29, 177.2.1 and 29, 177.2.3 of the Criminal Code was to the Surakhani District Court for consideration. By the court decision he was sentenced to 3 years of imprisonment.

#### ***T. A. M.***

On 14 January 2017, at about 11:00 a.m., T. M., resident of Garaghaji village of Barda District murdered his neighbor H. M., by striking numerous blows on his head with a piece of wood and a piece of roofing slate. The incident took place in Garaghaji village near the water canal passing through the sowing area; it occurred due to a personal conflict.

On the same day, Barda District Prosecutor's Office initiated a criminal case under Article 120.1 ("Premeditated murder") of the Criminal Code based on the material collected in connection with the fact of deliberate murder by T. M.

On 14 January 2017, T. A. M. was arrested as a suspect; on 16 January 2017 he was indicted under Article 120.1 of the Criminal Code. The Barda District Court sanctioned his 4-month arrest.

T. M.'s counselor filed complaints with Barda District Prosecutor's Office in which he claimed that his client had not murdered H. M. and that he confessed because he was beaten by Barda District Police Department's officers.

T. M. in his statement of 22 February 2017 indicated that after he was brought to the Barda District Police Department on 14 January 2017, police officer named B. handcuffed his hands and blew strikes in his soles with a rubber hose.

The examination of those complaints did not confirm the allegations.

B. M. and E. M., officers of the Barda District Police Department, testified that they had not beaten T. M., had not threatened him or forced him to confess about murder of H. M.

T. M. underwent medical examination on 15 January 2017, which revealed no injuries on his body.

In addition, according to the records in the Medical examination and registration of received medical care log book of Barda District Police Station and T. M.'s medical records in Ganja Pretrial Detention Center No. 2 of the Penitentiary Service of the Ministry of Justice, no injuries on his body were revealed during 14-18 January 2017.

On 22 July 2017 institution on a criminal case in connection with these complaints was rejected.

**Response to the issue raised in paragraph 29 of the Report (health-care professionals working in temporary detention centers)**

According to Article 2 of the “Regulations on medical and psychological assistance to detained or arrested persons, as well as on their detention in medical facilities”, approved by Decision No. 67 of the Cabinet of Ministers on 18 April 2013, detained persons shall be examined by medical personnel of the detention facility within 24 hours from the time of their detention or arrest, and a medical file shall be drawn up for each person who is accepted into temporary detention center.

If there are no medical personnel at the temporary detention facility, doctor from the territorial public medical institution shall be invited. The medical file shall contain a description of the bodily injuries revealed during the initial screening, regardless of the time of their infliction.

When physical injuries allegedly inflicted as a result of torture or inhuman or degrading treatment are revealed, the medical record of the date and time of the examination and the conditions of injury are made in the medical file. The record shall be signed by the arrested person and the doctor.

When the detainee or the arrested person gets ill or injured at the time when he/she was kept in the temporary detention center, his medical examination shall be carried out by the physician and the results shall be recorded, and information shall be provided to the detainee or the arrested person, as well as to his / her defense counsel.

If necessary, medical examination shall also be carried out by specialists of other medical institutions chosen by those persons on the basis of the decision of the prosecuting authority upon request of the detained or arrested person or his defense counsel. Complaints of torture and ill-treatment, as well information about injuries revealed by the medical examination and allegedly caused by such treatment shall be immediately forwarded to the prosecuting authority implementing procedural supervision over the primary investigation.

**Response to the issue raised in paragraph 32 of the Report (right of persons deprived of their liberty to inform a close relative or another third party of their situation)**

In accordance with Article 90.7.6 of the CPC of the Republic of Azerbaijan, from the moment of detention or presenting of the decision on imposing a measure of restriction, the suspect immediately informs by telephone or other means about the detention and the place of detention his close relatives or other persons whose relations are of legitimate interest to him; if the detained person is a foreigner or a stateless person, immediately informs the diplomatic mission or consulate of the state of which he is a citizen or resident in the Republic of Azerbaijan or a national or international organization that has taken custody of him.

Article 91.5.6 of the Code provides that, the accused immediately informs by telephone or other means about the detention or imprisonment and the place of detention his close relatives or other persons whose relations are of legitimate interest to him; if the detained person is a foreigner or a stateless person, immediately informs the diplomatic mission or consulate of the state of which he is a citizen or resident in the Republic of Azerbaijan or a national or international organization that has taken custody of him.

According to Article 153.2.4 of the Republic of Azerbaijan, the officials of the prosecuting authority shall secure the right of the person to inform others of his detention immediately after detention (the authority in charge of the temporary detention facility, on his own initiative, shall inform the family members of any detainees who are elderly, under age or unable to do so themselves because of their mental state).

Article 161.1.2 of the Code states that, upon bringing the detained person to the pretrial detention center the administration of the remand center should immediately create an opportunity for him to report by telephone or other means about his detention and the place of detention to close relatives or other persons whose relations are of legitimate interest to him (the administration of the remand center cannot transfer such information on their own initiative, except for cases related to old age, minority, health and mental state of the detained person), if the person arrested is a foreign national or a stateless person, immediately inform the diplomatic mission or consulate of the State of which he is citizen or who permanently resident in the Republic of Azerbaijan and to register any transfer of such information.

At the same time, Article 15 of the Law on ensuring the rights and freedoms of individuals held in detention facilities on remand indicates that, detainees or arrested persons are entitled to inform by telephone about their detention to close relatives and other persons of legitimate interest to them, immediately after their delivery to the place of detention.

According to paragraph 3.6 of the Order No. 08/10 of the Prosecutor General requires that, if a person is detained, he should be able inform his family members about the detention, the place where he is held, and the place of his detention. Paragraph 3.7 of this Order stipulates that if the detainee is a or a stateless person, information about his arrest and grounds for his detention are required to be reported to the International Relations Department of the Prosecutor General's Office immediately with the aim of informing the relevant diplomatic mission in Azerbaijan through the Ministry of Foreign Affairs.

Based on the applicable laws and the requirements of the above-mentioned Order of the Prosecutor General, from the moment of detention or presenting of the decision on imposing a measure of restriction, the suspect immediately informs by telephone or other means about the detention and the place of detention his close relatives or other persons whose relations are of legitimate interest to him; if the detained person is a foreigner or a stateless person, the Ministry of Foreign Affairs immediately informs the diplomatic mission or consulate of the state of which he is a citizen or resident, or a national or international organization that has taken custody of him. The relevant procedural documents are compiled, and are attached to the materials of the criminal case.

**Response to the issue raised in paragraph 33 of the Report (access to a lawyer)**

According to Article 26 of the Constitution of the Republic of Azerbaijan, Everyone has the right to protect his/her rights and liberties using means and methods not prohibited by law.

The state guarantees protection of rights and liberties of all people.

Article 90.7 of the CPC of the Republic of Azerbaijan provides that from the outset of detention or the decision on the choice of restrictive measure, the suspect shall exercise the right to know the grounds for detention and to seek legal aid from defense counsel.

In accordance with Article 91.5 of the CPC, The accused shall exercise the right to know what he is accused of (content, factual description and legal classification of the charge) and to have defense counsel from the time of the arrest or the announcement of the charge.

At .the same time, Article 90.7.8 and 91.5.8 of the Code provide that the suspect and the accused have unlimited opportunities and time to meet his defense counsel in private and in confidence.

