



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME



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**Third party intervention  
by the Council of Europe Commissioner for Human Rights**

under Article 36, paragraph 3, of the European Convention on Human Rights

**Application No. 68817/14  
Leyla YUNUSOVA and Arif YUNUSOV v. Azerbaijan**

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## Introduction

1. On 20 January 2015, the Council of Europe Commissioner for Human Rights (hereinafter: 'the Commissioner') informed the European Court of Human Rights (hereinafter: 'the Court') of his decision to intervene as a third party in the Court's proceedings, in accordance with Article 36, paragraph 3 of the European Convention on Human Rights (hereinafter: 'the Convention'), and to submit written observations concerning the case of *Leyla Yunusova and Arif Yunusov v. Azerbaijan*. This case relates to the institution of criminal proceedings against the applicants and their remand in custody, the search at the applicants' flat and at the office of the Institute for Peace and Democracy, the applicants' search at Baku airport, as well as the seizure of the applicants' passports, their prevention from leaving the country and the freezing of their bank accounts.
2. According to his mandate, the Commissioner fosters the effective observance of human rights; assists member states in the implementation of Council of Europe human rights instruments, in particular the Convention; identifies possible shortcomings in the law and practice concerning human rights; and provides advice and information regarding the protection of human rights across the region.<sup>1</sup>
3. With reference to human rights defenders in particular, the Commissioner has a specific duty to work in this field, further to the adoption by the Council of Europe Committee of Ministers of the Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities, on 6 February 2008.
4. The Declaration "[i]nvites the Commissioner for Human Rights to strengthen the role and capacity of his Office in order to provide strong and effective protection for human rights defenders by [...] continuing to meet with a broad range of defenders during his country visits and to report publicly on the situation of human rights defenders". It also calls on Council of Europe member states to "co-operate with the Council of Europe human rights mechanisms and in particular [...] with the Commissioner for Human Rights by facilitating his/her visits, providing adequate responses and entering into dialogue with him/her about the situation of human rights defenders when so requested."
5. The situation of human rights defenders in Azerbaijan is of great concern to the Commissioner. Reprisals, including judicial harassment, against critical voices in general, and those denouncing human rights violations in the country in particular, is a widespread phenomenon in Azerbaijan, to which the Commissioner has repeatedly attempted to bring the attention of the authorities in his reports and interventions.
6. This intervention is based on the Commissioner's visits to Azerbaijan from 5 to 8 November 2012, from 22 to 24 May 2013 and from 22 to 24 October 2014, as well as on continuous country monitoring. During his visits the Commissioner held discussions with a number of state authorities and met with representatives of non-governmental organisations (NGOs). He also met with a number of detained human rights defenders and other persons who had voiced dissenting views. The Commissioner last met the first applicant in the pre-trial detention centre of Kurdakhani in October 2014.
7. The Commissioner believes that the present case is an illustration of a serious and systemic human rights problem in Azerbaijan, which, in spite of numerous efforts by the Commissioner and other international stakeholders, remains unaddressed to date.
8. Section I of the present written submission focuses on major issues concerning the right to freedom of expression and the right to freedom of association in Azerbaijan; Section II

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<sup>1</sup> [Resolution \(99\)50](#) on the Council of Europe Commissioner for Human Rights, adopted by the Committee of Ministers on 7 May 1999.

describes the pattern of reprisals against human rights defenders in the country; and Section III contains observations on pre-trial detention. These sections are followed by the Commissioner's conclusions.

#### **I. Observations on the right to freedom of expression and the right to freedom of association in Azerbaijan**

9. Through his visits to Azerbaijan and continuous monitoring, the Commissioner has identified a number of deficiencies in the protection of freedom of expression, assembly and association in Azerbaijan. The Commissioner has had to conclude that Azerbaijan was failing to comply with its international obligations which require safeguarding these freedoms.

