



Strasbourg, 3 September 2013

Public  
GVT/COM/III(2013)004

**ADVISORY COMMITTEE ON THE FRAMEWORK  
CONVENTION FOR THE PROTECTION OF NATIONAL  
MINORITIES**

---

**COMMENTS OF THE GOVERNMENT OF AZERBAIJAN ON  
THE THIRD OPINION OF THE ADVISORY COMMITTEE ON  
THE IMPLEMENTATION OF THE FRAMEWORK  
CONVENTION FOR THE PROTECTION OF NATIONAL  
MINORITIES BY AZERBAIJAN**

---

(received on 8 July 2013)

## **The comments of the Government of the Republic of Azerbaijan on the Third Opinion on Azerbaijan of the Advisory Committee on the Framework Convention for the protection of national minorities**

*(The Third Opinion on Azerbaijan of the Advisory Committee on the Framework Convention for the protection of national minorities has already been translated into Azerbaijani and relevant measures on its dissemination are underway to be realized by the Government of the Republic of Azerbaijan)*

### **General legislative and institutional framework**

The Government of the Republic of Azerbaijan is a party to all of the fundamental international documents in the field of promotion and protection of human rights, and the Government is taking necessary efforts to implement the obligations proceeding from these documents in full and in time. Promotion and protection of human rights constitutes an important priority of domestic and foreign policy of the Government of Azerbaijan. Human and citizen's rights and freedoms have direct force in the territory of the Republic of Azerbaijan. The Constitution of Azerbaijan plays a role of a reliable and strong guarantor for provision of all rights reflected in core international human rights documents.

As to paragraph 12 (Unchanged legislative framework for the protection of national minorities since previous monitoring periods):

A number of important steps have been taken so far in the legislative framework for the protection of national minorities. Thus, along with the Constitution of the Republic of Azerbaijan and the Decree of the President of 1992 "On the state support for the protection of rights and freedoms and development of languages and culture of national minorities, small peoples and ethnic groups living in the Republic of Azerbaijan", the laws "on Administrative Procedure" of 2005 "On Education" of 2009, "On culture" of 2012 were adopted and changes have been made to a number of other laws.

**It has been mentioned in the report (Para 12): “No significant changes have taken place in the legislative and organizational framework concerning the protection of rights since the previous monitoring periods... No efforts have been made to incorporate the standards of the Framework Convention into the domestic legislation. .. No development has been observed regarding the development of the legislation comprehensively covering anti-discrimination issues”.**

The grounds for the state policy concerning the national minorities residing in the territory of the Republic of Azerbaijan have been laid down by the Constitution of the Republic of Azerbaijan, laws of the Republic of Azerbaijan, and orders and decrees of the President. The Article 25 of the Constitution provides for equality of all before the laws and the courts and provision by the State equality of rights and freedoms of each person regardless of their race, ethnicity, religion, language and other indications. Pursuant to Article 44 of the Constitution each person has a right to preserve ethnic affiliation and no one shall be forced to change ethnic identity. Article 45 provides for the right of every person to use mother language, to be brought up and educated in any language according to his/her own desire and impossibility of depriving any person of the right to use mother tongue.

According to Article 3 of the Law of the Republic of Azerbaijan on Nationality (Citizenship), the rights, freedoms and responsibilities of the nationals of the Republic of Azerbaijan are equal regardless of their origin,...racial and ethnic background... and other factors.

Pursuant to the Decree of the President of the Republic of Azerbaijan dated 16 September 1992 “On State Assistance to Protection of Rights and Freedoms of National Minorities, Minority Nations and Ethnic Groups, and Development of their Language and Cultures” it has been envisaged to provide state assistance in the following fields: 1) protection, preservation and development of cultural, religious and language specific features of national minorities, minority nations and ethnic groups; 2) freedom of being loyal to national traditions, exercising religious rituals and ceremonies, preservation and use of the places of prayer (religious services); free development of national handcrafts, vocational and amateur talent activities, folk arts; protection of historical monuments of all nations; preservation and protection of places, which are of public importance, reserves, parks and other nature facilities. The Decree also envisages implementation of a number of concrete measures in the above mentioned spheres.

In the “National Action Plan on Increasing Efficiency of the Protection of Human Rights and Freedoms in the Republic of Azerbaijan” approved by the Order of the President of the Republic of Azerbaijan dated 27 December 2011 it has been indicated that “continuation of activities in the field of protection and development of the cultural heritage of national minorities” has been chosen as one of the major directions for activities.

In other words, the relevant provisions of the Constitution and individual laws on the one hand, and the Presidential Decree and the National Action Plan approved by the Presidential Order on the other, have created sufficiently efficient legislative framework for the protection of national minorities.

With regard to the incorporation of the standards of the Framework Convention into the domestic legislation, it should be mentioned that the Republic of Azerbaijan joined the CoE Framework Convention “On protection of National Minorities” with the special statement. According to this statement, the Republic of Azerbaijan demonstrating its loyalty to the commonly accepted values of humanity and goodwill in regard of the human rights and freedoms, declares that ratification and implementation of the CoE Framework Convention on Protection of National Minorities excludes any actions that may prejudice or damage the territorial integrity and sovereignty, internal and external security of Azerbaijan.