In accordance with Article 153.2.5 of the CPC of the Republic of Azerbaijan, the prosecuting authority shall provide opportunities for the person, from the moment of detention, to meet in private and in confidence with his lawyer and legal representative under decent conditions and under supervision.

Articles 153.2.6-153.2.7 of the CPC stipulate that, if the detainee does not have a lawyer of his own, he shall be presented with a list of lawyers from the bar association offices in the vicinity of the temporary detention facility, given an opportunity to contact the chosen lawyer and meet him; if the financial position of the detainee does not enable him to retain a lawyer at his own expense, an opportunity to meet the duty lawyer from one of the bar association offices in the vicinity of the temporary detention facility, at the state's expense should be provided.

According to Articles 232.1-232.2 of the Code, a suspect shall be interviewed immediately after being taken into custody or after pronouncement of the decision concerning any restrictive measure to be applied in his case. A suspect who has been taken into custody or an accused who has been arrested shall be entitled to give evidence in the presence of his defense counsel. When questioning suspects, the investigator shall take steps in advance to guarantee the presence of counsel in the circumstances provided for in Article 92.3 of this Code. In the circumstances provided for in Article 92.12 of this Code, the participation of defense counsel in the interview of the suspect shall be compulsory.



Articles 233.1 and 233.5 of the CPC require that the investigator shall interview the accused immediately after preferring charges against him; defense counsel shall be entitled to participate in the interview with the accused. The investigator shall take steps in advance to guarantee the participation of counsel in the circumstances provided for in Article 92.3 of this Code. In the circumstances provided for in Article 92.12 of this Code, the participation of defense counsel in the interview of the accused shall be obligatory.

Articles 232.2-1-232.2-2-ci, 233.5-1 and 233.5-2 of the Code stipulate that, if the detainee wishes to receive legal assistance, he cannot be interviewed until legal aid is received, or his interrogation cannot be continued without the participation of a lawyer.

Confessionary statements given by a detained person who did not waive the right to the defender without the participation of a defense counsel cannot be used as evidence during judicial review. Acceptance of these statements as evidence is allowed on the basis of the request of the defense party in the manner established by this Code.

In addition, Article 92.3.5 of the CPC of the Republic of Azerbaijan states that, Participation of a defense counsel in criminal proceedings should be ensured if, at the time of committing a crime, the suspect or accused was a minor. Article 92.12 of the Code provides that, the refusal of the suspect or the accused from the defender in view of his minority is not accepted, the defender is appointed to him compulsorily or the powers of the lawyer appointed as a defense are retained.

Also, in Article 100.2.2 of the CPC it is envisaged that, persons who have not reached the age of fourteen, the victim, civil plaintiff, suspect or accused or civil defendant shall be recognized as incompetent in criminal proceedings.

Pursuant to Article 100.4 of the Code, between the ages of 14 and 18 a victim, civil party, suspect, accused or defendant to a civil claim shall have limited legal capacity. The possibility of such persons exercising their rights independently as parties to criminal proceedings shall be limited with the consent of their legal representatives.

According to requirements of Article 100.7 of the CPC, party to criminal proceedings who lacks legal capacity may not exercise his rights independently. These rights shall be exercised by his legal representative in accordance with this Code.

Moreover, Article 101.1 of the Code provides that, if a victim, civil party, suspect, accused or defendant to a civil claim lacks or has limited legal capacity and has no parents, adoptive parents or guardian, the prosecuting authority shall appoint the guardianship institution as legal representative of that person.

According to Article 211.2.4 of the very Code, the investigator or the prosecutor in charge of the procedural aspects of the preliminary investigation shall allocate another criminal case from the materials of the criminal case under his execution, if along with other persons the minor is involved as the accused in the initial criminal case (when the allocation of production is possible).

Also, Articles 228-233 of the CPC provides that, serious requirements have been imposed on the interrogation of juvenile persons as witnesses, victims, suspects and accused persons.

In addition, articles 428-435 of section I "Specifics of the implementation of proceedings against minors", referred to in Chapter X "Specifics of the proceedings for a certain category of persons", are devoted to age, psychological characteristics, levels of physical, intellectual and mental development, and issues of preliminary investigation and regulation of court hearing.

Compliance with the rights of participants in the criminal proceedings has been in the focus of attention during the criminal investigations carried out by prosecution bodies and other state agencies of the Republic, and adherence to legislation on defense matters has been ensured.

All investigations related to suspected or accused persons on criminal cases have been initiated with the direct involvement of their defense lawyers, who were independently selected by them, contracted or appointed by the state.

During the preliminary investigation of crimes initiated in respect of the juvenile, in accordance with the above-mentioned requirements of the criminal procedure law, as a rule participation of their defense counsel and legal representative in criminal proceedings was ensured and all investigative actions related to them were conducted with the participation of their defense lawyer and the lawyer.

In accordance with the requirements of the criminal procedure law, a detained, arrested or accused person seeking legal assistance, was not questioned until he received legal aid or his interrogation was not continued without the presence of a lawyer; confessional statements of the detained person, the accused or arrested person, who has not waived the defense counsel, made without participation of the defense lawyer have not been referred to as evidence during the court proceedings.

Further, all temporary detention centers under the authority of the Ministry of Internal Affairs have meeting rooms. Persons held in temporary detention centers are provided with all necessary conditions for confidential meetings with their defense counsels or legal representatives (without any restriction as to number of meetings or their duration) from the moment of detention or announcement of a decision on application of a restrictive measure.

**Response to the issue raised in paragraph 38 of the Report (provision of information on rights of detained persons)**

According to Article 45 of the Constitution, everyone has the right to use his/her mother tongue. Everyone has the right to be educated, carry out creative activity in any language, as desired.

Nobody may be deprived of right to use his/her mother tongue.

Article 69 of the Constitution states that, foreign citizens and stateless persons staying in the Azerbaijan Republic may enjoy all rights and must fulfill all obligations like citizens of the Azerbaijan Republic if not specified by legislation or international agreement in which the Azerbaijan Republic is one of the parties.

Rights and liberties of foreign citizens and stateless persons permanently living or temporarily staying on the territory of the Azerbaijan Republic may be restricted only according to international legal standards and laws of the Azerbaijan Republic.

These principles have also been stipulated in the relevant norms of the applicable criminal procedure legislation.

Thus, Article 26 of the CPC provides that criminal proceedings in the courts of the Republic of Azerbaijan shall be conducted in the official language of the Republic of Azerbaijan or in the language of the majority of the population in the relevant area.

In the event that the parties do not know the language used in court, the judicial authority shall guarantee their right to use their mother tongue; the right to use the services of an interpreter free of charge during the investigation and court hearings, to be fully familiar with all documents relating to the case and criminal prosecution and to use their mother tongue in court.

The rights of parties who do not know the language used in criminal proceedings, as provided for under Article 26.2.2 of this Code, shall be secured at the expense of the budget of the Azerbaijan Republic.

The judicial authority shall provide the relevant persons with the necessary documents in the language used during the trial. Documents to be submitted to relevant persons who do not know the language of criminal proceedings are presented in their mother tongue or in another language they know.

