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**Observations on the human rights situation in Azerbaijan:  
An update on freedom of expression, freedom of association,  
freedom of assembly, and the right to property**

On 6 August 2013, the Commissioner for Human Rights of the Council of Europe, Nils Muižnieks, published a [report](#) on Azerbaijan, following his visit there in May 2013. The report focused on some of the most pressing human rights issues identified in the country: freedom of expression, notably through the Internet; freedom of assembly and association; and the right to property. Several months after the publication of his report, the Commissioner regrets to note that there has been no progress on the ground in any of the above-mentioned areas; on the contrary, the Commissioner has been informed of a number of developments which further negatively affect the human rights situation in Azerbaijan.

In light of these developments, the Commissioner would like to reiterate some of the recommendations contained in his report. He calls on the Azerbaijani authorities to pay urgent attention to these issues, which are part of the obligations and commitments Azerbaijan has as a member state of the Council of Europe. He stands ready to continue his dialogue with the Azerbaijani authorities to this end.

*Freedom of expression*

In his report, the Commissioner expressed serious concerns about the apparent intensification of the practice of unjustified or selective criminal prosecution of journalists and others who express critical opinions, including bloggers and online activists. He stressed that releasing all persons who are in detention because of the views they hold and express should be a priority for the Azerbaijani authorities in order to protect freedom of expression.

The Commissioner notes that in the comments they submitted in response to his report, the Azerbaijani authorities state that the journalists referred to in his report had not been prosecuted for their professional activity. However, the Commissioner points to consistent reports according to which these cases are based on charges which lack credibility and often follow critical reporting or posts on the Internet.

The Commissioner deplores that this trend is on the rise, with, among others, the arrests of Parviz Hashimli, a journalist with the *Bizim Yol* newspaper, for alleged weapons possession in September 2013, online activist Abdul Abilov in November 2013 and blogger Omar Mammadov in January 2014, on charges of drug trafficking. Abdul Abilov and Omar Mammadov are both known for having created satirical Facebook pages, criticising the authorities. They are all in pre-trial detention.

Another disturbing example concerns Khadija Ismayilova, a journalist known for her investigations into corruption, who was repeatedly summoned to the Prosecutor General's office in February 2014 for questioning on allegations that she leaked state secrets to U.S. congressional aides visiting Baku.

The Commissioner's attention was also drawn to the increasing use of surveillance by intelligence services on human rights defenders and media representatives in Azerbaijan, with reports that a Remote Control System spyware, sold exclusively to governments, has been used in Azerbaijan.

The Commissioner considers that steps should be taken urgently to address the above concerns and calls once more on the authorities to immediately release all persons imprisoned because of views or opinions expressed. This includes the imprisoned journalist, academic and minority rights defender Hilal Mammadov, who was sentenced to 5 years' imprisonment on 27 September 2013 for the dubious combination of illegal drug possession, treason and incitement to national, racial or religious hatred.

Another issue of concern relates to the lack of progress with regard to the decriminalisation of defamation, a long-standing recommendation of the Council of Europe.

Two months after the publication of the Commissioner's report, the European Commission for Democracy through Law (the Venice Commission) adopted an [Opinion](#) on the Legislation pertaining to the Protection against Defamation of the Republic of Azerbaijan, following the submission by the Azerbaijani authorities of a Draft Defamation Law. In its Opinion, the Venice Commission deplored that "in its current form, the Draft Law is, in many respects, not in line with the applicable ECHR [European Convention on Human Rights, or the Convention] principles and case law and fails to ensure adequate implementation of the country's obligations in this field. Moreover, it seems to have been prepared in complete isolation from other parts of domestic law and no progress has been made towards decriminalizing defamation." In particular, the Venice Commission found it "worrying that, in spite of the authorities' repeatedly stated commitment to work towards decriminalization of defamation in co-operation with the Venice Commission, defamation is still associated with excessively high criminal sanctions, including imprisonment." The Venice Commission also underlined that the scope of defamation "has been even widened to online expressions", an extension also criticised by the Commissioner and the OSCE Representative on Freedom of the Media, Dunja Mijatović.

