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# COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE

DUNJA MIJATOVIĆ

REPORT FOLLOWING HER VISIT TO AZERBAIJAN  
FROM 8 TO 12 JULY 2019



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## SUMMARY

Commissioner Dunja Mijatović and her team visited Azerbaijan from 8 to 12 July 2019. During the visit, the Commissioner held discussions with the Azerbaijani authorities, the Ombudsman, representatives of civil society and lawyers. This report focuses on several issues raised during the visit: the right to freedom of expression; recent developments concerning the situation of lawyers; and the human rights of internally displaced persons.

### **Freedom of expression**

The Commissioner notes with regret that no progress has been made with regard to protecting freedom of expression in Azerbaijan. She observes that journalists and social media activists, who had expressed dissent or criticism of the authorities, are continuously detained or imprisoned in Azerbaijan on a variety of charges, such as disobeying the police, hooliganism, extortion, tax evasion, incitement to ethnic and religious hatred or treason, as well as drug possession or illegal possession of weapons. During her visit, the Commissioner went to prisons where she met with the journalists Seymour Hazi and Afgan Mukhtarli, whose cases are representative of a widespread pattern raising fundamental human rights concerns. In a number of judgments concerning Azerbaijan, the European Court of Human Rights (hereinafter: the Court) found violations of Article 18 of the European Convention on Human Rights (limitation on use of restrictions on rights) taken in conjunction with Article 5 (right to liberty and security), because the applicants had been detained for purposes other than having committed an offence. The Commissioner also points out that several of the Court's judgments relating to the arbitrary application of criminal legislation to restrict freedom of expression have not been fully executed to date. She once again calls on the Azerbaijani authorities to release all those detained because of the views they expressed.

The Commissioner observes that dozens of journalists, lawyers, political activists and human rights defenders are banned from leaving the country, in circumstances which give rise to justifiable doubts about the lawfulness of such travel bans. She calls on the Azerbaijani authorities to refrain from imposing arbitrary or disproportionate travel bans and lift immediately those which are in contradiction with the right to leave the country.

The Commissioner notes that provisions on defamation remain in the Azerbaijani Criminal Code, and were even extended to include online expressions. She reiterates the long-standing demand for decriminalisation of defamation in Azerbaijan.

The Commissioner observes that new amendments were introduced in March 2017 in the law "on information, informatisation, and protection of information", allowing the authorities to block access to a website if it contains "prohibited information posing a danger to the state or society." Shortly after the adoption of these amendments, a district court in Baku ordered the blocking of a number of websites. Blocking websites is an extreme measure which may hamper the right to access information. The Commissioner therefore calls on the authorities to bring the legislation and practice affecting Internet freedom in line with European standards.

### **Situation of lawyers**

The Commissioner observes that Azerbaijan suffers from an acute shortage of lawyers, in particular in the regions outside the capital. The recent reform of November 2017, which excluded lawyers from civil and administrative proceedings before courts unless they are members of the Azerbaijani Bar Association, left many people without access to legal assistance and representation. The Commissioner notes that a number of steps have been taken by the authorities and the Bar Association to increase the number of lawyers in the country. She calls on the government to step up its efforts to address effectively the shortage of lawyers in the country. While the Commissioner welcomes the more frequent organisation of qualification examinations by the Bar Association, she underlines that the qualification process for a lawyer's admission to the Bar, as it stands, suffers from a number of weaknesses. The oral part of the examination in particular should be removed or reformed, to ensure fair and objective evaluation. In addition, there is a clear need to strengthen the independence of the Bar Association and its role in the representation and defence of the interest of its members.

The Commissioner is also concerned about the quality of the legal assistance provided, which can be of a formalistic nature, and by the fact that access to a lawyer can be delayed. The authorities should immediately take measures to ensure that the right of access to a lawyer is effectively guaranteed to all persons as from the

very outset of their deprivation of liberty. In Azerbaijan, State-funded legal aid is only provided in cases where representation by a lawyer is mandatory; there is no specific legislation on legal aid, and no clear criteria for eligibility. A further issue of concern relates to the fact that lawyers providing free legal aid are insufficiently remunerated. The Commissioner underlines that effective access to justice, particularly by persons who are in an economically weak situation, cannot be achieved without an efficient national system of legal aid and legal advice. She therefore calls on the Azerbaijani authorities to adopt a law on legal aid in line with Council of Europe standards and ensure that all persons effectively enjoy the right to legal assistance.