According to Article 90 of the CPC, from the outset of detention or the decision on the choice of restrictive measure, the suspect shall exercise the following rights in accordance with this Code:

- to know what he is suspected of (the nature of the suspicion - factual description and legal classification of the offence of which he is accused);
- to know the grounds for detention, if detained, to receive legal aid from the defense counsel from the outset of detention, and to receive written notification of his rights from the person who detained him or the preliminary investigator, investigator or prosecutor;
- to receive a copy of the decision on his detention or on the choice of restrictive measure;
- to take cognizance the record of detention immediately after it is drawn up and to make observations, which must be appended to the record;
- to give statements in his mother tongue or a language he knows;
- to have the help of an interpreter free of charge.

Also, Article 91 of the Code provides that the accused shall exercise the following rights in accordance with this Code:

-to know what he is accused of (content, factual description and legal classification of the charge) and to receive a copy of the corresponding decision immediately after the charge is brought, the accused is remanded in custody or the decision on the choice of restrictive measure is announced;

- to receive written notification of his rights from the person who detained or arrested him or from the preliminary investigator, investigator or prosecutor;

- to acquaint himself with the record of detention and arrest immediately after it is drawn up and to make observations for inclusion in the record;

- to give statements in his mother tongue or in a language he knows; 91.5.12. to have the help of an interpreter free of charge.

In accordance with the requirements of Article 99 of the Code, persons who do not know the language of criminal proceedings during criminal prosecution shall be provided with the translator at the expense of the state.

According to the requirements of the Constitution, the criminal procedural legislation, as well as the Order No. 10/70 “On improving the effectiveness of the procedural management of the preliminary investigation by a prosecutor, strengthening supervision over the investigation and inquiry, and improving work in this area”, issued by the Prosecutor General on 28 June 2010, from the time when the suspect or accused were brought to the investigation during the investigation of criminal cases, if they do not know the language of criminal proceedings, they should be appointed an interpreter at the expense of the state the investigative actions are carried out in native language of suspects or accused or in a language they know with their direct participation their rights stipulated in the legislation should be explained in advance, notifications and other documents on their rights should be submitted in their native language or language which they know, and must be signed by them and their advocates.

At the same time, allegations of infringement of rights of suspected and accused persons and other documents are also attached to the materials of the criminal case.

Further, persons brought to the temporary detention centers of the police organs can get information on their rights and freedoms, relevant provisions of international law and documents regulating the functioning of the Ministry of Internal Affairs, by means of special boards placed visible places.

**Response to the issue raised in paragraph 43 of the Report (partial partition of toilets in multi-occupancy cells in police establishments)**

Relevant structural units of the Ministry of Internal Affairs currently take measures in order to eliminate the mentioned shortcomings.

**Response to the issue raised in paragraph 46 of the Report (conditions in the SSS Isolator)**

Under the requirements of paragraph 10.13 of the Cabinet of Ministers' Decision No. 63 "On approving the internal disciplinary rules of detention facilities", dated 26 February 2014, detained or imprisoned persons shall be provided with adequate conditions for bathing in the temporary detention centers no less than once a week. In the Investigative Isolator of the State Security Service conditions have been created for having access to shower twice a week, depending on the wish of detainees.

The sports hall area in the Isolator is 42 square meters and it is equipped with modern equipment. Only 2 persons are taken to the sports hall simultaneously, therefore the area of the gym can be considered satisfactory. In accordance with the Annex 11 the Cabinet of Ministers' Decision No. 63, dated 26 February 2014, short-term meetings, in contrast to the penitentiary institutions, should be conducted in glass-boxes in detention facilities. However, children and elder people have the opportunity to meet outside the glass-boxes. Besides, the detainees are provided with books, newspaper and magazines in Azerbaijani, as well as Russian and other foreign languages, also are provided with favorable conditions for performing religious beliefs. At the same time, the installation of TV sets is expected to be completed in all cells in the current year.

**Response to the issue raised in paragraph 47 of the Report (transferring the responsibility for the SSS Isolator to the Ministry of Justice)**

The SSS Isolator operates on the basis of the principles of respect for human and rights and freedoms, rule of law and humanism. The people suspected of committing acts of terrorism, espionage and other serious crimes and especially serious crimes investigated by the Investigation Department of SSS in accordance with the provisions of legislation are held there temporarily, by court decisions. The purpose is to ensure rapid and urgent investigative and operational measures in order to prevent serious threats to the national and international security, to prevent leaks of classified information, to ensure general security and protection of detainees.

Furthermore, the Investigation Department of SSS and the SSS Isolator operate independently from each other.

**Response to the issue raised in paragraph 50 of the Report (execution of the Executive Order of the Head of State on humanization of criminal policies, reducing the number of remanded and sentenced persons, providing 4 m<sup>2</sup> of living space per prisoner)**

As concerns the prevention of an increase in the number of remanded and sentenced persons the abovementioned special Order on humanization of penal policies was signed by the President of the Republic of Azerbaijan.

Immediately after the adoption of the Order, which plays the role of a “road map” for law enforcement authorities, analysis of the legislation and judicial-investigative practices was carried out, and new laws envisaging significant amendments to the Criminal and Criminal Procedure codes were drafted and submitted to the Head of the State. Based on the legislative initiative of the country’s President almost 300 amendments were made to the Criminal Code on 20 October 2017.

In the Criminal Code, 15 offences were decriminalized, while the category of acts under 3 Articles of the Code was changed from criminal to administrative offense by increasing the amount that causes criminal responsibility. Thus, decriminalization was carried out not only by abolishment of Articles of the Code, but also by increasing the amount of damage required to be caused in order to constitute a crime.

Moreover, the institute of exemption from criminal liability through reconciliation with the victim was improved; new norms were introduced stipulating exemption from criminal liability for crimes against property and in the field of economic activity.

According to law, for the purpose of reducing the application of the imprisonment sentence, a new type of non-custodial punishment was determined and alternative punishments were added to the sanctions of 158 Articles, including a new punishment - restriction of freedom, while imprisonment sentence for 36 crimes was made more lenient.

Attitude toward persons suffering from narcotic addiction was also humanized, as they shall be exempt from criminal liability upon full recovery from addiction as a result of compulsory stationary medical treatment and if no other deed constituting a crime has been committed.

From the date of entry into force of the Law on amendments to the Criminal Code (20 October 2017) documents on 6,461 sentenced persons falling under the Law's scope were sent to courts. Out of the reviewed cases, 1,550 sentenced persons were exempt from their sentences; the term of sentence of 1,815 persons was reduced, while the detention regime of 215 persons was mitigated. Currently, the works are ongoing in this field.

Presently, close to 700 cases are being reviewed by the courts in the implementation of that Law. Overall, it is planned that additional hundreds of sentenced persons will be exempt from criminal responsibility and sentence, including their situation becoming more lenient in other forms.

Moreover, in accordance with the recommendations made in the Presidential Order on humanization of penal policies, measures were taken to reduce the application of pretrial detention by the judicial and initial investigation authorities. As a result, in comparison with the previous period, in the past year the number of arrested persons decreased by 24%, while the number of presentations requesting to extend the detention period decreased by 33%.

Further, 413 sentenced persons were released from their imprisonment sentences by 2 Pardon Orders signed by the President of the Republic of Azerbaijan in 2017.

As a result of the most recent Pardon Order signed on 24 May 2018 by the Head of State on the occasion of the 100<sup>th</sup> Anniversary of the Azerbaijan People's Republic, 607 out of 634 pardoned persons were released from their imprisonment sentences.