#### **Freedom of expression**

10. Regarding freedom of expression in particular, the Commissioner has repeatedly called on the authorities to improve the respect for this right and to release all persons who are detained because of the views they have expressed.
11. In his report following his May 2013 visit to Azerbaijan,<sup>2</sup> the Commissioner expressed serious concerns at the apparent intensification of the practice, already highlighted by his predecessor in 2010 and 2011, of the unjustified or selective criminal prosecution of journalists and others who express critical opinions. He noted that several media workers had recently been prosecuted and/or sentenced for incitement to national, racial or religious hatred and in some instances terrorism, as well as for hooliganism, tax evasion, drug possession and illegal possession of weapons, with the credibility of the relevant charges being widely challenged. As a result, a number of journalists had to serve long prison terms or carry out corrective labour and/or pay heavy fines.
12. In an update to the report published in April 2014, the Commissioner stressed that the situation with regard to freedom of expression in Azerbaijan had deteriorated.<sup>3</sup> He noted that in the comments they had submitted in response to his 2013 report, the Azerbaijani authorities had stated that the journalists referred to in his report had not been prosecuted for their professional activity. However, the Commissioner pointed 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.
13. The Commissioner also reiterated that steps should be taken urgently to address the above concerns and called once more on the authorities to immediately release all persons imprisoned because of views or opinions expressed.
14. The Commissioner's findings and conclusions were echoed by a number of other international bodies. In a recent interim resolution,<sup>4</sup> 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*, considered that, as regards the arbitrary application of criminal legislation to limit freedom of expression, "the present situation raises serious concerns, in particular on account of the reported recent use of different criminal laws - similar to the ones used in the present group of cases (accusations of illegal activities, abuse of authority, treason,

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<sup>2</sup> Commissioner for Human Rights, Report on Azerbaijan, 6 August 2013, [CommDH\(2013\)14](#).

<sup>3</sup> Commissioner for Human Rights, Observations on the human rights situation in Azerbaijan: An update on freedom of expression, freedom of association, freedom of assembly, and the right to property, 23 April 2014, [CommDH\(2014\)10](#).

<sup>4</sup> [Interim Resolution](#) CM/ResDH(2014)183, adopted by the Committee of Ministers of the Council of Europe on 25 September 2014.

hooliganism or other crimes which can have close links to the legitimate exercise of the freedom of expression) - against journalists, bloggers, lawyers and members of NGOs.”

15. Emphasising the structural dimension of the aforementioned shortcomings, the Commissioner has also repeatedly stressed the need to take measures to ensure a genuinely independent and impartial review by the judiciary of cases involving journalists and others expressing critical voices.

### **Freedom of association**

16. With regard to freedom of association, a number of NGOs, especially those operating in the field of human rights and those openly critical of the government, are reported to encounter severe obstacles in carrying out their work in Azerbaijan. Already in 2011, the Commissioner’s predecessor expressed concern about “information indicating that in the past months several national and international NGOs have faced difficulties in carrying out their activities freely, and that some of them have even been obliged to cease their activities in Azerbaijan.”<sup>5</sup>
17. National NGOs have faced difficulties especially with regard to the restrictive application of the regulations on registration, which can result in long delays or the absence of any formal decision on registration. The Court had to examine several cases concerning violations of the right to freedom of association (Article 11 of the Convention) in Azerbaijan due to the repeated failure of the Ministry of Justice to decide definitively, or to respond within the statutory time-limits on the applicants’ requests for registration of their associations.<sup>6</sup>
18. In an Opinion on the NGO legislation adopted in 2011, the Venice Commission concluded that, while legislation relating to NGOs legal status had been improved in some aspects over the years, amendments adopted in 2009 and a Decree adopted in 2011 “unfortunately overturn the previous efforts to meet with the requirements of international standards.”<sup>7</sup> With regard to the registration issue in particular, the Venice Commission noted that these changes have added further complications to an already complicated and lengthy procedure. According to the Venice Commission, “the main deficiencies relate to the fact that the registration of NGOs is a lengthy and complicated procedure, whose outcomes are somewhat difficult to predict. Recorded practice shows that some of the NGOs which applied for registration have never got formal decision, and those that have got it, often needed to wait for an extensive period of time.”<sup>8</sup>
19. Moreover, in his 2013 report, the Commissioner stressed that on 15 February 2013, amendments to the law on NGOs, the law on grants and the Code of Administrative Offenses which further restrict the operations of NGOs in Azerbaijan were adopted by the Azerbaijani Parliament.<sup>9</sup> These amendments were signed into law by the President of Azerbaijan on 11 March 2013. They require NGOs to sign a formal grant agreement when they receive funding for amounts exceeding 200 AZN. If a copy of the grant agreement is not presented to the Ministry of Justice within the period prescribed by law, NGO leaders can be fined between 1500 and 2500 AZN and legal entities can be fined from 5000 to 7000 AZN. NGOs receiving