Article 148 of the Constitution of the Republic of Azerbaijan identifies the place of the international treaties in the national legislative system of Azerbaijan, including the Framework Convention. Pursuant to this Article, the international treaties that the Republic of Azerbaijan has become a party to, are the integral part of the national legislative system of the Republic of Azerbaijan. The Article 151 of the Constitution defines the legal force of international treaties, including the Framework Convention. According to this Article, in case of contradiction between the regulations that have been included into the legislative system of the Republic of Azerbaijan (save the Constitution and the legislative acts adopted upon referendums) and the intergovernmental treaties that the Republic of Azerbaijan became party to, the international treaties shall prevail.

Thus, pursuant to the above mentioned provisions of the Constitution, the Framework Convention and its standards are the integral part of the national legislative system of the Republic of Azerbaijan and have prevailing legal force as to other laws. This means that the Framework Convention and its standards have been implanted into the national legislative system of the Republic of Azerbaijan.

Regarding the anti-discrimination legislation it would be possible to mention that Part 3 of Article 25 of the Constitution prohibits restriction of human rights and freedoms on the basis of racial, national, religious and other indications, and prescribes impossibility of subjecting any person to a damage, affording him or her any privileges or compromises, or refusing to grant him or her privileges or compromises on the basis of the above mentioned grounds.

In other words, the Constitution alongside with affirming first of all, the equality of citizens and human beings regardless their racial, national or religious background, also directly prohibits discrimination on the basis of those indications. It means that the most important anti-discriminatory principles and guarantees are enshrined directly in the Constitution.

The Republic of Azerbaijan is also party to the International Convention on Elimination of all forms of racial discrimination which has become the integral part of the national legislative system of the Republic of Azerbaijan.

The Criminal Code of the Republic of Azerbaijan provides for criminal liability for the discriminatory offences on the basis of racial and religious indications alongside with other features. Among these offences we can indicate the acts of persecution against any group or organization on the racial, national, ethnic, cultural, religious, sexual and other grounds, in other words, the rough deprivation of persons of their fundamental rights for their affiliation to certain group or organization (Article 109); violation of the equality right of any person through damaging his/her rights and legitimate interests on the basis of racial, national, religious, language grounds... (Article 154); offences perpetrated with the purpose of inciting national, racial, social or religious hatred or hostility, degrading national dignity, as well as the acts directed towards restriction of rights or defining the superiority of citizens based on their national, racial, or religious affiliation (Article 283).

Therefore, the Constitution and the international treaties the Republic of Azerbaijan has joined from one side and the Criminal Code on the other constitute sufficient legislative framework against discrimination.

The two State Programmes on social and economic development of the regions of Azerbaijan, adopted in 2004 and 2009 respectively, played significant role in the overall development of our country. The second State Programme on regional development is being successfully implemented at present. As a result of this Programme, more than 1 100 000 jobs were created in the country, with 30 000 jobs in the first quarter of this year.

The “State Programme on social and economic development of the regions of the Republic of Azerbaijan for the years 2009-2013” also defines major directions of the governmental activities at the next stages in the regions with compact residence of national minorities.

In course of last 7 years more than 35 000 new enterprises were created in Azerbaijan, significant portion of them created in the regions with compact settlement of national minorities. More than 77% of the new jobs were created in the regions, with more than 20% of them being created in the regions with compact settlement of national minorities.

In May 2010 the Republic of Azerbaijan acceded to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. In a context of implementation of the provisions of the said Convention, the Government is elaborating an action plan, which envisages a project “Cultural Diversity – Cultural Unity”. The project includes seminars on national and cultural solidarity in the regions of compact settlement of national minorities, training events for regional figures of culture and persons with special cultural expressions and

talents, research of situation on intercultural dialogue, publication of brochures on cultural heritage and diversity of the country, exhibitions, concerts, competitions and other events.

### **On court cases**

Court cases among the SCRA and religious communities are rarely related with registration. The grounds for claim are mainly related to the restrictions imposed by the SCRA on distribution of religious literature. The SCRA in very rare cases acts as a claimant.

### **Full and effective equality**

As to paragraph 13 (Obtaining legal documents by internally displaced persons):

When submitting documents envisaged by the legislation of the Azerbaijani Republic, state registration of acts of civil status of all persons, including internally displaced persons is carried out and the certificates are issued in this regard.

It should be noted that the legislation does not provide for any different legal bases or restrictions on obtaining legal documents by persons belonging to national minorities as well as internally displaced persons.

In addition, during the registration of relevant documents government agencies provide legal and practical assistance to citizens.

Experience has shown that difficulties arise only in obtaining documents related to internally displaced persons from the occupied territories as a result of the Armenian aggression and deported compatriots from the Republic of Armenia.

“... some groups of population belonging to minorities incur disadvantageous conditions and restrictions” provided in 13-th item of the document is not based on the concrete fact or figure. In statistics and social sciences the use of such expressions in advanced experience and know-how is necessarily based on statistical surveys and public opinion inquires. Similar expressions provided in several items of this document are not based on statistics or public opinion inquires.