In addition, 1,816 sentenced persons were released on parole, while 310 were released from imprisonment on other grounds envisaged by legislation. This in turn positively affected the decrease in the number of persons held at Penitentiary Service prisons and pretrial detention facilities, enabling to provide the persons held at penitentiary establishments with bedding area and 4m<sup>2</sup> of living space.



As of 1 April 2018, 584 persons were held at the Pretrial Detention Facility No. 2, against the capacity limit of 700, while 837 were held at the Pretrial Detention Facility No. 3, held against the capacity limit of 1050, and each of those persons is provided with an individual bed.

At the same time it shall be noted that the legislation was upgraded for efficient application of the public works punishment, in the framework of steps taken toward prevention of the practice of nominal execution of the public works sentence, by the 20 October 2017 Law a new norm was added to the Administrative Offenses Code, prescribing liability of an official for not executing the duties related to public works sentence or administrative penalty.

For the purpose of humanizing the penal policies, on 1 December 2017 amendments were made to the codes of Criminal Procedure and Execution of Punishments, in addition to numerous deductions, the provisions were envisaged on the means of electronic control, that enable widespread application of alternative punishment and procedural compulsory measures not associated with isolation from society.

In order to more efficiently organize the control over the execution of non-custodial punishments and the management in this field in accordance with the Presidential Order, the Probation Service of the Ministry of Justice was established and a number of organization measures were taken since to ensure the Service's operation.

The relevant change was introduced to the structure of the Ministry of Justice by the Presidential Decree of 7 November 2017; the Probation Service was defined as a structural body with general departmental authority, and the necessary work has been conducted for forming its staff.

One of the main novelties mentioned in the Executive Order is to ensure the use of information and communication technologies in the execution of sentences. In order to execute this task, the Ministry formed working groups with the relevant bodies and conducted respective analyses; the practice of a number of European countries (Turkey, Czech Republic, Sweden) in this field was studied.

At the same time, for the purpose of identifying the model that is more suitable to our country, the electronic control devices of various foreign and local companies were tested. In the end, a local manufacturer was chosen.

Electronic bracelets manufactured by that company were subjected to pilot testing in 2017 and the works on installing relevant software were finalized. For the purpose of organizing the monitoring activity, which is part of the electronic control means, the Monitoring Center was created at the Probation Service's administrative building and was equipped with necessary modern installations.

Presentation of the Electronic Monitoring Center was held before the public and media on 7 May and with the participation of judges of the Baku Court of Appeal and the capital city's district courts on 12 May. The participants were informed about the operation of the Electronic Monitoring Center of the Probation Service, the functions of electronic bracelets; the sentenced persons, to whom the electronic control device has been applied, were contacted via the relevant system, demonstrating in practice the surveillance process and control devices used on them.

Since the beginning of 2018, electronic control means were applied to 20 sentenced persons, while due to the expiry of the punishment term of 4 convicts released on parole their electronic bracelets have been removed. At present, 16 convicts, applied with electronic control devices, are being monitored by the monitoring center (11 sentenced persons released on parole and 5 convicts serving the restriction of freedom sentence).

For the purpose of ensuring application of electronic control means the relevant draft decision was prepared and duly presented and by the 10 April 2018 Decision of the Cabinet of Ministers the "List of the electronic control means applied to sentenced or remanded persons" and their application Rules were approved and entered into force on 15 April.

The Draft Rules of "Execution of Restriction of Freedom Punishments" were prepared, taking into account provisions of the new normative legal acts and the experience gained; they were approved by the Decision of the Ministry of Justice Plenary Board dated 24 April 2018, and directed to be implemented. These rules prescribe in detail the terms of serving the restriction of freedom punishment, the rights and obligations of execution officers and convicts in this regard, the consequences of violating the rules of serving the sentence, the initial search measures of persons who cannot be located.

In order to increase efficiency of the Probation control the Rules of “Execution of public works punishment and administrative penalty”, “Execution of correctional works”, as well as “Probation control over persons conditionally sentenced, released on parole, and with suspended sentence” were drafted, approved by the 24 April 2018 Decision of the Ministry of Justice Plenary Board and directed to be implemented.

At the same time, for the purpose of upgrading normative regulation in the field of probation, a Working Group of staffers of the Ministry’s relevant bodies was formed by the 15 May 2018 Order of the Minister of Justice. The Working Group was tasked to draft the Law “On Probation” and to improve other legislation in this field.

Results of the summary on the “Practice of application of legislation by the Republic’s first instance courts in reviewing presentations on remanding and extending the detention term of the accused persons during the second half of 2017” were discussed at the Plenary Board meeting of the Supreme Court on 25 May 2018.

It was found that presentations on remanding and extending the detention term and the petitions on replacing detention with alternative restrictive measures are reviewed by the courts in accordance with the requirements of the legislation. It was noted that the number of presentations on unnecessary detention and extension of the detention term has decreased, while the quality of justified court decisions has improved.

Moreover, some violations in court practice were also discovered.

It was decided at the Plenary Board meeting to send an overview letter to the courts for the purpose of eliminating mistakes in the application of legislation by the courts, ensuring standard application of law, and establishing a single court practice.

According to legislation, the decision on the extension of the term of pretrial detention of the accused person due to the complexity of the case shall be taken by the court, based on the presentation of the prosecutor leading the initial investigation.

According to the 1 December 2017 amendments introduced to the Criminal Procedure Code, in the event of exceptional complexity of a case only the Military Prosecutor of the Republic of Azerbaijan, the Baku City Prosecutor, the Prosecutor of the Nakhchivan Autonomous Republic, or the Deputy Prosecutor General of the Republic of Azerbaijan have the authority to file a presentation with the court on extension of the detention term.

In exceptional circumstances, where the case is being delayed due to the large volume of materials collected during the criminal process or due to a large number of the accused persons or where it is hindered in another form, only the Prosecutor General or his/her first deputy are authorized to file a presentation with the court on extension of the detention term.

**Response to the issue raised in paragraph 50 of the Report (completion of construction of new prisons)**

Construction works of the Ganja and Lankaran penitentiary establishments, the new prison located in Umbaki Settlement, the new prison for women and correctional facility for juveniles in Zabrat Settlement will be continued on account of funds allocated from the state budget. Requests were made to relevant state agencies asking to assist in expediting construction works.

**Response to the issues raised in paragraphs 52, 54 and 55 of the Report (taking decisive action to combat corruption at penitentiary establishments, especially the Pre-Trial Detention Facility No. 2, and to ensure that there is “zero tolerance” of ill-treatment; confidentiality of medical examinations)**

Special attention is being paid to increasing transparency in the operation, letters and complaints about abuse of power, corruption and ill-treatment are immediately taken under supervision and are investigated comprehensively. In 2017 the Penitentiary Service received 13 appeals, 19 appeals on ill-treatment were received; the circumstances mentioned in the appeals were not confirmed during the investigation.

As to the Pretrial Detention Facility No. 2, it shall be informed that the Ministry's leadership considered the findings of the 2016 CPT visit to that establishment as a concerning signal, thus the director of the facility was fired from justice organs for violations in his work and other disciplinary measures were taken in respect of 6 employees.