The Commissioner is particularly concerned by the use of disciplinary measures on improper grounds, such as expressing critical views, as well as by the lack of clear criteria for the imposition of disciplinary sanctions, in particular disbarment. She notes that most of the lawyers recently disbarred or who had their licenses suspended are those working on cases considered to be politically sensitive, suggesting that disciplinary proceedings are used as a tool for punishing lawyers who take on sensitive cases. A number of procedural flaws have also been reported in the disciplinary procedure. In addition, the Commissioner is concerned by the numerous reports she received of disciplinary proceedings unjustifiably interfering with lawyers' freedom of expression. She further notes that the new Code of Conduct, adopted by the Conference of members of the Bar Association on 7 December 2017, contains some provisions which might be used to unduly restrict lawyers' freedom of expression. The Commissioner calls on the Bar Association to strengthen the procedural safeguards to ensure that complaints against lawyers are dealt with through transparent and fair proceedings, and recalls that lawyers have the right to express their views on matters of public interest, and their freedom to do so must be safeguarded.

### **Human rights of internally displaced persons**

The issue of internal displacement resulting from the unresolved conflict over the Nagorno-Karabakh region remains one of the main priorities for the government of Azerbaijan. The Commissioner commends the important steps taken by the authorities to address the human rights issues of internally displaced persons (IDPs). She reiterates the importance of overcoming the decades-long impasse and finding a peaceful solution to the Nagorno-Karabakh conflict, so that those IDPs who wish to return may do so on a voluntary basis, in safety and dignity.

As regards the living condition of IDPs, the Commissioner recognises the important progress made by the authorities, by relocating IDPs to specially constructed settlements and providing them with housing free of charge. However, she remains concerned that some IDPs continue to live in dormitories and collective centres in dire or substandard conditions, that they have no possibility to acquire ownership rights over the apartments in which they have been resettled and that the allocation of housing does not necessarily take into consideration the specific needs of IDPs. Several obstacles also hamper income-generation and self-reliance opportunities for IDPs, especially for persons living in the rural regions and urban areas outside Baku. The Commissioner encourages the authorities to further enhance access by IDPs to all economic and social rights, in particular the right to adequate housing and the right to employment. It is particularly important to ensure that livelihood opportunities are provided, in order to ensure that IDPs achieve self-sufficiency and do not entirely depend on government assistance. Furthermore, the Commissioner is concerned that a majority of internally displaced children study in schools which were built or intended just for IDPs and are thus being educated separately from the rest of the population. She calls on the authorities to promote mixed schooling in order to facilitate the integration of internally displaced children in society. Finally, the Commissioner underlines the importance of mapping the specific needs of IDPs, in order to better respond to the various challenges they are facing.

An effective participation in decision-making processes implies the right of IDPs to vote and stand for elections, especially at the local level, as local authorities play a key role in promoting and sustaining their inclusion in the host communities. The Commissioner is concerned that, in Azerbaijan, participation in political life is limited due to IDPs' inability to vote in municipal elections in the constituencies where they reside. The Commissioner calls on the authorities to ensure the right to vote of IDPs in municipal elections at their current place of residence. The Commissioner further observes limited participation of IDPs in public life. Although some NGOs dealing with IDP issues have been established by IDPs themselves, their voices are often not heard, and they are not included in political decision-making. In the Commissioner's view, it is imperative that state authorities ensure the full participation of IDPs in decision-making processes, and involve host communities to address broader concerns related to the inclusion policies.