### **Protection against discrimination and efforts to combat intolerance**

As to paragraph 15 (Protection from discrimination):

Allegations addressed in the Opinion, that a small number of discrimination cases submitted to courts demonstrates limited public confidence in independence and effectiveness of possible legal remedies, are ill-founded. On contrary, in a tolerant country as Azerbaijan these figures indicate that such cases are not to be regarded as typical.

### **The criminal prosecution of persons who are engaged in the promotion of rights of national minorities provided by the Framework Convention, penalties imposed by courts towards journalists and other members of media, assurance of the right to a fair trial**

The opinion has reported with the reference to trial of 2 individuals (Hilal Mammadov and Novruzali Mammadov) about serious gaps in the field of human rights, including the judicial process that seriously affect persons engaged in activities related to rights of national minorities, particularly presumption of innocence, legal assistance, the right to an impartial and independent

justice. Therefore, this information should not be considered authoritative. Thus, it should be noted that the OSCE Office in Baku since 2006 has been monitoring the courts of first, appeal and cassation instances of the country. As a result of these monitoring, the last reports prepared by the OSCE indicated the general compliance with the principle of publicity, openness of court proceedings to public and media, accessibility of the information on time and place of proceedings. Any information on gaps in provision of the presumption of innocence has not been found in reports.

As regard to Mr. N. Mammadov mentioned in the report we note that his arrest was not related to his national identity and cultural activities. Serious Crimes Court of the Republic of Azerbaijan proved him guilty in engaging since 1992 in hostile activities against Azerbaijani government assisting intelligence bodies of the Islamic Republic of Iran, collecting the necessary data and transferring it to Iran, determination of individuals who have necessary information and making connections with these bodies, providing them information that characterizes such persons and in this way confidentially co-operating with the same bodies in order to assist in creation of administrative autonomy at the territory of the Republic of Azerbaijan in the area of regions densely populated by Talysh minority, getting money from these authorities and being engaged in such activity from that period until his arrest.

By the sentence of the Court dated 24.06.2008 N. Mammadov was found guilty by the Article 274 of the Criminal Code (treason) and sentenced to 10 years of imprisonment with confiscation of property (the lower limit of punitive sanction on that Article, the upper limit of the sanction is 15 years). While making decision the court considered a number of circumstances as mitigating the sentence, including first time conviction, his scientific activity, the fact that at the time of accusation he had three persons under his auspices.

The allegation addressed in the opinion regarding the conviction of other person Hilal Mammadov for exercising the rights granted to him under the Framework Convention does not reflect the reality as well.

Thus, on 21 June 2012 H.Mammadov was arrested on the suspicion of illegally obtaining and storing large amounts of narcotic drug - heroine; the following day he was charged as an accused person under Article 234.4.3 of the Criminal Code (Illegal storage of large amounts of narcotics for the purpose of selling).

During the investigation it was established that he illegally obtained and stored large amounts of narcotics with a view of selling, closely cooperated with foreign countries' special services and on the basis of orders of those authorities he published anti-Azerbaijani publications with a view to cause the detriment to the territorial integrity of the Republic of Azerbaijan and state security by using the funds earned from the selling of narcotics and gave speeches on infringement of territorial integrity and internal stability of the country; thus, on 3 July 2012 he was additionally accused under the Article 274 (high treason), Article 283.2.2 (Excitation of national, racial or religious hatred) and Article 234.4.3 (Illegal storage of large amounts of narcotics with a view of selling).

As regard to concerns of Advisory Committee on reports of ill-treatment towards H.Mammadov during preliminary proceedings it shall be noted that legal assessment of the claims that this person had been subjected to physical violence while in detention has been conducted and in accordance with rules based on the existing legislation as well as relevant international documents and law thorough investigation has been carried out regarding these matters. During the investigation possible necessary actions were taken, forensic medical and additional

commissioned forensic medical examinations were conducted, however the above-mentioned claims have not been confirmed by gathered materials.

Notes in the opinion related to the institution of criminal proceedings against persons being engaged in the protection of rights of national minorities as those in the above-mentioned case studies, as well as for the activities of journalists and other persons expressing critical views are unsubstantiated. Wide opportunities for independent work are created for human rights defenders operating in the Republic of Azerbaijan in various spheres and media, the full amount of their rights and freedoms are guaranteed, they are not subject to criminal prosecution in connection with their activity. Only persons suspected of a specific crime shall be prosecuted in the manner prescribed by law and, in this case, regardless of race, nationality, religion, official position and other circumstances the principle of equality of all before law is fundamental.

Regarding remarks on growing intensiveness of sentences imposed by the courts against journalists and media workers, it is noted that in 2011 no media workers were sentenced under Articles 147 (slander) and 148 (insult) of the Criminal Code.

As to Consultative Committee's recommendation regarding the system that provides the right to a fair trial, it should be noted that in the frame of democratic reforms taking place in our country substantial measures were taken in order to increase efficiency of justice and citizens trust in courts, improve court activity, modernize the infrastructure, and provide the independence of judges.