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<sup>5</sup> Observations on the human rights situation in Azerbaijan, [CommDH\(2011\)33](#), 29 September 2011.

<sup>6</sup> *Ramazanova and others v. Azerbaijan*, application no. 44363/02, judgment of 1 February 2007; *Aliyev and others v. Azerbaijan*, application no. 28736/05, judgment of 18 December 2008; *Nasibova v. Azerbaijan*, application no. 4307/04, judgment of 18 October 2007; *Ismayilov v. Azerbaijan*, application no. 4439/04, judgment of 17 January 2008.

<sup>7</sup> [Opinion](#) on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, adopted by the Venice Commission at its 88<sup>th</sup> Plenary Session (Venice, 14-15 October 2011), CDL-AD(2011)035, para. 117.

<sup>8</sup> *Ibid.*, para. 60.

<sup>9</sup> Commissioner for Human Rights, Report on Azerbaijan, 6 August 2013, [CommDH\(2013\)14](#), para. 88.

any kind of grant or donation over 200 AZN without a formal agreement could also face fines and confiscation of their property.

20. In the report, the Commissioner considered that these amendments have added reporting obligations regarding the grants and donations received to already heavy reporting obligations for NGOs. He therefore urged the Azerbaijani authorities to ensure full respect of the right to freedom of association. To this end, he called upon the authorities to alleviate the registration requirements and make the whole process, as well as the official requirements for the functioning of NGOs, less bureaucratic.
21. In the update to the report published in April 2014, the Commissioner expressed worries about new amendments to the law on NGOs and the law on grants.<sup>10</sup> These amendments, which were adopted on 17 December 2013 and signed into law by the President of Azerbaijan on 3 February 2014, 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. The Commissioner noted that 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 was left in applying the new provisions.
22. The Commissioner notes that further changes were introduced on 17 October 2014, adding new regulations relating to the receipt of grants and donations by NGOs. In a recent Opinion, the Venice Commission concluded that some of the new obligations imposed on NGOs with respect to the receipt of grants and donations and to reporting to the state authorities “seem to be intrusive enough to constitute a *prima facie* violation of the right to freedom of association. In general, the enhanced state supervision of NGOs seems to reflect a very paternalistic approach towards NGOs and calls again for sound justification. The same holds for new and enhanced penalties that can be imposed upon NGOs even for rather minor offences. Globally, the cumulative effect of those stringent requirements, in addition to the wide discretion given to the executive authorities regarding the registration, operation and funding of NGOs, is likely to have a chilling effect on the civil society, especially on those associations that are devoted to key issues such as human rights, democracy and the rule of law.”<sup>11</sup>
23. In the Commissioner’s view, a number of the recent arrests and detentions of Azerbaijani human rights defenders are related to the above shortcomings in the NGO legislation and the way it is implemented. Irregularities found in the activities of a number of the NGOs concerned actually derived from the onerous legislative framework relating to reporting obligations, grants registration as well as tax requirements. The Commissioner would like to recall that, according to the relevant Council of Europe Committee of Ministers Recommendation, no external intervention in the running of NGOs should take place unless a serious breach of the legal requirements applicable to NGOs has been established or is

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<sup>10</sup> Commissioner for Human Rights, Observations on the human rights situation in Azerbaijan: An update on freedom of expression, freedom of association, freedom of assembly, and the right to property, 23 April 2014, [CommDH\(2014\)10](#).