## INTRODUCTION

1. The Commissioner for Human Rights of the Council of Europe, Dunja Mijatović (the Commissioner), carried out a visit to Azerbaijan from 8 to 12 July 2019.<sup>1</sup> The visit focused on three sets of issues: the right to freedom of expression (section I of the present report), recent developments concerning the situation of lawyers (section II) and the human rights of internally displaced persons (section III).
2. During the visit, the Commissioner met with the Minister of Foreign Affairs, Elmar Mammadyarov; the Minister of Justice, Fikrat Mammadov; the Minister of Internal Affairs, Vilayat Eyvazov; the Head of the Department of Foreign Policy Affairs in the Presidential Administration, Hikmat Hajiyev; the Prosecutor General, Zakir Garalov; the President of the Supreme Court, Ramiz Rzayev; and the Chairman of the State Committee for Affairs of Refugees and IDPs, Rovshan Rzayev. In addition, the Commissioner met with the Ombudsman, Elmira Suleymanova, as well as with the Chair, Anar Baghirov, and members of the Bar Association. She also held discussions with representatives of UNHCR and the ICRC, representatives of civil society and lawyers.
3. The Commissioner made field visits to two settlements of internally displaced persons in the Yasamal and Sabunchu districts in Baku. She also went to prisons where she met with the journalists Seymur Hazi and Afgan Mukhtarli.
4. The Commissioner would like to thank the Azerbaijani authorities in Strasbourg and in Baku for their assistance in organising and facilitating her visit and for providing her with additional information following the visit. She expresses her gratitude to all her interlocutors in Azerbaijan for sharing with her their positions, knowledge and insights.<sup>2</sup>

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<sup>1</sup> The Commissioner was accompanied by Özgür Derman, Deputy to the Director of her Office, and Anne Weber, Adviser.

<sup>2</sup> This report was finalised on 18 November 2019.

## 1 FREEDOM OF EXPRESSION

5. The Commissioner notes with regret that no progress has been made with regard to protecting freedom of expression in Azerbaijan.<sup>3</sup> The Commissioner remains particularly concerned about the lack of pluralism in the country's media and arbitrary interferences with media freedom. While the State Fund for the Support of Mass Media Development, established under the President of Azerbaijan, invests extensive funds to assist print media, a lack of transparency in the eligibility criteria used for newspapers to receive public funding has been reported.<sup>4</sup> Recent interferences with media freedom have included the revocation of broadcast licenses, notably of Radio Free Europe/Radio Liberty and ANS television and radio outlets, and financial pressure on the newspaper *Azadliq*. Persistent impunity for the murder of two journalists - Rafiq Tagi in 2011 and Elmar Huseynov in 2005 - also raises grave concerns.
6. More generally, the Commissioner notes that the issue of restrictions on freedom of expression was raised during Azerbaijan's recent Universal Periodic Review, in May 2018, with numerous States making recommendations to put an end to these restrictions, both direct and indirect, and to ensure that journalists, human rights defenders, NGOs and other civil society actors are able to carry out their legitimate activities without fear of threats or reprisals, obstruction or legal and administrative harassment.<sup>5</sup>
7. As the protection of personal opinions, secured by Article 10 of the European Convention on Human Rights (hereinafter the Convention), is one of the objectives of freedom of peaceful assembly as enshrined in Article 11, the Commissioner observes that restrictions to the right to freedom of assembly, such as the excessive use of force by law enforcement officials to disperse and suppress peaceful demonstrations and the arrests of participants for their involvement in protests held without prior agreement with the authorities, have also negatively affected the state of freedom of expression in the country.
8. In the following sub-sections, the Commissioner wishes to address more particularly the arbitrary application of criminal legislation to restrict freedom of expression, the issue of defamation and Internet restrictions.