In the meantime, the Commissioner has been informed that on 21 February 2014, the Plenum of the Supreme Court of Azerbaijan adopted a decision containing recommendations to guide domestic courts in the application of freedom of expression provisions in line with the case-law of the European Court of Human Rights. The Plenum notably recommends that courts give priority to sentences not related to imprisonment when applying Articles 147 (defamation) and 148 (insult) of the Criminal Code. The same day, the Plenum also submitted a legislative proposal with a view to amending Articles 147 and 148 of the Criminal Code and bringing them into line with ECHR standards. The proposed amendments have now to be examined by the Azerbaijani Parliament. However, the Commissioner notes that, in the legislative proposal submitted by the Plenum, imprisonment of up to three years remains a possible sentence for aggravated instances of defamation (Article 147.2).

In its last decision adopted on 6 March 2014, the Committee of Ministers of the Council of Europe, supervising the execution of the judgments adopted by the European Court of Human Rights in the cases of *Mahmudov and Agazade v. Azerbaijan* and *Fatullayev v. Azerbaijan*, welcomed the decision of the Plenum drawing the attention of domestic courts to the Convention requirements in the field of freedom of expression. The Committee also noted with interest the legislative proposal made by the Plenum and "invited the authorities, in co-operation with the Venice Commission, to ensure that the general legislative changes necessary are rapidly adopted, sufficiently precise and fully in line with the Convention requirements".

The Commissioner calls on the Azerbaijani authorities to take advantage of this opportunity to review defamation legislation as a whole and ensure that defamation is dealt with through proportionate damages awards and not imprisonment.

Finally, disproportionate damage awards applied in civil proceedings remain an issue. As a result of a decision ordering the payment of a 32.000 AZN (approximately 32.000 €) fine from a defamation lawsuit, *Azadliq* newspaper's bank accounts have been frozen since 25 October 2013 as the newspaper was unable to pay it. The substantial fines imposed in different sets of defamation proceedings on *Azadliq* have seriously jeopardised the continued activities of the newspaper. The Commissioner would like to reiterate that a compensation award of a disproportionate amount may also contravene Article 10 of the Convention, which protects the right to freedom of expression.

#### *Freedom of association*

In his report, the Commissioner expressed serious concerns about the amendments to the law on NGOs, the law on grants and the Code of Administrative Offenses adopted on 15 February 2013. However, new amendments to the same laws, which further restrict the operations of NGOs in Azerbaijan, were adopted on 17 December 2013.

These amendments were signed into law by the President of Azerbaijan on 3 February 2014 and introduce additional administrative requirements with regard to the registration of NGOs as legal entities, the receipt and use of grants by these NGOs and their reporting obligations to the government. NGOs are for example required to inform the Ministry of Justice of any change to the number of their members. The amendments also introduce new offences punishable by fines, notably in case of failure to submit the necessary information for the state registry of legal entities, or for operating without registration.

More generally, these amendments increase the control exercised by the Ministry of Justice over both Azerbaijani and foreign NGOs operating in the country. Due in particular to the very broad and vague wording of the majority of the provisions, for instance as concerns the validity, after an initial period of 90 days, of the certificate that NGOs receive upon registration, excessive discretion is left in applying the new provisions.

The Commissioner is worried about the enactment of the new amendments to the NGO legislation, which was presented as "restricting the environment for an independent and critical civil society, especially in the field of human rights and democracy" in a statement by the spokespersons of EU High Representative Catherine Ashton and Commissioner Štefan Füle issued on 12 February 2014. As pointed out by the Venice Commission in a previous [opinion](#), such restrictive measures raise issues under Article 11 of the Convention, which guarantees the right to freedom of association. The Commissioner urges the Azerbaijani authorities to ensure full respect of the right to freedom of association and reiterates his call on the authorities to alleviate the administrative requirements and make the functioning of NGOs less bureaucratic.

In his report, the Commissioner was also worried to note that problems relating to the registration of NGOs had not abated and referred in this context to the situation of the Election Monitoring and Democracy Studies Center, which remains unregistered to date, although it has sent registration requests six times to the Ministry of Justice since December 2008.

