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Meeting: 1340<sup>th</sup> meeting (March 2019) (DH)

Item reference: Action plan (07/02/2019)

Communication from Azerbaijan concerning the INSANOV group of cases v. Azerbaijan (Application No. 16133/08)

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Réunion : 1340<sup>e</sup> réunion (mars 2019) (DH)

Référence du point : Plan d'action

Communication de l'Azerbaïdjan concernant le groupe d'affaires INSANOV c. Azerbaïdjan (Requête n° 16133/08) (**anglais uniquement**)

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DGI

07 FEV. 2019

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

## ACTION PLAN

Case Insanov v. Azerbaijan (Application No. 16133/08) –

Judgment of 14/03/2013, final on 14/06/2013)

## INTRODUCTION

1. At their 1250th meeting (8-10 March 2016), the Deputies adopted the following decision with respect to the execution of the Court's above judgment:

### "General measures

1. noted that with the introduction of a heating system and the recent renovation of the sanitary facilities, two of the three cumulative elements found by the European Court to contribute to an overall situation of degrading treatment in Prison Facility 13 appear to have been addressed;

2. considered that, whilst the situation of overcrowding in the Facility remains unclear, in light of the European Court's finding that this element alone was not severe enough to amount to ill-treatment, it would be more appropriate to focus their supervision as regards general measures on the other violations in this case and strongly urged the authorities to take rapidly a position in respect of the general measures needed to remedy the violations of Article 6;

### Individual measures

3. recalled that it is imperative that the applicant be detained in conditions which are in accordance with Article 3 and that the Committee of Ministers be provided with concrete information confirming that this is the case; therefore insisted anew on the necessity for the authorities, as a matter of urgency, to respond to the applicant's complaints, ensure the appropriateness of his detention conditions and inform the Committee accordingly;

4. underlined their deep concern that the reopened civil proceeding, brought by the applicant to complain about his conditions of detention, do not appear to be advancing and firmly reiterated their request to the authorities to provide information about the likely timetable;

5. noted that the reopened criminal proceedings are now pending before the Supreme Court but expressed their deep concern about the fact that the Supreme Court has postponed its

consideration sine die and similarly requested the authorities to inform the Committee as to when the Supreme Court hearing is likely to take place.”

2. Accordingly, there remained several matters to be addressed by the respondent State with regard to individual measures implemented in the present case.

## GENERAL MEASURES

### Violation of Article 6 of the Convention

3. The Court’s judgment has been translated into Azerbaijani and published on HUDOC and in the periodic “Bulletin of the judgments of the European Court of human Rights”, which is produced by the Azerbaijan Law Reform Centre NGO.

4. The text of the judgment in Azerbaijani has also been forwarded to the Justice Academy of the Ministry of Justice to include it in the curriculum of training of judges and candidates for judge position.

## INDIVIDUAL MEASURES

### The applicant’s detention conditions

5. The applicant is being detained in the Penitentiary Facility no. 11, in a cell measuring 20.9 sq. m, with 3 other inmates. The cell has 2 windows, is sufficiently lit, ventilated and heated through centralised heating system. It has also necessary sanitary equipment.

### Civil proceeding, brought by the applicant to complain about his conditions of detention

6. Following the Court’s judgment, on 15 November 2013, the Civil Cases Panel of the Supreme Court of the Republic of Azerbaijan quashed the decision of the Supreme Court’s Civil Cases Panel dated 3 June 2008 and the decision of the Baku Court of Appeal dated 5 February 2008 and submitted the civil case related to the applicant’s complaints against the condition of his detention to the Baku Court of Appeal for a re-examination.

7. On 31 January 2014, the Civil Cases Panel of the Baku Court of Appeal quashed the decision of the first instance court delivered on 2 November 2007, following the examination of the applicant's civil complaint. The Baku Court of Appeal submitted the case for re-examination to the Administrative and Economic Court of Baku no. 1.

8. It appears from the decision of the Administrative and Economic Court of Baku no. 1, dated 12 June 2014ç that the applicant and his legal representative have continually failed to appear before the judge.

9. Administrative and Economic Court of Baku no. 1, in particularly found that:

“Notice of hearing of 15 April 2014 had been sent to the place of the claimant's detention – Baku Pre-trial Facility – and he informed the court in writing that he has refused from participating at the hearing in person and appointed his representative. However, the hearing has been again postponed and scheduled for 7 May 2014, since the claimant's representative failed to appear before the court. On 7 May 2014 ... the claimant's representative did not appear before the court. ...

Furthermore, the next hearing has been appointed to take place on 29 May 2014 and relevant notice has been sent to the claimant. On 29 May 2014 the claimant's representative again failed to appear before the court, and the hearing was appointed for 12 June 2014. On 9 June 2014 the court received the letter no. 17/29-1046, of the Director of the Penitentiary Facility no. 13, in which he forwarded an Act signed by 4 officers of the Penitentiary Facility. It appears from the text of this Act that on 23 May 2014 the previous notice of hearing at the Administrative and Economic Court of Baku no. 1 was submitted to A.B. Insanov; however, he refused from accepting the notice and stated that nor he, neither his representative would appear before the court”.

10. The court, accordingly, discontinued the case, holding that the applicant was not interested in the outcome of his claim (see copy of the decision in Annex 1).

#### Reopened criminal proceedings in respect of the applicant

11. Following the Court's judgment, the Plenum of the Supreme Court of the Republic of Azerbaijan quashed the judgment of the Supreme Court of 16 January 2008 and the judgment

of the Baku Court of Appeal of 21 September 2007 in the part related to the applicant and referred the criminal case in this part to the Baku Court of Appeal for new examination.

12. In the course of the new examination the witnesses whose attendance was necessary to ensure the fairness of the trial were summoned by the court. Both the applicant and his representative were able to put questions to those witnesses. On 25 February 2014, following the examination, the Baku Court of Appeal delivered its judgment – the court upheld the first instance court’s judgment in the part related to the applicant.

13. In June 2015 the applicant lodged a cassation appeal with the Supreme Court. On 9 June 2016 the Supreme Court upheld the judgment of the Baku Court of Appeal (see copy of the decision in Annex 2).

14. It appears from the decision of the Supreme Court that it has verified whether the appellate court followed the instructions of the European Court of Human Rights to lift the deficiencies found in the criminal proceedings. The Supreme Court concluded that the appellate court addressed and lifted every shortcoming found by the Court.