### 1.1 THE ARBITRARY APPLICATION OF CRIMINAL LEGISLATION TO RESTRICT FREEDOM OF EXPRESSION

#### 1.1.1 ARRESTS AND DETENTION

9. The Commissioner notes that journalists and social media activists, who had expressed dissent or criticism of the authorities, are detained or imprisoned in Azerbaijan on a variety of charges, such as disobeying the police, hooliganism, extortion, tax evasion, incitement to ethnic and religious hatred or treason, as well as drug possession or illegal possession of weapons. This was also pointed out in November 2016 by the United Nations Human Rights Committee, which reiterated its concerns in Azerbaijan "about extensive restrictions on freedom of expression in practice, including (...) consistent reports of intimidation and harassment, including arbitrary arrest and detention, ill-treatment and conviction of human rights defenders, youth activists, political opponents, independent journalists and bloggers on allegedly politically motivated trumped-up administrative or criminal charges of hooliganism, drug possession, economic crimes, tax evasion, abuse of office, incitement to violence or hatred etc."<sup>6</sup>
10. During her visit, the Commissioner went to prisons no. 17 and no. 16 in Baku where she met with the journalists Seymour Hazi and Afgan Mukhtarli.
11. Seymour Hazi used to write for the newspaper *Azadliq* and was the presenter of the "Azerbaijan Saati" (Azerbaijani Hour) satellite TV program, which was often critical of the Azerbaijani authorities. Police arrested

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<sup>3</sup> At the time of the visit, the Council of Europe [Platform to promote the protection of journalism and safety of journalists](#) had recorded a total of 35 alerts with regard to Azerbaijan, of which 28 were at "level 1", covering the most severe threats to media freedom.

<sup>4</sup> "[OSCE Media Freedom Representative calls on Azerbaijan to revise state aid system for press and allow for environment favourable to media pluralism](#)", 20 February 2019. See also the alert "[Azerbaijan Offers Journalists Free Apartments](#)", posted on the Council of Europe Platform on 17 July 2017.

<sup>5</sup> Universal Periodic Review – Azerbaijan, Report of the Working Group, [A/HRC/39/14](#), 11 July 2018.

<sup>6</sup> Human Rights Committee, [Concluding observations \(2016\)](#), [CCPR/C/AZE/CO/4](#), § 36.



him on 29 August 2014, over claims that he had attacked a man at a bus stop, which Mr Hazi denied. He was charged with hooliganism and sentenced to five years in prison in January 2015, a sentence seen by many of the Commissioner's interlocutors as a retaliation for his critical reporting. In a judgment issued on 6 December 2018, the Court held that there had been a violation of Article 5 § 3 (right to liberty and security, entitlement to trial within a reasonable time or to release pending trial) of the Convention because the authorities had failed to justify the need for his pre-trial detention.<sup>7</sup> On 29 August 2019, Seymur Hazi was released upon completion of his five-year sentence. On 17 October 2019, he was re-arrested in Baku and sentenced to 15 days of administrative detention, later extended to 30 days, for minor hooliganism and non-compliance with police orders.

12. Afgan Mukhtarli is an investigative journalist who has worked for several media outlets in Azerbaijan, including Radio Free Europe / Radio Liberty, and is known for his critical journalistic coverage of the Azerbaijani authorities. Fearing for his safety, he left Azerbaijan in 2015 and went to Georgia. In May 2017, on his way home, Mr. Mukhtarli was reportedly abducted in Tbilisi by unidentified men and forcibly taken to Azerbaijan.<sup>8</sup> He affirms that money was put in his pocket by his abductors and alleges that they also ill-treated him. In January 2018, an Azerbaijani court sentenced him to six years in prison on charges of illegal border crossing, smuggling and violently resisting a law enforcement official. These charges have been described as "spurious" by the OSCE Representative on Freedom of the Media, Harlem Désir.<sup>9</sup> His case is now pending before the European Court of Human Rights.<sup>10</sup>
13. The Commissioner could observe that Mr. Mukhtarli is facing several restrictions in prison: he cannot have access to some books or receive visits from friends. He has also developed some health complications which require specific medical care. On 22 September 2019, Mr. Mukhtarli began a hunger strike to protest against the mistreatment of his lawyer, who was reportedly stopped and searched after a meeting with his client. The Commissioner was informed that Mr. Mukhtarli stopped his hunger strike after three days. However, she remains concerned about his health and impeded access to his lawyer.
14. In the Commissioner's view, these two cases are representative of a widespread pattern raising fundamental human rights concerns.
15. In a number of judgments concerning Azerbaijan, the Court found a violation of Article 18 of the Convention (limitation on use of restrictions on rights) taken in conjunction with Article 5 (right to liberty and security), because the applicants had been detained for purposes other than having committed an offence, including: to silence or punish them for criticising the government and attempting to disseminate what they believed was the true information that the government was trying to hide;<sup>11</sup> to silence and punish them for their activities in the area of human rights,<sup>12</sup> as well as to prevent them from continuing those activities;<sup>13</sup> to silence and punish them for their activities in the area of electoral monitoring,<sup>14</sup> or their active social and political engagement and their activities in the civic movement NIDA.<sup>15</sup>
16. According to the Court, "these judgments reflect a troubling pattern of arbitrary arrest and detention of government critics, civil society activists and human-rights defenders through retaliatory prosecutions and misuse of criminal law in defiance of the rule of law."<sup>16</sup>