Large scale works in the sphere of development of the judicial system in our country have attracted the attention of international organizations, the selection procedure of judge nominees has been evaluated as a positive model and this practice was recommended to other states as an example in reports of CEPEJ and European Union Project on strengthening of judicial reforms in Eastern Partnership countries.

## **Media and language rights**

The information on the lack of dissemination of any of programs in languages of minorities described in Media and language Law Section (page 7), and also in Section about minorities' language in television, radio and press (page 22) does not reflect the reality. As on AZTV channel daily at 18.00 is being broadcasted news program in Russian with duration of 20 minutes, on Ictimai (Public) Channel daily at 14.00 is being broadcasted news program in Russian with duration of 12 minutes, and also different programs in Russian, Georgian, Talish, Lezghin languages are being transmitted on satellite channel ATV INT and on short and medium waves of radio REPUBLIC. Regional channels – KAPAZ TV (Gandja), KANAL S (Sheki), JANUB TV (Lenkeran), REGION TV (Khachmaz) GUTB TV (Guba), TURKEL TV (Tovuz), EL TV (Yevlakh) are transmitting documentary “National Minorities” in different times.

Programs in languages of national minorities living in the Republic of Azerbaijan are entered into program schedule of public services according to the Article 12.3 of the Law of the Republic of Azerbaijan No.767-IIQ dated 28 September 2008 on “Public Television and Radio Broadcasting”.

On paragraphs 18 and 88 (inexistence of a legislative provision regarding official communication in a minority language, the use of their own language by the minorities when communicating with execution authorities):

According to Article 27 of the 2005 Law on Administrative Proceedings, administrative proceedings are performed in the official language of the Republic of Azerbaijan, or in the language of the majority of a specific area, also documents and information are provided to the participants of this process in the language that the proceedings take place.

Also, under the Article 11.3 of the 2002 Law “On Official Language in the Republic of Azerbaijan” in accordance with the Law “On Notaries” if the person requesting notary acts does not speak the official language or asks notary acts to be prepared in another language, then the notary may notarize the documents in the requested language or the text may be translated by a translator.

## **Effective participation**

21<sup>st</sup> item of the document provided the opinion that “there is a high unemployment rate in the areas densely populated with most minorities, in rural places in Azerbaijan by the whole country” is wrong. The State Statistical Committee informs that number of unemployed population in the country territory made 317.8 thsd. persons in 2005, while this indicator for the beginning of 2003 decreased for 23.5 % and made 243.1 thsd. persons. At the same time the share of unemployed in the structure of economically active population decreased for 2.1 % and made 5.2 %. This indicator in CIS region and on a global scale is perceived as one of the low indicators of unemployment level. Moreover, the unemployment level in urban and rural places of the country is various. So, during last periods the unemployment level in rural places was lower comparatively to urban places. In 2005 the unemployment level in urban and rural places made correspondingly 9.1% and 5.3%, while in 2012 this indicator made correspondingly 6.2% and 4.2%. Lower unemployment level in rural places is related with the fact that land owners are considered as employed;

## **Census questionnaires and the right of self-identification**

26<sup>th</sup> item of the document indicated that population census in 2009 had been prepared and conducted according to international standards. It also indicated that persons responsible for census had organized the trainings for participants about voluntary principle of independent defining the ethnic background and personality. The State Statistical Committee notes that during the census all items of the questionnaire, as well as information on ethnic background of individuals were replied voluntarily by respondents themselves. The results were published in the yearbook and presented to the users; the data on ethnic composition of population is available for any user from the web-page of the Committee.

Registration and documentation of individuals are not conducted based on their ethnicity or nationality in the Republic of Azerbaijan. According to the respective provisions of the Constitution and Law on Citizenship of the Republic of Azerbaijan respective organs of the Ministry of Internal Affairs provides personal identification cards to every person regardless of his/her race, nationality and religion. For this end, passports and identification cards were granted to around 1100 ethnically Armenian Azerbaijani citizens who did not have personal identification cards and more than 1500 stateless persons who permanently resided in Azerbaijan. The other demonstration of the non-discrimination in Azerbaijan is non-existence of information about ethnicity in personal identification documents.

27<sup>th</sup> item of the document indicated that during 2009 census 306 persons noted about their Armenian background and this opinion was “wonderingly”, it is inconsistent with opinions indicated in 26<sup>th</sup> item of the document. So, according to information shown in 26-th item due to every person had voluntarily indicated the information on his/her background, the State

Statistical Committee did not make any corrections in replies of all minorities residing in the country, as well as Azerbaijan's citizens with Armenian background related to their ethnic background. If a person conceals his/her ethnic background, in international experience and methodology the official statistical bodies have no right to edit the information. Moreover, vital and migratory movement of population, as well as indication of another ethnic background of persons born of mixed marriages could also impact on the data;

The expression "... availability of information on the right to define independently the ethnic background and personality by all persons belonging to minorities, and appeal to provide the use of this right" reflected in the document is unjustified and does not follow the logic of positive activities indicated in 26<sup>th</sup> item of the document.