In the past period, the facility's administration was strengthened, appointments were made to the director deputies and other important positions; all employees were decisively demanded to not allow the occurrence of torture, ill-treatment and other degrading situations. At the instruction of the Minister of Justice, the operation of the facility is being supervised vigilantly.

Simultaneously, representatives of the International Committee of the Red Cross and of the National Preventive Group of the Commissioner for Human Rights of the Republic of Azerbaijan are enabled to regularly visit and get acquainted with the situation at the Pretrial Detention Facility No. 2.

The issues of ensuring human rights at penitentiary establishments and especially eliminating negative facts, abuse and ill-treatment cases were discussed at the Ministry's Plenary Board meeting held on 26 January this year.

At the meeting the Minister of Justice emphasized the special importance of ensuring human rights and zero tolerance of torture and other forms of ill-treatment by justice and other law enforcement employees, considering the political will of the Head of State.

Plenary meetings on the issue were also held at the Ministry of Internal Affairs and the Prosecutor General's Office. At the same time, on 27 January 2018 the Ministry of Internal Affairs and the Prosecutor General's Office sent out a letter to all structural bodies across the Republic concerning additional measures in the field of protection of rights of arrested and detained persons. The letter made important demands to fully ensure such persons' rights, not subject them to torture and ill-treatment, and not allow any offensive actions toward them.

Requirements of international documents on treatment of sentenced and remanded persons, as well as the topic on combating corruption were added to the curriculum of the courses for employees organized at the Academy of Justice of the Ministry of Justice and at the Training Center of the Penitentiary Service.

Also, the national report of Azerbaijan was reviewed recently in Geneva within the 30<sup>th</sup> Session of the UN Human Rights Council Working Group on the Universal Periodic Review. At the Session, our country's delegation, alongside other issues, shared information about the fight against torture and ill-treatment in Azerbaijan and demonstration of zero tolerance in this regard, and about the efficient cooperation with specialized international organizations in this field.

As to the issue of ensuring medical confidentiality, it shall be taken into account that all medical-sanitary units are fully equipped for this. While the individual circumstances mentioned by the CPT representatives are due to medical employee's failure to comply with the requirements, which can be explained by his/her negligence toward official duties.

In order to detect such cases, the officials of the Medical Department General have carried out unannounced inspections at the establishment and conducted anonymous surveys among prisoners. In any case, no instance of custodial staff participating in medical examination without the medical worker's invitation was observed. Also, the Medical Department General has not received any information or complaint about such cases.

The recommendations made, including that all medical examinations of prisoners should be conducted out of the hearing - and unless the doctor concerned requests otherwise in a particular case - out of the sight of prison officers, were extended to the medical employees and they were warned that they will be disciplined for violations in this respect.

**Response to the issue raised in paragraph 56 of the Report (use of handcuffs in accordance with the law and without excess)**

In penitentiary establishments the special means, including handcuffs, are used by strictly complying with the requirements of legislation in exceptional circumstances, only when necessary and for essential defense, in cases where other impact measures aimed at preventing unlawful actions of the sentenced and remanded persons did not produce the desired effect, depending on gravity of the violation or personality of the person committing it. According to the Internal Disciplinary Rules and the relevant Instruction in force, each fact of special means use toward convicts, including handcuffs, is reported to the leadership of the Ministry of Justice and the Penitentiary Service; service investigation is conducted into the persons who order and apply their use. No instances of unjustified or inadequate application of special means, including handcuffs, were recorded in 2017.

According to the "Instruction on security measures in the penitentiary system of the Republic of Azerbaijan and the rules of their application", every time special means, including handcuffs, are used the sentenced and remanded person shall receive medical assistance in due course.

At the same time, at the instruction of the Ministry's leadership, that Instruction was redrafted given the changes introduced to legislation, the recommendations made by the CPT were taken into account. Presently, proposals made by relevant agencies regarding the Instruction are being studied.

**Response to the issue raised in paragraph 57 of the Report (inmates having the possibility to take a hot shower at least twice a week)**

Sentenced and remanded persons held at the Pre-trial Detention Facilities of Baku, No. 2 and 3 are given the possibility of taking showers at least once a week during the winter season and at least twice during the warm season.

Still, taking into account the recommendations made by the CPT, the inmates at the Baku Pre-trial Facility were enabled to take showers twice a week.

**Response to the issue raised in paragraph 58 of the Report (the improvement of material conditions at the Pre-trial Detention Facility No. 2, reducing overcrowding and speeding up the construction of the new prison complex in Ganja)**

For the purpose of upgrading the material conditions of inmates held at the Pretrial Detention Facility No. 2, a 20-person living area was formed and utilized, while juvenile prisoners were transferred to the cell no. 67, with better conditions, located in the regime corpus No. 3.

Throughout the 4 regime corpora located in the administrative territory of the facility, substantial repair and refurbishment works were conducted in 70 cells and the dormitories, kitchen, bathroom, and goods warehouse allocated for inmates involved in the maintenance and housekeeping services. New ventilation equipment was bought, the lighting system was rebuilt, the corroded iron water lines were replaced with plastic pipes, the buildings' facades were repainted, and the asphalt pavement of the facility was renewed.

Moreover, a new 8-person cell was created for the remanded and sentenced persons, while the 2-cell penalty isolator located in the regime corpus no. 3 was repaired. Simultaneously, a new 3-cell penalty isolator is being constructed at present.

The capacity of the Pre-trial Detention Facility is 700 people and 584 inmates were being held there as of 1 April 2018. Every sentenced and remanded persons held at the facility is provided with a personal bed.

Construction of the new penitentiary complex in Ganja will be continued depending on the funds allocated for it. The under-construction new penitentiary complexes and the ones with approved projects are all planned with at least 4m<sup>2</sup> of living space per person (including sanitary units), areas for walking and sports.

**Response to the issue raised in paragraph 59 of the Report (taking all the necessary measures to build the new pretrial facility to replace the Pre-trial Detention Facility No. 3 and to close down the current establishment; pending this, improving material conditions and reducing occupancy rates in the existing establishment)**

The issue of construction of new establishments for the modernization of the penitentiary infrastructure can be reviewed in the future depending on allocation of respective funds.

It shall be noted that 2 wards were built and opened at the medical-sanitary unit of the Pretrial Detention Facility No. 3. New windows were installed in the respective regime corpora, ensuring normal ventilation and lighting in all cells, water lines of the bathroom were replaced, the floor was done with ceramic tile, while the roof and walls with lambrine, the electric, water and sewage lines were replaced.

The capacity of the Pre-trial Detention Facility No. 3 is 1050 people and 837 inmates were being held there as of 1 April 2018. Every sentenced and remanded person held at the facility is provided with a personal bed.



**Response to the issue raised in paragraph 60 of the Report (at Nakhchivan prison: reducing occupancy rates in the cells for remand prisoners, with a view to offering a minimum of 4 m<sup>2</sup> of living space per inmate in multiple occupancy cells; providing all in-cell toilets with a full partition, i.e. up to the ceiling; ensuring that remand prisoners and those on “prison” regime have the possibility to take their daily outdoor exercise in conditions which enable them to physically exert themselves; equipping all exercise yards with some protection against inclement weather and with a means of rest; ensuring that all prisoner accommodation areas are properly heated during the cold season)**

The work has been commenced and is ongoing toward equipping walking yards of the establishment with additional roofing to protect from the sun and rain, as well as on providing all in-cell toilets with a full partition, i.e. up to the ceiling.