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<sup>7</sup> [Haziye v. Azerbaijan](#), application no. 19842/15, judgment of 6 December 2018.

<sup>8</sup> See the Commissioner's predecessor's [statement](#) published on 31 May 2017.

<sup>9</sup> [OSCE media freedom representative Désir condemns jailing of investigative journalist Afgan Mukhtarli in Azerbaijan](#), 12 January 2018.

<sup>10</sup> Case of [Afgan Mukhtarli v. Azerbaijan and Georgia](#), application no. [39503/17](#), communicated on 30 May 2018.

<sup>11</sup> [Ilgar Mammadov v. Azerbaijan](#), application no. 15172/13, judgment of 22 May 2014. See also the [proceedings under Article 46 § 4](#) of the Convention in this case (Grand Chamber judgment of 29 May 2019), in which the Court concluded that "Azerbaijan has failed to fulfil their obligation under Article 46 § 1 to abide by the [Ilgar Mammadov v. Azerbaijan](#) judgment of 22 May 2014."

<sup>12</sup> [Rasul Jafarov v. Azerbaijan](#), application no. 69981/14, judgment of 17 March 2016.

<sup>13</sup> [Intiqam Aliyev v. Azerbaijan](#), applications nos. 68762/14 and 71200/14, judgment of 20 September 2018.

<sup>14</sup> [Anar Mammadli v. Azerbaijan](#), application no. 47145/14, judgment of 19 April 2018.

<sup>15</sup> [Rashad Hasanov and Others v. Azerbaijan](#), applications nos. 48653/13 and 3 others, judgment of 7 June 2018. See also [Natiq Jafarov v. Azerbaijan](#), application no. 64581/16, judgment of 7 November 2019 (not final yet), § 70.

<sup>16</sup> [Intiqam Aliyev v. Azerbaijan](#), § 223.

17. In another judgment issued on 7 March 2019,<sup>17</sup> regarding the case of Ilkin Rustamzade, a member of the organisation NIDA who was arrested in 2013 on charges of hooliganism due to his alleged involvement in a 'Harlem Shake' dance video filmed in Baku, the Court noted that "the criminal charges against the applicant, as described in the domestic proceedings, were based on the fact that he had filmed a group of individuals performing a 'Harlem Shake' dance and that subsequently he uploaded the video recording to YouTube." However, the Court did not consider that "such an action could have given rise to a reasonable suspicion that he had committed the criminal offence of hooliganism as defined under national law" and therefore found a violation of Article 5 of the Convention.
18. The Commissioner also recalls that several judgments relating to the arbitrary application of criminal legislation to restrict freedom of expression have not been fully executed to date and continue to be examined by the Committee of Ministers of the Council of Europe under "enhanced supervision."<sup>18</sup> In an interim resolution adopted in December 2015, the Committee of Ministers "[e]xpressed anew its deepest concern in respect of the absence of any adequate response to the problem of the arbitrary application of the criminal law to restrict" freedom of expression and exhorted the Azerbaijani authorities "to adopt without further delay measures demonstrating their determination to solve the problems revealed."<sup>19</sup> In another interim resolution adopted in 2016, the Committee of Ministers reiterated its call on the authorities "to strengthen judicial independence *vis-à-vis* the executive and prosecutors" and to "ensure the legality of the action of prosecutors".<sup>20</sup>
19. At its session held from 23 to 25 September 2019, the Committee of Ministers of the Council of Europe, examining the execution of the judgments in the *Ilgar Mammadov* group of cases, required Azerbaijan "rapidly to eliminate all the remaining negative consequences of the criminal charges brought against each of the applicants, principally by ensuring that the convictions are quashed and deleted from their criminal records".<sup>21</sup> At the same time, it "welcomed the authorities' intention to elaborate draft legislative amendments taking on board the recommendations prepared in cooperation with the Council of Europe with a view to improving domestic criminal justice law and practice in the light of the Court's case law."