<sup>11</sup> [Opinion](#) on the Law on non-governmental Organisations (Public Associations and Funds) as amended of the Republic of Azerbaijan, adopted by the Venice Commission at its 101<sup>st</sup> Plenary Session (Venice, 12-13 December 2014), CDL-AD(2014)043-e, para. 91-93.

reasonably believed to be imminent.<sup>12</sup> He is of the opinion that, in Azerbaijan, the strict control over NGOs operated by state authorities is likely to interfere with the right to freedom of association, guaranteed by Article 11 of the Convention. He is also of the opinion that by deliberately attempting to make independent human rights work in Azerbaijan impossible, this restrictive framework constitutes an integral part of the pattern of judicial harassment and reprisals against human rights defenders currently prevailing in Azerbaijan, as further detailed below.

## **II. Reprisals against human rights defenders**

### **Hindrances to the work of human rights defenders in the Council of Europe area**

24. In the course of ongoing discussions with human rights defenders, the Commissioner's attention has been drawn to the very difficult situation which human rights defenders in some countries face, including regular and severe threats and attacks against their personal security as well as administrative and legal obstacles. Both individuals and organisations can be targeted. In order to mobilise public support for some of their actions, states often engage in defamation campaigns against these individuals and organisations. Defenders are accused of spying, being "enemies of the state", getting support from outside forces due to their reliance on foreign funding or helping "criminals" and "deviants". Sometimes defamation and libel suits are launched against defenders.<sup>13</sup>

### **Reprisals in Azerbaijan as human rights violations**

25. The arrest and detention of the first applicant in July 2014 and of the second applicant in August 2014 is part of a more general crackdown on human rights defenders in Azerbaijan, which intensified over the summer of 2014. In the Commissioner's view, the prosecutions of human rights defenders and prominent journalists in Azerbaijan constitute reprisals against those who have co-operated with the Council of Europe or other organisations and denounced human rights violations in the country. The close working relationships of the Commissioner's Office and the Council of Europe as a whole with these human rights defenders reinforce the belief that they are being deliberately targeted with criminal proceedings as a result of their engagement in activities that should be perfectly legal in a well-functioning democracy. Almost all have participated in human rights defenders' round-tables organised by the Commissioner's Office in recent years. Others have provided legal aid on a number of cases before the European Court of Human Rights, or have provided information to monitoring mechanisms of the Council of Europe. Finally, some of them have organised or participated in several side events during sessions of the Parliamentary Assembly of the Council of Europe over the last year. All of them are important and reliable partners of the Council of Europe and the Commissioner's Office.

26. The applicants' case provides a disturbing illustration of this pattern of reprisals against those who co-operate with international institutions, including the Council of Europe, to address human rights shortcomings in Azerbaijan.

27. Head of the Institute for Peace and Democracy, an unregistered association, and founder of Azerbaijani Women for Peace and Freedom, the first applicant is one of Azerbaijan's most renowned human rights defenders and a long-standing partner of the Council of Europe. She has provided various bodies of the Council of Europe with extensive information about the human rights situation in Azerbaijan over the past several years. The Commissioner met her

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<sup>12</sup> Recommendation [CM/Rec\(2007\)14](#) of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, para. 70.

<sup>13</sup> [Report](#) on the Round-Table organised by the Office of the Commissioner for Human Rights of the Council of Europe, Strasbourg, 27-28 October 2011, CommDH(2012)21, para. 12.

on a number of occasions in Strasbourg and Baku to discuss human rights issues in Azerbaijan. She also participated in round-tables with human rights defenders organised by the Office of the Commissioner in 2009 and 2011. In May 2013, the Commissioner took the opportunity of his presence in Baku to participate in the ceremony at the French Embassy during which she was awarded the National Order of the French Legion of Honour for her human rights-related work. In 2014, she was one of three finalists for the Sakharov Prize for Freedom of Thought, granted by the European Parliament every year to individuals who have made an exceptional contribution to the fight for human rights across the globe.