**Response to the issue raised in paragraph 61 of the Report (carrying out repair works in some areas of the Sheki Prison)**

In order to upgrade gas supply of the Sheki Prison a new gas line was installed, the boiler house was equipped with 3 boilers and water filters, the underground warm water lines of the heating system were replaced, the wear-and-tear due to humidity on the right and left side of the facility entrance, in the corridor of the central kitchen and on the walls of the pretrial detention facility were cosmetically refurbished. For the purpose of improving the establishment’s water supply, a 150 meters deep water well was drilled and given to use.

**Response to the issue raised in paragraph 62 of the Report (efficient organization of free time of remanded and sentenced prisoners; doing away with the “isolator” philosophy and the cellular confinement regime)**

Despite the existence of certain problems in providing prisoners with work at Pre-trial Detention Facilities, in recent years successive measures were taken in other penitentiary establishments to provide the prisoners with work. As a result, in 2000-2017 the number of prisoners involved in work increased 6.7 times (846 in 2000 and 5,649 in 2017). In 2017 and in the first quarter of 2018, in 14 penitentiary establishments 34 small-sized production and individual labor zones, 21 hothouses, 6 poultry and 2 livestock farms were built and about 500 new jobs were created. Negotiations are being held regarding the organization of production zones in other establishments and preparation works are being carried out.

At penitentiary establishments, 171 convicts were involved in various short-term vocational training courses on various specialties, while 1,180 convicts were involved in vocational education on 17 specialties in 59 groups. Simultaneously, a request was made to the Ministry of Education for the opening of vocational groups in the Sheki Prison.

For a more efficient organization of sentenced persons' free time, individual and mass events on various directions are being held by the bodies responsible for correctional work; to this end, a club, a library, computer rooms, gyms and exercise yards operate in the establishments. State organs and NGO representatives are involved in the events for convicts. Sports, intellectual, musical and other contests are held regularly at the establishments.

It should be taken into account that before the construction of new penitentiary establishments, in accordance with the recommendations made by the Council of Europe, visits were conducted to a number of European countries, where prisons were visited, the good practices of these countries in this field were studied, the project estimate documents were drafted and construction works were conducted accordingly.

The abovementioned can also be said about the Baku Pre-trial Detention Facility, the Sheki prison, the Nakhchivan mixed-regime prison, and the new penitentiary complexes under construction. The construction, infrastructure, and detention conditions of these penitentiary establishments in line with international and European standards were evaluated positively during the visits by international human rights organizations and no remarks were made.

**Response to the issues raised in paragraphs 63 and 64 of the Report (increasing the number of feldshers at penitentiary establishments and recruiting nurses in pretrial detention facilities in Baku, No. 2 (Ganja) and No.3 (Shuvalan), and at Sheki Prison; recruiting a psychiatrist at Nakhchivan and Sheki Prisons, and other establishments where such a post is absent or vacant; taking steps to ensure that someone qualified to provide first aid, which should include being trained in the application of CPR and the use of a defibrillator), is always present at every penitentiary establishment, including at night and on weekends)**

To fill vacant posts regular announcements are made in various press agencies and official websites and other sets of measures are taken.

However, it should be noted that the psychologically tense environment arising from the specific nature of the work in penitentiaries discourages medical professionals from working there, results in staff flow and is the main factor that affects staffing.

In 2017 the work on admittance to medical service by competition was continued, recruitments were made to 28 doctor posts, including 20 graduates of the Azerbaijan Medical University from the third graduation, and 6 to mid-level medical worker posts. 15 mid-level medical workers were hired in 2016.

In most penitentiary establishments presence of a medical worker in the evening and night hours, on weekends and non-working days is not envisioned. During such times, medical assistance is provided by using the service of the local Emergency Medical Assistance (EMA) stations of the Ministry of Health. However, in case of necessity, a medical employee of the establishment is called to work at any given time, and due medical assistance is provided to the detainees. In 2017, doctoral teams of 37 emergency assistance stations entered penitentiary establishments outside of working hours and all needs were met by them. In most cases, when EMA doctors arrived at the establishment, the establishment's medical service employee living nearby also arrived and participated in medical treatment. Also in the establishments located in the regions the doctors of 23 Emergency Medical Assistance Brigades were called to the establishment in emergency situations.

In addition, the Medical Department General is taking certain steps in order to ensure that someone qualified to provide first is present during the evening and night hours, on weekends and non-working days.

For the purpose of strengthening first aid provided before the arrival of a doctor at penitentiary establishments, special attention is being paid to the training and education of non-medical staffers. In order to impart knowledge on first aid in case of injury, burns, etc., and to raise awareness about infections transmitted by blood, the tuberculosis disease, in 2017 employees of the Medical Department General taught medical topics to the nonmedical staff at the Academy of Justice and the Training Center of the Penitentiary Service.

Also, the work on teaching first medical aid to newly hired employees was continued at the Academy of Justice. Overall, in 2017 and the first quarter of 2018, 1093 non-medical employees (708 employees serving in justice organs, bailiffs, senior officials working in the justice organs, and newly hired employees, 385 junior supervising staff working at the subordinate facilities of the Penitentiary Service) attended these courses.

Resources of the Tuberculosis Training Center of the Specialized Treatment Institution of the Ministry are also utilized for the purpose of increasing medical knowledge and awareness of non-medical staff. In 2017 various medical topics were presented to total 78 non-medical employees of the Penitentiary Service at the training.

To this end, the resources of the “Further support to the penitentiary reform in Azerbaijan” Project, implemented by the European Union and the Council of Europe, are being used. Within the Project, the CoE expert conducted the “Training of trainers for healthcare staff of prisons on health promotion and prevention activities”.

3 training courses for 30 mid-level health-care staffers working in penitentiary establishments on “Emergency Medical Assistance” and 1 training course for doctors on “Increasing knowledge and skills in identifying and treating diseases of the cardiovascular and nervous systems” were held. The employees were trained to use defibrillators in the courses.

In May of this year, a two-day training course was held for 36 non-medical penitentiary staff on “Emergency Medical Assistance”; there are plans to hold 1 two-day course in June.

Also, it is planned to carry out in June, jointly with the Medical Department General, training on “Promotion of healthcare and preventive measures in prisons” for 40 non-medical staffers and on “Emergency treatment to ensure the functioning of the cardiovascular system” for 12 doctors.

**Response to the issue raised in paragraph 65 and 66 of the Report (non-thorough recording of injuries, medical examinations being mostly superficial and the confidentiality frequently violated; the description of injuries provided to Committee members being scant and on occasion not recorded; health-care professionals making no attempts to assess the consistency between statements made by detained persons and medical findings; the medical documentation seen being to a great extent unreliable and insufficient for forensic purposes; taking concrete steps to transfer the responsibility for prison health-care services to the Ministry of Health)**

At the 31 May 2018 meeting held between the Ministry of Justice and the CPT delegation the Committee's recommendations above were discussed.

Regarding this issue, the Committee members were informed that previously the Health Department operated within the penitentiary system and in such conditions ensuring the independence of health-care professionals and efficient medical examinations was impossible.