On 16 December 2013, Anar Mammadli, the Chairman of the Election Monitoring and Democracy Studies Center, was arrested and sentenced to three months' pre-trial detention by the Nasimi District Court. In response to a request for information on this case, the Azerbaijani authorities informed the Commissioner that Anar Mammadli was sentenced to pre-trial detention on the grounded suspicions of having committed offences under Articles 192.2.2 (illegal business), 213.1 (tax evasion), 308.2 (abuse of power) of the Criminal Code, following an inspection to ascertain whether the accounting was in accordance with the requirements of law, compliance with tax legislation, and to check the legality of other financial income. On 12 March 2014, his pre-trial detention was extended for three more months.

While investigations are on-going, the Commissioner calls upon the authorities to release Anar Mammadli from detention, as pre-trial detention must be seen as a measure of an exceptional nature, which should be applied only when all other options are judged to be insufficient.

The Commissioner is seriously concerned by the arrest of Anar Mammadli, which follows critical reports issued by his organisation around the last presidential election. Moreover, the investigations appear to be linked to the problems of registration faced by his organisation. In this respect, the Commissioner would like to stress that the cumbersome requirements for registration inevitably drive a number of NGOs to operate on the fringe of the law, for instance by concluding partnerships with registered NGOs to obtain funding. By easing the procedure, instead of complicating it, the authorities should enable NGOs to pursue their public watchdog function in an environment conducive to their work, without undue interference in their internal functioning, unless there are objective reasons for doing so.

#### *Freedom of assembly*

The Commissioner has regularly expressed concerns about the limitations imposed on freedom of assembly. The most frequent problems encountered include the banning of demonstrations in central and easily accessible locations and the use of force to disperse the demonstrations which still go ahead, leading to arrests and, in some cases, harsh sentences. According to information received by the Commissioner, a number of peaceful protests, notably against the increase of fuel prices and against demolitions of houses, have recently been dispersed by the police, sometimes with excessive force, and participants have been arrested and sentenced to administrative detention and fines. The Commissioner reiterates that the notification procedure foreseen by the law should be applied in accordance with European standards and that no authorisation should be required for the holding of public demonstrations; instead the authorities should seek to facilitate and protect public assemblies at the organisers' preferred location.

The Azerbaijani authorities have indicated that the relevant executive authority in each city and region has allocated "special places" (one for each of the 11 districts in Baku) for holding meetings, assemblies and demonstrations. It seems however that the list of such places was only valid for the period surrounding the last presidential election. The Commissioner would be grateful to receive clarification in this regard.

Regarding the 18 persons arrested in relation to protests which took place in the town of Ismayilli in January 2013, and referred to in the Commissioner's report, the Commissioner regrets to note that on 17 March 2014, 8 of them were sentenced to 2.5 to 8 years' imprisonment while another 8 persons received suspended sentences and were released from custody. Tofiq Yagublu, deputy chair of the opposition political party Musavat and journalist with the *Yeni Musavat* newspaper, and Ilgar Mammadov, Chair of the Republican Alternative Civic Movement, were respectively sentenced to 5 years and 7 years of imprisonment for organisation of mass disorders accompanied with violence. The Commissioner, who had called for the release of all persons against whom there is no reliable evidence as to their involvement in acts of violence, is deeply concerned by these convictions, which follow trials in which significant irregularities were observed. He calls on the authorities to review these cases as a matter of priority.

In this context, the Commissioner would like to again raise an issue cutting across the areas of concern highlighted above, namely the urgent need to take measures to ensure a genuinely independent and impartial review of cases relating to fundamental freedoms by the judiciary.

#### *Right to property*

In his report, the Commissioner highlighted several problems that are generated by the demolitions of houses and expropriations, in particular in the city of Baku. He pointed out the lack of transparency in the process, the absence of a legal basis in national law and the violation of

provisions of existing national laws on expropriation, as well as compensation which is sometimes below the market values of properties.

The Commissioner has been informed that demolitions of houses, as well as problems associated with it, have continued in two regions of Azerbaijan and in at least five areas in Baku, in connection with projects such as the “White City” project in Baku, the European Olympic Games, or a tourist complex in the district of Gusar. In this context, the Commissioner would like to re-emphasise his recommendation that all persons affected by expropriations should have access to an effective remedy at national level. The authorities should ensure that all further expropriations and demolitions are carried out in a lawful and transparent manner and should provide those who have been evicted with fair compensation, set at market value.