28. The first applicant was also regularly compiling lists of alleged politically motivated arrests in Azerbaijan, for submission to international organisations.
29. Along with the second applicant, her husband, the first applicant has also sought to promote dialogue with counterparts in Armenia. Together, they have been vocal advocates of reconciliation between Armenia and Azerbaijan working to foster dialogue, mutual understanding, and peaceful settlement of the Nagorno-Karabakh conflict through civil society.<sup>14</sup>
30. The Commissioner notes that his predecessor had expressed particular concern about threats and harassment targeting the applicants already in 2011, following the demolition in August 2011 of a building hosting several human rights organisations, including the Office of the Institute for Peace and Democracy, which had taken place as part of a reconstruction programme being implemented in Baku. In this specific case, the demolition was carried out despite a court decision prohibiting the destruction of the building pending a hearing scheduled for September 2011, and in the absence of any prior notification or compensation offer to the owners. The building's occupants were unable to retrieve any of their belongings, and their working materials - such as computers, documents, and books - were destroyed. The Commissioner's predecessor considered that the circumstances of the demolition, which occurred in the evening, gave reason to believe that it was carried out in retaliation against the activities of the first applicant, who was the owner of the house.<sup>15</sup>
31. Furthermore, on 29 April 2014, the Commissioner expressed dismay at the news that the applicants had been detained and searched for hours at Baku airport, with difficulties to meet their lawyer, and at the subsequent questioning of the first applicant by the Prosecutor's office. The Commissioner stressed that this was an additional example showing the extent of intimidation and repression of critical voices in Azerbaijan.
32. The Commissioner also notes that the charges brought against the applicants are identical to those initiated against a number of other human rights defenders. The Commissioner shares the concern expressed by many of his interlocutors that the arrest and detention of the applicants is an attempt to silence their efforts to report on human rights violations and aims to prevent them from continuing their work, notably on the sensitive issue of reconciliation between Azerbaijan and Armenia.
33. The Commissioner notes that the judgment of the European Court of Human Rights in the case of *Ilgar Mammadov*,<sup>16</sup> which recently became final, brings the broader issue of selective justice in Azerbaijan to the forefront. In this judgment, the Court found that the applicant had been detained for purposes other than having committed an offence, and that there had accordingly been a violation of Article 18 of the Convention (limitation on use of restrictions

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<sup>14</sup> See "PACE rapporteur denounces arrest of Azerbaijani human rights defender Leyla Yunus on treason charges", [Statement](#) by Mailis Reps, Rapporteur of the Parliamentary Assembly of the Council of Europe on "Strengthening the role and protection of human rights defenders in Council of Europe member States", 3 August 2014.

<sup>15</sup> Observations on the human rights situation in Azerbaijan, [CommDH\(2011\)33](#), 29 September 2011.

<sup>16</sup> *Ilgar Mammadov v. Azerbaijan*, application no. 15172/13, judgment of 22 May 2014.

on rights) taken in conjunction with Article 5 (right to liberty and security). The Court stressed that the circumstances of the case “indicate that the actual purpose of the impugned measures was to silence or punish the applicant for criticising the Government and attempting to disseminate what he believed was the true information that the Government were trying to hide.”<sup>17</sup> On the basis of his work on Azerbaijan, the Commissioner believes that similar issues arise with respect to the detention and conviction of a number of other individuals who have voiced critical views, including human rights defenders.

### **Reprisals in Azerbaijan as obstruction to the functioning of international human rights mechanisms**

34. The Commissioner underlines that intimidation and reprisals against human rights defenders in retaliation for their work at the international, regional or national levels not only amount to attacks on human rights, but also breach the rule of law.
35. In this respect, the Commissioner recalls Article 5 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,<sup>18</sup> which describes the activities in which human rights defenders may engage at national and international level, including the right to communicate with non-governmental or intergovernmental organisations.
36. In addition, the Council of Europe 2008 Declaration calls on member states “to ensure the effective access of human rights defenders to the European Court of Human Rights, the European Committee of Social Rights and other human rights protection mechanisms in accordance with applicable procedures.”<sup>19</sup>
37. In a 2013 Resolution on Protecting Human Rights Defenders, the UN Human Rights Council reaffirmed the right of unhindered access to and communication with international and regional human rights mechanisms and called on states to avoid legislation that has the effect of undermining that right and to refrain from any act of intimidation or reprisals against those who co-operate, have co-operated or seek to co-operate with international institutions, including their family members and associates.<sup>20</sup>
38. Finally, the Commissioner would like to draw attention to the recently published Guidelines on the Protection of Human Rights Defenders,<sup>21</sup> which also provide that states shall ensure that human rights defenders enjoy the right to unhindered access to and communication with international and regional bodies and states that they should refrain from any action that may frustrate or undermine the right of human rights defenders to provide information to international bodies; they should notably not prevent human rights defenders from meeting with international delegations when they visit the country.