## **Legislation, policies and practice to combat discrimination**

Under Article 6.3 of the 2012 Law on Culture in the area of culture the State provides to the nations and minorities living in its territory equality of rights and freedoms, the right to preserve their culture, determine their cultural identity, restore, strengthen and develop their cultural resources.

According to Article 27.3 of that Law, the state monitoring in the cultural area takes place through observation of cultural diversity of the minorities.

The notes in the review regarding the insufficient awareness of general public and law enforcement officials due to the low number of complaints made under Article 154.1 of the Criminal Code (breach of right of equality) are not realistic. Large scale works took place in order to educate the population and law enforcement workers about provisions of the Criminal Code that entered into force in 2000, also everyone is provided with an opportunity to get acquainted with legislative acts through the digital database at [www.e-qanun.az](http://www.e-qanun.az) for free.

As for statistics, no persons were sentenced under Article 154.1 in 2011 and 2012.

Despite of the fact that discrimination is not common in Azerbaijan, relevant awareness raising campaigns still take place.

Articles related to protection of human rights and freedoms, as well as prohibition of discrimination, and promotion of peace and tolerance are being placed in Ministry of Justice publications and relevant information is being posted on the ministry's official website.

## **Collection of ethnic data**

36<sup>th</sup> item of the document indicates that data on population ethnic background and national language is collected only from the census, and the information on situation of persons belonging to national minorities should be collected by the Government bodies in compliance with international data protection standards (37-th item). In very regard we would like to inform that the referred standards – EU Convention (ETS № 108) on "Protection of individuals related to automatic processing of private information" and Recommendations on "Protection of private information collected and processed for statistical purposes" (Rec (97) 18) encompasses data protection but not the data collection.

## **Promotion of full and effective equality**

On paragraph 39 (promotion of equality)

By referencing the amendments made in 2009 to Article 25 of the Constitution, it is mentioned in the review that regarding promotion of equality for minorities “legislative conditions have become less advantageous”. Also, it is noted in the review that according to the information received by the Consultative Committee privileges provided to minorities is unconstitutional.

Regarding this issue it should be noted that, as a result of national voting in the amendments made to the main law of the country, the contents to the right to equality were further extended, their important provisions received constitutional guarantees. According to the addition made to Article 25, no person shall be discriminated, privileged or denied privileges based on his or her race, nationality, religion, language or other reasons.

### **On an item 38 of the 4th article of the Framework Convention:**

During 2011 and 2012, **16546** documents (surveys) concerning the determination of identity of the individuals to Citizenship of the Republic of Azerbaijan entering from various organizations and physical persons were examined and it was determined that **5476** persons were citizens of the Republic of Azerbaijan. As well as, during 2011 and 2012 by the Orders of the President of the Republic of Azerbaijan **266** stateless persons were admitted to the citizenship of the Republic of Azerbaijan.

### **State support for the preservation and development of minority cultures**

The State Council of Support to NGOs under the President of the Republic of Azerbaijan was constituted upon the Presidential Decree dated 13 December 2007 and started functioning after the staff members were appointed upon the Presidential Order dated 16 April, 2008. The main objective of the Council is to attain strengthening and sustainable development of the civil society, and increase the role of NGOs in settlement of the problems which are of public importance. The Council holds calls for the financing of the projects of the NGOs operating in Azerbaijan.

The information about the grant tender announcements, themes that may allow preference, application form for participation in the tender, the sample of the project proposal, instruction on development of the project budget, rules and terms of the tender, main criteria for the evaluation of projects, the rule for evaluation of the submitted projects, and the sample financial reports are placed in the websites of the Council at [www.cssn.gov.az](http://www.cssn.gov.az) and [www.qhtxeber.az](http://www.qhtxeber.az). Besides, information sessions are being organized with involvement of NGO leaders on each tender regarding the financial aid. During such sessions the directions of the financial aid tenders, their topics, necessary documents, as well as the issues of project expertise and evaluation are being largely elaborated.

It shall be mentioned that during the next call conducted on 3 December, 2012 for the tender of financing of NGO projects in 2013, development of the culture of nationalities residing in the territory of Azerbaijan and initiatives of the regional NGOs were identified as priority fields and the budget envisaged for financing of this priority spheres consists one third of the overall budget allocated for the financing of the tender.

## **Relation with the police**

On paragraphs 54 and 55 (Consultative Committee's concern regarding torture and ill-treatment, the investigation of such cases, guaranteeing prevention of ill-treatment towards prisoners, awareness raising measures in this field):

Purposeful measures are being taken and modern infrastructure is being created in the frame of democratic reforms in our country, including the modernization of the Penitentiary Service of the Ministry of Justice, improvement of the legislative database in this field, expansion of rights of prisoners and sentenced persons, and improvement of the medical service provided to them.

Mutual cooperation in the Penitentiary field takes place with international organizations such as the Committee for Prevention of Torture (CPT).

While visiting Azerbaijan the CPT delegation noted the improvement of detaining conditions, they emphasized that during the monitoring no concern raising information has been received regarding torture and ill-treatment in the penitentiary institutions and they witnessed good treatment towards the sentenced persons. Special attention is paid to securing rights and freedoms of sentenced and accused persons, cases of breach of their rights, ill-treatment, and abuse of authority by the staff are thoroughly investigated. Relevant steps are being taken for the purpose of preventing ill-treatment towards prisoners and the accused persons and for the increase of supervision over such cases.