#### 1.1.2 RESTRICTIONS ON THE RIGHT TO LEAVE THE COUNTRY

20. The Commissioner observes that dozens of journalists, lawyers, political activists and human rights defenders are banned from leaving the country, in circumstances which give rise to justifiable doubts about the lawfulness of such travel bans.
21. The Azerbaijani Migration Code, which regulates the right of citizens of the Republic of Azerbaijan to leave the country, contains an exhaustive list of the circumstances in which this right may be temporarily restricted, notably when a citizen is convicted or conditionally released.<sup>22</sup>
22. On 13 December 2018, the Court issued a judgment in 11 cases<sup>23</sup> in which travel bans were imposed by the investigating authorities, in the absence of any judicial decision, within the framework of various criminal proceedings in which the applicants were not convicted, accused or suspected persons, but were only questioned as witnesses. In all cases, the Court concluded that the interference with the applicants' right to leave their country was not "in accordance with law", and that there had accordingly been a violation of the applicants' right to leave their country, as guaranteed by Article 2 of Protocol No. 4 to the Convention. The Court noted in particular that the investigating authorities had imposed travel bans on the applicants in the absence of any judicial decision and that none of the circumstances listed in the Migration Code corresponded to the case of the applicants. During the visit, the Commissioner was informed that the travel bans of 8 among the 11 applicants had been lifted.

<sup>17</sup> [Rustamzade v. Azerbaijan](#), application no. 38239/16, judgment of 7 March 2019. Imprisoned since 17 May 2013, Ilkin Rustamzade was finally released on 16 March 2019, following the Navruz presidential pardon.

<sup>18</sup> Group of cases *Mahmudov and Agazade v. Azerbaijan and Fatullayev v. Azerbaijan*.

<sup>19</sup> Interim Resolution [CM/ResDH\(2015\)250](#), adopted by the Committee of Ministers on 9 December 2015.

<sup>20</sup> Interim Resolution [CM/ResDH\(2016\)145](#), adopted by the Committee of Ministers on 8 June 2016.

<sup>21</sup> Decision [CM/Del/Dec\(2019\)1355/H46-2](#), adopted by the Committee of Ministers on 25 September 2019.

<sup>22</sup> Article 9 of the [Migration Code](#). A travel ban can also be imposed in respect of persons who have tax debts (Article 84 of the Law on Execution).

<sup>23</sup> [Mursaliyev and others v. Azerbaijan](#), applications nos. 66650/13 and 10 others, judgment of 13 December 2018.

23. However, several other journalists or activists, such as human rights defender Intigam Aliyev, remain under travel bans. During her visit, the Commissioner expressed concern regarding the travel ban imposed on investigative journalist Khadija Ismayilova since 2016, following her criminal conditional conviction with a probation period of five years. While her suspended term was finally reduced to 2 years and 3 months, several attempts to have her probation period shortened and her travel ban lifted failed. With the travel ban extending for a longer period than the remaining time Ms Ismayilova should have served in prison, the Commissioner was struck by the disproportionality of this measure. Her continued travel ban is a serious hindrance on her professional life as an investigative journalist and has had detrimental effects on her right to respect for private and family life.
24. In a statement issued in December 2017, two UN Special Rapporteurs underlined that this “ban stifles her right to freedom of expression as it is aimed at preventing her from travelling abroad to speak about human rights issues.”<sup>24</sup> Her case and several other cases related to restrictions imposed on the right to leave Azerbaijan are still pending before the Court.<sup>25</sup>