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<sup>17</sup> *Ibid.*, para. 143.

<sup>18</sup> Article 5 of the [UN Declaration](#) on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by General Assembly resolution 53/144 of 9 December 1998: For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

(b) To form, join and participate in non-governmental organizations, associations or groups;

(c) To communicate with non-governmental or intergovernmental organizations.

<sup>19</sup> [Declaration](#) on Council of Europe action to improve the protection of human rights defenders and promote their activities, adopted by the Committee of Ministers on 6 February 2008, para. 2 (vii).

<sup>20</sup> Human Rights Council [Resolution](#) 22/6 on Protecting Human Rights Defenders, adopted on 12 April 2013, para. 13 and 14.

<sup>21</sup> OSCE/ODIHR [Guidelines](#) on the Protection of Human Rights Defenders, 10 June 2014, J. Right to access and communicate with international bodies.



39. As stressed in the Explanatory report to these Guidelines, “international human rights mechanisms depend on the information submitted by individuals and groups in order to support the implementation of international human rights standards by states. Therefore, any form of reprisal against human rights defenders for providing information to international bodies, or otherwise obstructing their interaction with these bodies, is both a human rights violation and, at the same time, undermines the functioning of mechanisms with which states have committed to co-operate in good faith.”

### III. Pre-trial detention

40. Another issue of serious concern to the Commissioner is the frequent resort to pre-trial detention as a preventive measure in Azerbaijan.
41. In a report published in 2010,<sup>22</sup> the Commissioner’s predecessor noted that since 2000 and the adoption of the new Criminal Procedure Code of Azerbaijan, the power to order pre-trial detention of a person suspected or accused of a crime had been transferred from the Prosecutor General to judges. According to the Criminal Procedure Code, detention during the pre-trial stage of criminal proceedings may only be ordered by the court in strictly limited circumstances prescribed by law, and only where other restrictive measures are not regarded as adequate. The report concluded that, while the provisions of the Code in this regard are in accordance with European standards, judges have in practice ordered pre-trial detention in the vast majority of criminal proceedings without proper or adequate consideration for the grounds or whether less restrictive measures, such as house arrest or release on bail, would be sufficient.
42. Despite the adoption of an important decision by the Plenum of the Azerbaijani Supreme Court on 3 November 2009,<sup>23</sup> instructing all courts to consider alternatives to detention on remand, and the adoption of a new law, clarifying norms of different legislative acts related to pre-trial detention,<sup>24</sup> the Commissioner observes that the World Pre-trial/Remand Imprisonment List<sup>25</sup> recently showed that the number of pre-trial detainees in Azerbaijan has been continuously rising since 2002.
43. Several judgments of the European Court of Human Rights have found a violation of Article 5 of the Convention with respect to Azerbaijan,<sup>26</sup> related in particular to the lack of relevant and sufficient reasoning by courts while considering pre-trial detention and its extension. The Court recently stated:

“In all their decisions in the present case, the domestic courts limited themselves to copying the prosecution’s written submissions and using short, vague and stereotyped formulae for rejecting the applicant’s complaints as unsubstantiated. In essence, the domestic courts limited their role to one of mere automatic endorsement of the prosecution’s requests and they cannot be considered to have conducted a genuine

<sup>22</sup> Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Azerbaijan, 29 June 2010, [CommDH\(2010\)21](#).

<sup>23</sup> Decision of the Plenum of the Azerbaijani Supreme Court on “the practice of the application of the law by courts when submissions to order the restrictive measures of arrest in respect of the accused are considered”, 3 November 2009.