As noted in the review in addition the human rights ombudsman of the Republic of Azerbaijan provision of rights of sentenced persons is also implemented by the method of public control. Since 2006 the Public Committee consisting of well-known human rights activists which functions under the Ministry of Justice has paid over 300 visits to the penitentiary institutions, and necessary measures have been taken in view of their reports.

As awareness raising campaign in this field and within the framework of the Support to Reforms in the Justice Field Program, which is implemented in collaboration with the European Commission, scientific and practical interpretation of legislation dedicated to execution of sentences, including European and UN Conventions on Prevention of Torture (Collection of basic standard and international acts for Penitentiary employees – 5000 copies) have been printed and presented to the employees of the Penitentiary service and to the prison libraries for the use of the sentenced persons.

Topics on treatment of the sentenced and accused persons in accordance with international documents have been included in the training programs for Penitentiary employees.

The new “Law on ensuring rights and freedoms of the persons kept in the places of detention” which is in conformity with international standards and European Penitentiary Rules was adopted on May 22, 2012, provides opportunity for these persons who are caught or arrested: a right to an immediate call to close relatives or to the ones who is of interest according to the legal circumstances at the temporary place they have been detained; detention by guaranteeing personal safety; right after the admission to the place of detention or while in the prison, these detainees are to be informed about their rights and obligations, internal daily routine, including getting familiarized in written form with the regime in that location, also with the rules on how to submit proposals, petitions and complains and if there is need, to keep such written notification with themselves; cannot be subjected to torture or insane or humiliating conduct or punishment; to inform them about all procedural steps while detaining them in the jail; meeting

with their council for the defense or legal representative etc. are legal guarantees for ensuring their human rights.

## **Situation of refugees and asylum-seekers**

### **On items 56 and 57 of the 6<sup>th</sup> article of the Framework Convention:**

The necessary conditions have been created by the State Migration Service for foreigners and stateless persons for applying to the asylum. All persons willing to get refugee status are registered for examination and after the relevant procedures each of them has to be informed about decisions on granting or depriving the refugee status. A person, whose claim for refugee status has been rejected, shall receive a written notification of the decision with indication of reasons of rejection and procedures of appeal to the Court.

A person acquired the refugee status can choose the place of residence, as prescribed by the relevant authority can come to the temporary place of residence and transport their property. Birth certificates are given to the new-born children of person acquired the refugee status or asylum seekers, and necessary conditions has been created to educate their children in preschool education institutions and in relevant higher educational institutions, to adopt them to local conditions, obtain citizenship and learn language. During the last period, 2 persons who have received refugee status were adopted to citizenship of the Republic of Azerbaijan.

Refugees or persons willing to get refugee status have a right for voluntary return to the country of origin or to a third country. At the same time, the Republic of Azerbaijan is collaborating with the United Nations High Commissioner for Refugees for the purpose of voluntary return of the refugees to their country of permanent residence and to those developed countries where the treatment is only available. A person who acquired refugee status can no way be sent or forcibly expelled to the country, where there is a danger for his life and freedom. A person, who has been granted the refugee status, uses the rights and has the duties, provided by the legislation of the Republic of Azerbaijan for the foreigners and stateless persons.

The alternative form of protection has not been intended in the legislation of the Republic of Azerbaijan for those who has not been recognized as refugees. However, at a later stage the necessary conditions have been created for these people to apply to the UNHCR Representation in Azerbaijan and benefit from their protection. Foreigners and stateless persons under the protection of the UNHCR Representation in Azerbaijan may not be expelled from the territory of the country.

In 2012, construction of detention centers in Yevlakh and Baku cities has already been completed and since May 2012 the center started to function in Baku. Foreigners and stateless persons coming to the Republic of Azerbaijan with the intention of acquiring refugee status are voluntarily placed in those detention centers in the absence of place of residence. Taking into account the European countries experiences all the conditions has been created for asylum seekers in the centers consistent with international standards. Asylum seekers and their family members are provided with the place of residence, food (3 times in a day) in the centers. All the necessary conditions have been created for them to learn the language and spend their leisure time interestingly. Asylum seekers placed in the centers is provided with the right to leave the centre at any time they desire. According to the requirements of the legislation, they may stay in the center during the review of their petition, namely 3 months, and those who acquired refugee status may stay additional 3 months.

Asylum seekers use the territory of the Republic of Azerbaijan as a transit destination, as well as a country of destination.

In 2008-2012, 351 applicants applied to the State Migration Service in order to acquire refugee status and their applications were investigated in compliance with the requirements of the 1951 Convention Relating to the Status of Refugees and legislation of the Republic of Azerbaijan. Evidences produced by applicants for obtaining refugee status were evaluated within the requirements of the Convention and legislation of the Republic of Azerbaijan, most of these persons were not granted refugee status as their evidences did not meet the requirements of refugee definition (race, religion, nationality, political opinion and membership of social group), as well as left the countries of origin for economic reasons or intended to go to third countries via UNHCR Representation in Azerbaijan. During 2008-2012, refugee statuses were granted to 3 applicants by the State Migration Service (in total 7 persons including family members). At present, in total 48 applicants (in total 64 persons including family members) are registered as refugees by the State Migration Service including persons granted refugee status in previous years.