However, it was emphasized that as a result of the carried out reforms this agency was removed from the penitentiary system in 2004 and on its basis the Medical Department General was established under direct authority of the Minister of Justice, which now operates independently, provides the detained and sentenced persons with quality medical assistance, cooperates efficiently in this area with the Ministry of Health, invites experts from the private sector, and even from abroad for the examination and treatment of prisoners.

In recent years important achievements were reached in the field of medical assistance, especially in the fight against tuberculosis in penitentiary establishments and Azerbaijan's practice was shown as an example to other countries by the international organizations, including the World Health Organization, while representatives of foreign states' Health Ministries even visit our country for this purpose.

The successive reforms carried out in the country's health system in recent years, as well as the ongoing institutional measures in this field makes inevitable the application of mandatory medical insurance system.

At the same time, the existence of over 1 million refugees and internally displaced persons in the result of the attack by the neighboring state puts extra tasks on the Ministry of Health, and as such the recommendation to place responsibility of providing quality health-care to the prison population causes a number of difficulties, this initiative raises questions on whether it falls in line with the rights and interests of the remanded and sentenced persons.

Presently the medical service in penitentiary establishments is provided in close collaboration with the Ministry of Health. For the purpose of providing equivalence between the medical assistance provided to the sentenced and remanded prisoners and the health-care services provided throughout the country, in clinically and diagnostically complicated cases of examination and treatment of this specific contingent, the technical and human resources of the Health Ministry's medical institutions are used widely.

In 2017, 11 persons were transferred to city hospitals in view of their health and received relevant medical assistance; 86 times various specialists from territorial private city hospitals were invited to the establishments for consultation.

Also, 210 convicts received various instrumental examinations, consultations, surgeries and other medical measures in the private sector. 11 convicts were provided with hemodialysis treatment 3 times a week, 3 pregnant women received birthing assistance in the private sector. In addition, the country's leading specialists have held 246 consultations in the Medical Facilities of the Penitentiary Service and have performed 30 surgeries.

As to the recording of injuries at penitentiary establishments, it shall be informed that in the event of discovery of injuries during medical examination a written notice is presented to the establishment administration, with its copy sent to the Medical Department General. The data is summarized at the Medical Department General and presented to the Penitentiary Service twice a month.

In the event of complaints on torture and inhuman or degrading treatment, as well as the discovery of bodily injuries suspected to be sustained due to torture and inhuman or degrading treatment, a record is drawn up in this regard in the pages of the medical file allocated for this purpose.

Instructions were made that every person admitted to the establishment shall be medically examined within 24 hours as prescribed by legislation and every person on whom bodily injuries were discovered shall be reexamined by the doctors after few days in order to again inquire into the reasons of such injuries. Also, it was instructed that upon the return to the facility of detained persons after they were sent to temporary detention centers of the police organs, they shall be reexamined by a health-care employee, and in the event of discovery of new bodily injuries a relevant record shall be made in the medical file, while the information shall be duly forwarded.

Officials of the Medical Department General have investigated the registered cases at the establishments. As a result, hiding of injuries or their distortion as to make them seem lighter by health-care staff was not confirmed by any consistent facts. Also, the Medical Department General has not received any information and complaints about such cases.

Nevertheless, the remarks made by the CPT representatives were brought to the attention of health-care professionals working at penitentiary establishments, including the Sheki Prison, Pre-trial Detention Facilities No. 2 and 3, and they were once again warned that they will be held to serious disciplinary responsibility for any negligence.

Moreover, for the purpose of bettering the skills in comprehensive recording and description of the injuries observed and in assessing the consistency between the information and the doctor's own considerations, in 2017 experts of the Forensic Medicine Expertise and Pathological Anatomy Scientific Practical and Education Unit of the Ministry of Health have carried out training at the Training Center for 182 health-care professionals working in penitentiary establishments on the theme of "Examination of injuries on prisoners and diagnosis of pathological changes in this regard in accordance with international classification, and their reflection in medical documentation".

Also, within the "Further support to the penitentiary reform in Azerbaijan" Project, together with the experts of the Forensic Medicine Expertise and Pathological Anatomy Scientific Practical and Education Unit, the "Information booklet on the description of bodily injuries" was prepared and is being printed to be distributed among the employees.

It is informed that for the recording of injuries observed on convicts at the medical-sanitary unit of the Nakhchivan Prison, the “Registration of Injuries Book” was prepared and duly sent to the medical-sanitary unit for use.

**Response to the issue raised in paragraph 67 of the Report (increasing the number of personnel in penitentiary institutions, including female employees)**

The issue of raising the number of female workers in the facilities where prisoners, including female detainees and prisoners are held is kept under constant attention, and the measures taken in this direction are continuing regularly. Approximately 10% of the total number of employees working in the penitentiary service is made up of female employees. When considering work applications, special attention is paid to the issue of involvement of female employees in this service.

Within the execution of the Presidential Decree on humanization of the criminal policy, formation of a highly professional staff of the penitentiary service, more flexible and short-term appointments to higher positions, the development of knowledge, skills and practical skills of employees, improvement of employee performance assessment system, as well as a number of other necessary measures were taken to strengthen their social security.

Thus, in 2017, 485 vacancies were set up, the “Automated Personnel Information System” was created to meet the modern requirements, and employees were regularly trained in compulsory training, initial training and retraining courses in order to form a highly professional staffing body.

After the commissioning of new penitentiary complexes, the CPT's recommendations will be considered during the staffing process. Thus, when the Sheki Prison was put into operation, its staffing units were approximately 10 times higher than that of penitentiary establishments with the same capacity.



**Response to the issue raised in paragraph 68 of the Report (amending the relevant legislation so that the regimes under which inmates serve their sentences are determined by the prison administration (and not by the sentencing court) and are subjected to periodic review based on individual risk assessment; all prisoners, irrespective of the category and regime, having the same possibility for contact with the outside world i.e. at least the equivalent of one visit per week)**

Legislation and international experience are studied in this field and relevant work will be done depending on the outcome.

**Response to the issue raised in paragraph 69 of the Report (improving the conditions under which inmates at Nakhchivan Prison receive short-term visits; ensuring that short-term visits take place under open conditions)**

The interior supply of short-term meeting rooms is governed by Annex 1 of the Internal Disciplinary Regulations of Prisoners and Annex 11 of the Internal Disciplinary Regulations of the Pretrial Detention Facilities, and the supply of interior partition of these rooms is in line with international practice. These partitions are used according to the international practice to ensure the physical and medical safety of citizens, including children, who have come to the meeting. However, in most penitentiary establishments, except for penitentiary service investigative isolators, short-term visits to convicts are provided in large rooms, without glass partitions, enabling physical contact (except prisoners receiving treatment from an infectious disease at a specialized treatment facility).

**Response to the issues raised in paragraphs 71 and 71 of the Report (at Pre-trial Detention Facility No. 2 in Ganja and Nakhchivan Prison doctors continuing to certify that an inmate was fit for punishment prior to a decision on placement in a disciplinary punishment cell; taking measures to ensure that health-care staff are informed immediately of every such placement and visit the prisoner without delay after placement and thereafter on a regular basis, and provide him/her with prompt medical assistance and treatment as required)**

In accordance with Part 34 of the Internal Disciplinary Rules of Pretrial Detention Facilities and Part 69 of the Internal Disciplinary Rules of Penitentiary Institutions, the remanded and sentenced prisoners are transferred to disciplinary punishment cells without participation of a doctor. The health status of remanded

and sentenced prisoners transferred to punishment cells is monitored daily by the doctors and relevant records are made in this regard into their medical files and the jail journal.