<sup>24</sup> Law *On protection of rights and freedoms of detainees* (22.05.2012, N 352-IVQ).

<sup>25</sup> [World Pre-trial/Remand Imprisonment List](#), May 2014. See also the 2013 Council of Europe Annual Penal Statistics ([SPACE I](#) and [SPACE II](#) surveys), published on 11 February 2015.

<sup>26</sup> The violations of Article 5 of the Convention concerning arrest and detention on remand are currently examined by the Committee of Ministers of the Council of Europe in the context of the *Farhad Aliyev* group of cases (see notably *Farhad Aliyev v. Azerbaijan*, application no. 37138/06, judgment of 9 November 2010, and *Muradverdiyev v. Azerbaijan*, application no. 16966/06, judgment of 9 December 2010).

review of the “lawfulness” of the applicant’s detention. That is contrary not only to the requirements of Article 5 § 4, but also to those of the domestic law as interpreted and clarified by the Plenum of the Supreme Court.”<sup>27</sup>

44. On the basis of his work on Azerbaijan, the Commissioner considers that the situation remains unchanged. He wishes to reiterate that pre-trial detention should be the exception rather than the norm, as provided for by European and international standards, including the Committee of Ministers Recommendation 2006(13) on the use of remand in custody.<sup>28</sup> He also wishes to underline that a genuine change in practice will first of all depend on the level of judicial independence and changes in the way law enforcement bodies work during the course of investigations.

## Conclusions

45. As noted by the Parliamentary Assembly of the Council of Europe, there is a tendency among Azerbaijani authorities to rely on the Court to rectify the shortcomings of the national judicial procedures.<sup>29</sup> The Commissioner cannot stress enough that it is essential that national authorities assume their responsibilities in the field of human rights protection: national judges should apply the Convention, as interpreted by the Court, more systematically.

46. In conclusion, the Commissioner is of the opinion that:

- There is a clear pattern of repression in Azerbaijan against those expressing dissent or criticism of the authorities. This concerns particularly human rights defenders, but also journalists, bloggers and other activists, who may face a variety of criminal charges which defy credibility. Such charges are largely seen as an attempt to silence the persons concerned and are closely linked to the legitimate exercise by them of their right to freedom of expression.
- Moreover, these criminal prosecutions often constitute reprisals against those who cooperate with international institutions, including the Council of Europe.
- A number of the recent arrests and detentions of Azerbaijani human rights defenders are related to shortcomings in the NGO legislation and the way it is implemented. In particular, some of the obligations imposed on NGOs with respect to the receipt of grants and to reporting to the state authorities raise issues under Article 11 of the Convention, which guarantees the right to freedom of association. This restrictive legal framework constitutes an integral part of the pattern of judicial harassment and reprisals against human rights defenders currently prevailing in Azerbaijan.
- Reprisals against human rights defenders in retaliation for their work at the international, regional or national levels amount to human rights violations. In particular, arrest and detention in such circumstances raise issues under Article 5 § 1 of the Convention, in the absence of a reasonable suspicion that a criminal offence has been committed.
- Pre-trial detention is used as a tool of punishment to silence those expressing dissenting views, including to prevent them from providing information to international human rights bodies.
- Pre-trial detention orders are problematic due to the absence of proper or adequate consideration for the grounds of detention and for alternative measures to detention.

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<sup>27</sup> *Ilgar Mammadov v. Azerbaijan*, application no. 15172/13, judgment of 22 May 2014, para. 118.

<sup>28</sup> [Recommendation](#) Rec(2006)13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, adopted by the Committee of Ministers on 27 September 2006.

<sup>29</sup> [Report](#) of Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), *The functioning of democratic institutions in Azerbaijan*, 31 May 2010, para. 79.

47. Lastly, the Commissioner would like to stress that reprisals against the civil society partners of his Office make it increasingly difficult to work on human rights issues in Azerbaijan. These reprisals should immediately stop and all persons who are in detention because of their views expressed or legitimate civic activity should be released.