According to Article 6, Part 1, Item 1 of the Law of the Republic of Azerbaijan on “Status of Refugees and IDPs (internally displaced persons)” dated on May 21, 1999 persons obtained refugee status have the same rights and freedoms with the citizens of the Republic of Azerbaijan and have the same duties. Furthermore, the right to work without work permit has been also provided for the persons acquired refugee status. At present, the refugees registered by the State Migration Service carry out labor activities in construction, science, trade, etc. spheres.

The State Migration Service has not received any information by refugees and asylum-seekers regarding delay and artificial barriers during registration of their marriage, obtaining birth certificates and other legal documents, violence and discrimination by local people towards persons of Chechen origin, as well as intensive inspections by law-enforcement bodies’ employees. On contrary, Ramazan Mollayev, head of Chechen community in the Republic of Azerbaijan, mentioned hospitality of Azerbaijani people, attention and care demonstrated towards Chechen people during meetings. Registration of persons of Chechen origin (refugees) is conducted by UNHCR Representation in Azerbaijan and as these persons are under protection of this organization, assistance to them is provided by UNHCR Representation in Azerbaijan.

Bilateral and sustainable cooperation, practical relations exist between the State Migration Service and UNHCR Representation in Azerbaijan. With the aim of improving national asylum systems and quality of decision making related with determination of refugee status, as well as protection of applicants’ rights draft “Memorandum of Understanding between the State Migration Service and UNHCR Representation in Azerbaijan” was prepared by the State Migration Service and UNHCR Representation in Azerbaijan for the implementation of "Asylum Quality Initiative in Eastern Europe and the south Caucasus" and after consulting with relevant state agencies it has been submitted to the Cabinet of Ministers for review.

## **Legislation on non-governmental organizations and freedom of association**

On paragraphs 59-61 (registration of NGOs in the field of human rights, legislation on this field):

The analysis of the work of NGOs in Azerbaijan shows that at the moment there is a positive increase in number of civil society institutions.

In comparison to 2008 the number of State registered NGOs increased for 19%. Thanks to the advantageous environment created in our country for the development of civil societies, the

activities of NGOs enhanced on a yearly basis (over 2850 NGOs), 210 organizations dealing with human rights, including minorities have been registered by the State.

It should especially be noted that, in order for NGOs to function it is not necessary for them to be registered by the State and since this is not required by legislation (NGOs can perform activities for their purposes even without State registration), the number of organizations that do not have the legal entity status is also increasing each year.

As a result of creating broad opportunities for the functioning of NGOs and implementation funding mechanisms for them, during the year of 2012 the Ministry has registered 1054 grant contracts. In comparison to the relevant period of last year the number and the amounts of grants have increased by 20%.

The State registration of NGOs is executed in accordance with the 2003 Law on State Registration of Legal Entities. Under this Law the registration request and the required documents is received by the relevant execution authority of the Republic of Azerbaijan (Ministry of Justice) and within 30 days its compatibility with the Constitution, this Law, and other legislative acts is considered.

As to the comment on the registration process of Consultative Committee which involves expenses we inform that under Article 5 of the above-mentioned Law, in order to state register an organization which wants to obtain the legal person's status alongside other documents it is also required to show the document confirming the payment of state duty. According to the Article 20 of the Law on State Duty the amount of that duty is eleven manats (10.9 euros).

When registering non-government organization the legislation does not envisage any other expenses apart from the state duty. Concept of state support for non-governmental organizations in Azerbaijan, confirmed by the Presidential decree dated 2007, which establishes the fundamental principles for beginning of the development of civil society's new stage in our country is of a special note.

Under that Concept the programs and projects for provision of human rights and freedoms presented by the NGOs are among the priorities of the state.

The implementation of the Concept has served to widen the network of NGOs in our country and spread them in regions across the country; thus, it has helped the people from all layers of the society through these organizations to realize their abilities and has created new opportunities for their participation in various fields of state building in this or other form.

Besides this, in relation to the implementation of the noted decree, by the Presidential Decree of the Republic of Azerbaijan dated 2007 The Council of State Support to NGOs was established.

Within a short period of time of the Council's functioning, the implementation of the projects financed by it which has given great stimulus to the building of civil society has played a significant role in shaping the national donor institution.

The meeting of the President of the country with local NGO representatives held in July 2012 could be one of the examples of state care and attention to the functioning as well as importance of the NGOs in Azerbaijan.

Alongside this, by taking into consideration the European Commission for Democracy through Law's (Venice Commission) and The Expert Council of the International Non-Government

Conference's recommendations on our country's NGO legislation, including the registration process of the organization and improvement of legislation, proposals are being prepared to make amendments to the existing legislation.

Benefits and privileges, mentioned in the Clauses 58, 60 of exemplary regulations of secondary school in Azerbaijan Republic, provide the possibility for education in the country, irrespective of their race, language and religion.