### 1.1.3 CONCLUSIONS AND RECOMMENDATIONS

25. The continued prosecution of critical voices in Azerbaijan remains of great concern to the Commissioner. She exhorts the authorities to put an end to arbitrary restrictions of freedom of expression, including measures detrimental to the safety of journalists.
26. The Commissioner recalls the Recommendation of the Committee of Ministers of the Council of Europe to member states on the protection of journalism and safety of journalists and other media actors,<sup>26</sup> which stresses that member states should put in place a comprehensive legislative framework that enables journalists and other media actors to contribute to public debate effectively and without fear, guaranteeing public access to information, privacy and data protection, confidentiality and security of communications and the protection of journalistic sources and whistle-blowers. In other words, states have not only a negative obligation not to interfere with journalists’ ability to contribute to public debate, but also a positive obligation to create a favourable or enabling environment to ensure their safety and security against threats, attacks, abuse, harassment from state and/or non-state actors, as well as a range of legal, political, socio-cultural and economic pressures.
27. The Commissioner draws the Azerbaijani authorities’ attention to measures outlined by the Court in the *Aliyev* judgment, under Article 46 of the Convention (execution of judgments), regarding the pattern in breach of Article 18 of the Convention. The Court stressed that “the necessary general measures to be taken by the respondent State must focus, as a matter of priority, on the protection of critics of the government, civil society activists and human rights defenders against arbitrary arrest and detention. The measures to be taken must ensure the eradication of retaliatory prosecutions and misuse of criminal law against this group of individuals and the non-repetition of similar practices in the future.”<sup>27</sup> In this context, the Commissioner calls on the authorities to ensure an independent and impartial review by the judiciary of cases involving journalists, but also critical voices in general.
28. The Commissioner calls on the Azerbaijani authorities to drop all charges and release all those detained because of the views they expressed. In this respect the case of Afgan Mukhtarli raises particularly urgent concerns. The Azerbaijani authorities must ensure that Mr Mukhtarli fully enjoys his human rights, including the right to the highest attainable standard of health, the right of access to a lawyer, and protection from torture and inhuman or degrading treatment.

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<sup>24</sup> [UN experts](#) urge Azerbaijan to end travel ban on award-winning investigative journalist Khadija Ismayilova, 5 December 2017.

<sup>25</sup> *Aynur Ganbarova v. Azerbaijan* and 3 other applications, application no. [1158/17](#), communicated on 11 September 2017, and *Georgi Nikolaev Nikolov v. Azerbaijan* and 7 other applications, application no. [62383/17](#), communicated on 13 June 2019.

<sup>26</sup> Recommendation of the Committee of Ministers of the Council of Europe to member States on the protection of journalism and safety of journalists and other media actors, [Recommendation CM/Rec\(2016\)4](#), adopted on 13 April 2016.

<sup>27</sup> [Intigam Aliyev v. Azerbaijan](#), applications nos. 68762/14 and 71200/14, judgment of 20 September 2018, § 226.

29. In addition, the Commissioner calls on the Azerbaijani authorities to refrain from imposing arbitrary or disproportionate travel bans and to lift immediately those which are in contradiction with the right to leave the country.