Inquiries into the issue were made by the Medical Department General at the penitentiary establishments, including the Pretrial Detention Facility No. 2, no evidence proving that doctors certified fitness for punishment prior to a decision on placement in a disciplinary punishment cell was found. In every establishment it was confirmed that health-care staff pay daily visits to punishment cells and make the records in this regard in the relevant journal.

Also it was found that in 2017 and in the 5 months of current year, the punishment measures against 31 prisoners were suspended based on the petition by a doctor in relation to his/her health status and they were removed from the punishment cell. Also, the Medical Department General has not received any information or complaints regarding such cases.

The CPT's remarks were brought to the attention of health-care staff working at penitentiary establishments, including the Pretrial Detention Facility No. 2 and the Nakhchivan Prison and they were once again warned that they shall be held to serious disciplinary responsibility for any negligence.

Simultaneously, the establishments' administrations were instructed to immediately inform health-care staff about placement of a prisoner in the punishment cell. The issue of regular doctor visits to persons placed in punishment cells and their provision with necessary medical assistance was raised at the meeting held at the Medical Department General (MDG) with participation of heads of medical-sanitary units, the paragraphs of the MDG Order on the implementation of the CPT recommendations was reminded.

**Response to the issue raised in paragraph 73 of the Report (consecutive disciplinary measure in form of placement in punishment cells)**

Directors of penitentiary establishments were warned and instructed that whenever a prisoner has been placed in a punishment cell for a total of more than 15 days in relation to two or more offences, there should be an interruption after 15 days. No such case was allowed in penitentiary establishments in 2017.

It shall be noted that the sentenced and remanded prisoners can only be transferred to solitary cells housed by the prison and pretrial detention facility. They are placed in solitary confinement to ensure personal security, whenever it is not possible to detain them with others, or based on a written request. In 2017, there were no cases of solitary confinement of sentenced or remanded prisoners.

## **INFORMATION**

### **regarding the present Report's Appendix III on the recommendations made in the Report on the 2016 CPT visit to Azerbaijan**

**Response to the issue raised in paragraph 23 (adoption of detailed instructions from the most senior level reiterating to all staff, in particular operational officers and investigators, of their obligations in relation to the treatment of persons in their custody)**

Over the last 5 years, a number of internal regulations, various training programs, guidance manuals concerning the guaranteeing of human rights and freedoms have been prepared and sent to the territorial police organs, and most of the topics identified for vocational training courses are dedicated to this important activity.

On 27 January 2018, the Prosecutor General and the Minister of the Interior addressed the heads of all their local structures with a circular letter concerning additional measures to protect the rights of detained or arrested persons. They required ensuring a full and comprehensive investigation of all allegations of torture, cruel, inhuman or degrading treatment or punishment, and bringing the criminal offenders to responsibility. This topic was widely discussed at the Ministerial Operational Meeting held in April of the current year and decision consisting of 44 paragraphs was adopted and submitted for execution.

Further, in recent 5 years and in the first quarter of 2018, as a result of the measures taken within the internal supervision, 1909 staff members of the police organs were subjected to disciplinary sanctions for violations of human rights and freedoms, including for bringing citizens to the police without relevant grounds etc. Four of them were brought to criminal responsibility, 177 were removed from the service, 168 were dismissed from their offices, the ranks of 10 of them were decreased and 1550 others were reprimanded.

**Response to the issue raised in paragraph 27 (reminding judges, by the highest judicial authorities and/or, if necessary, through the adoption of relevant legal provisions, that they should take appropriate action whenever a person brought before them alleges that he or she has been subjected to ill-treatment; the judge ensuring that even in the absence of an express allegation of ill-treatment, a forensic medical examination is promptly carried out whenever there are other grounds (e.g. visible injuries, a person's general appearance or demeanor) to believe that ill-treatment may have occurred; considering introducing specific provisions in the Code of Criminal Procedure on the general duties of judges in the prevention of ill-treatment, in particular at the remand-in-custody stage)**

**Under Paragraph 3 of the 10 March 2000 Decision of the Plenary Board of the Supreme Court on the activities of the courts in the field of the protection of human rights and freedoms during the administration of justice,** it is explained that torture and inhuman or degrading treatment of individuals by the officials during the investigation, pretrial investigation and imprisonment are criminal offenses, and in this context, the court must always express its position in all the above mentioned cases.

In case of receiving such information the person must undergo a medical examination, the personal file of the detainee must be demanded and reviewed, the witnesses should be interrogated, and if there are legitimate grounds, a criminal case should be initiated or the prosecutor's attention should be drawn to the matter in the manner prescribed by law.

Additionally, according to **Paragraph 17 of the 3 November 2009 Decision of the Plenary Board of the Supreme Court of the Republic of Azerbaijan "On the practice of applying the legislation by the courts when considering presentations on the choosing of arrest warrant for accused persons"**, when a defendant makes a statement on being subjected to torture and other inhuman or degrading treatment in the process of choosing or extending the term of detention in custody, this shall be reflected in the trial protocol. At the same time, the prosecutor conducting the procedural aspects of the preliminary investigation shall be provided with the relevant information in writing in order to verify that issue.

Although the defendant does not make a statement in this context, the fact of exposure to torture or other cruel, inhuman or degrading treatment may cause serious doubts in the judge, which is a basis for taking the same measures.

At the same time, it should be noted that topics on torture prevention issues are included in the curriculum of the Justice Academy of the Ministry of Justice and are regularly taught to judges and candidates for judges.

For information, under Article 125.2.2 of the Code of Criminal Procedure, the information, documents and other items obtained through the use of violence, intimidation, deception, torture and other cruel, inhuman or degrading treatment are not acceptable as evidence in criminal cases.

**Response to the issue raised in paragraph 31 (all persons admitted to temporary detention centers and pretrial detention facilities being properly interviewed and thoroughly examined by qualified healthcare staff as soon as possible, and no later than 24 hours after their admission; all medical examinations (whether they are carried out in temporary detention centers or pretrial detention facilities) being conducted out of the hearing and - unless the health-care professional concerned expressly requests otherwise in a given case - out of the sight of staff not carrying out health-care duties)**

The information on these matters is reflected in the responses to paragraphs 55 and 65-66 of the present Report.

**Response to the issue raised in paragraph 34 (reflection of the comprehensive information in the records of the medical examination of a detained person in a temporary detention center and pretrial detention facility; presenting the results of the examination to the detainee and his advocate; organization of special trainings to health-care professionals working in pretrial detention facilities (and, whenever relevant, temporary detention centers); In addition to developing the necessary competence in the documentation and interpretation of injuries as well as ensuring full knowledge of reporting obligations and procedures, that training should cover the technique of interviewing persons who may have been ill-treated):**

The information on these matters is reflected in the responses to paragraphs 55 and 65-66 of the present Report.

At the same time, according to the Law on ensuring the rights and freedoms of individuals held in detention facilities on remand, when the detained person gets ill or injured he/she immediately receives medical examination by the health-care professionals. The results of the medical examination are recorded and presented to the detainee and to his/her lawyer, at the request. According to appeals made in 2017-2018, the results of the medical examination of 118 prisoners were submitted to their advocates, thus satisfying the requests.