## **On the registration of religious communities**

After the start of the re-registration process of religious communities (01.09.2009) documents of more than 800 religious communities were received for re-registration or for the first-time registration. Up to now 577 religious communities have passed registration. 372 of these communities were re-registered and 205 religious communities were registered for the first time. Confessional makeup of registered communities is as following: 556 of these registered organizations are Islamic and 21 (12 are Christian, 6 are Jewish, 1 is Krishnaite and 1 is Bahais) are non-Islamic.

During the registration process equal conditions were created for both Islamic and non-Islamic communities and receipt and preparation of their documents, review of their compliance with the legislation and conduction of the state registration were effectively organized. Certificates of the religious communities which did not pass the re-registration remain valid and vast majority of them continue to function. The SCRA has not the right to liquidate the religious communities which did not pass re-registration. The SCRA has the right to appeal to the court with the claim of their liquidation. The SCRA in rare cases appeals to the court.

In the recent years there wasn't closure of any mosque or church in the country. The regulations of the registration of religious communities are very simple. Bureaucracy and discrimination is not allowed during the registration procedure. The religious communities which were denied of the registration has the right to appeal to the SCRA after elimination of shortcomings causing the denial. Denial of religious communities of state registration by the SCRA is realized according to the requirements of the legislation in all cases. The registration process is being continued. At present more than 1800 mosques, 5 Orthodox, 1 Catholic, 1 Lutheran, 2 Alban-Udi, 4 Georgian-Orthodox, 6 synagogues and other prayer houses are functioning in the country. And generally alongside up to 700 Islamic religious communities, 34 non-Islamic religious communities are functioning in the country, 22 of them are Christian, 9 are Jewish, 2 are Bahai and 1 is Krishnaite.

## **On denial of registration**

According to the legislation, the religious community is denied of state registration on below-mentioned grounds:

- If the activities and aims of the religious community or nature and basic principles of the religion which is propagated contradicts the Constitution and Laws of the Republic of Azerbaijan;
- If the established community is not recognized as a religious community;

- If the presented Charter (Regulations) or other documents contradict to the requirements of the legislation of the Republic of Azerbaijan or if the reflected information on them are not true.

The religious community rejected of the state registration is informed about denial by indicating the provisions of the legislation causing the denial. It is not allowed to reject the religious community of state registration on any other grounds other than the legislation of the Republic of Azerbaijan. According to the requirements of the legislation 30 religious communities were denied of state registration up to now. After adjustment of the lacks indicated in the denial order, the religious community has the right to appeal for the state registration. 3 of these mentioned 30 religious communities passed state registration after adjustment of the lacks causing the refusal.

### **On Caucasian Muslims Board**

In the Republic of Azerbaijan Islamic religious communities are united in their historical Islamic religious centre - Caucasian Muslims Board. Islamic religious communities appeal to the CMB for registration. Religious figures leading Islamic places of worship are appointed by the CMB while informing the relevant executive power. Islamic religious communities functioning in the Republic of Azerbaijan present report about their activities to the CMB. In the organizational issues Islamic religious communities are subordinate to the CMB.

### **On Georgian churches**

At present 2 (two) religious communities registered with the SCRA are functioning. These are the "St George's church" and "Saint Nino" Georgian Orthodox Christian religious communities which are functioning relatively in Gakhingiloy and Alibayli villages of Gakh region.

### **On Hijab**

According to the directive of the Ministry of Education prohibiting girls to wear hijab at schools, it should be noted that according to the Article 14.10 of the Law of the Republic of Azerbaijan "On Education" uniforms of the all educated in educational institutions are determined with the regulations of the educational institution.

This issue has already lost its actuality. As regards universities, there is no such a problem at all.

## **Manifestation of religious belief**

On paragraphs 72-73 (Freedom of religious belief)

When it comes to the issue of re-registration of all religious communities in order they could carry out their activities it should be noted that under the Law on Freedom of Religious Belief dated 1992 there is no institution of re-registration of religious communities for the purpose of carrying their activities.

In the opinion high fines were shown for praying in places other than the places that have been registered for this purpose. For such an action neither the Administrative Violations Code nor the Criminal Code stipulates any responsibility. On the contrary, under the Article 21 of the Law on Freedom of Religious Belief liturgies shall be freely carried out in temples, them-owned territories, in places of pilgrimages, cemeteries, institutions of religious associations, as well as in apartments and houses of citizens.

The Muslim communities in addition need not to register in the Caucasus Muslim Office. Under the Articles 7-9 of the abovementioned Law religious Islamic organizations are supervised by the Caucasus Muslim Office they report to this organization only about their activities.

### **Minority language television and radio broadcasting and print media**

On paragraph 78 (Television and radio broadcasting in a minority language):

In accordance with the Law on Public Television and Radio Broadcasting programs in languages of national minorities living on the territory of the Republic of Azerbaijan shall be included in programs.

Approved by the Presidential Decree in 2003, Part 6 of The National Strategy on behalf of the development of information and communication technologies in the years 2003-2012 serving the establishment of conditions for cultural development of national minorities is identified as a key priority.