## 1.2 DEFAMATION

30. The Commissioner notes that the provisions of the Azerbaijani Criminal Code on defamation (Article 147) and insult (Article 148) remain unchanged since 2013<sup>28</sup> and still provide for up to six months' imprisonment,<sup>29</sup> despite repeated calls to decriminalise defamation in the country.<sup>30</sup> She regrets that a new offence of "defamation or insult" on the Internet through "fake user names, profiles or accounts" was introduced on 29 November 2016 under Article 148(1), which can lead to imprisonment for up to one year. The scope of the offence of "smearing or humiliating the honour and dignity" of the Azerbaijani President was also extended to include online expressions (Article 323(1)). In addition, a new amendment to Article 323(1-1) foresees a prison term of up to three years for defamation of the President through a publicly displayed Internet information resource under fake user names, profiles or accounts. If such "smearing or humiliation" consists in accusing the President of having committed "a serious or especially serious crime", it becomes punishable by imprisonment of three to five years (Article 323(2)). Though the provisions of Article 323 do not apply to public statements related to critical views about the activities of the President or the policies carried out under his leadership, there is nevertheless "a significant scope for utterances that do not constitute 'criticism', but may include, for example, discussions of legality of President's actions, corruption allegations, or simply opinionated statements that may be perceived as hostile and partial, that could lead to a five-year imprisonment."<sup>31</sup>
31. As underlined by the European Commission for Democracy through Law (the Venice Commission), the criminalisation of defamation on the Internet in Azerbaijan "goes against the most recent trends in the field of defamation" and is "extremely worrying and disappointing."<sup>32</sup> The Commissioner also observes that the execution of two judgments of the Court against Azerbaijan,<sup>33</sup> in which violations of Article 10 of the Convention revealed the inadequacy of the legislation on defamation, remains under the supervision of the Council of Europe Committee of Ministers. The Committee has repeatedly deplored that, notwithstanding the undertakings given, the necessary amendments to the law on defamation have not been introduced.<sup>34</sup>
32. The authorities have regularly argued that a reform was not needed, as a *de facto* moratorium had been in effect since 2009 on the application of articles 147 and 148 of the Criminal Code and no journalist had been criminally charged for defamation in Azerbaijan since then. They have further stressed that, due to the lack of economic independence of the media and reported cases of continued insults and libel against individuals by media outlets, the adoption of a law to decriminalise defamation in the country could be counter-productive and complicate the situation.
33. The *de facto* moratorium was however broken on 3 March 2017, when a District Court found Mehman Huseynov, a blogger and investigative journalist, guilty and sentenced him to two years in prison on defamation charges (article 147(2) of the Criminal Code – defamation regarding a very serious crime).<sup>35</sup> Mehman Huseynov had filed a complaint with the prosecutor's office following his arrest by the police in January 2017, alleging that he

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<sup>28</sup> The scope of the general provisions on defamation and insult was widened to include liability for online content in June 2013.

<sup>29</sup> This may be extended to three years for aggravated instances of defamation (Article 147(2)).

<sup>30</sup> See for instance the Commissioner's predecessor's [report](#) on his visit to Azerbaijan carried out from 22 to 24 May 2013, CommDH(2013)14.

<sup>31</sup> [Analysis](#) of Azerbaijani legislation on freedom of expression, produced as part of a project co-funded by the European Union and the Council of Europe, 2017, p. 11.

<sup>32</sup> [Opinion](#) on the Legislation Pertaining to the Protection against Defamation of the Republic of Azerbaijan, adopted by the Venice Commission, at its 96<sup>th</sup> Plenary Session, (Venice, 11-12 October 2013), CDL-AD(2013)024, § 55.

<sup>33</sup> [Mahmudov and Agazade v. Azerbaijan](#), application no. 35877/04, judgment of 18 December 2008, and [Fatullayev v. Azerbaijan](#), application no. 40984/07, judgment of 22 April 2010.

<sup>34</sup> See Interim Resolution [CM/ResDH\(2015\)250](#), adopted by the Committee of Ministers on 9 December 2015.

<sup>35</sup> In a previous case, the journalist Ikram Rahimov had been sentenced on 25 November 2016 to one year in prison on the same charges. However, the Court of appeal mitigated the sentence to 9 months of corrective labor on 1 March 2017. On 6 July 2017, another journalist, Mahbub Zulfugarli, a regional correspondent of the "Gündəm Xəbər" newspaper, was sentenced to five months imprisonment for defamation (article 147(1) of the Criminal Code).

suffered from several abuses at the police station. The authorities formally opened an inquiry into his allegations but swiftly closed it, claiming the allegations were groundless. While the authorities failed to conduct a credible investigation into Mehman Huseynov's torture allegations, he was instead charged with defamation based on a complaint made by the Nasimi police chief. Mehman Huseynov was released from prison on 2 March 2019 after fully serving his prison sentence.

34. During her visit, the Commissioner was informed that, in 2018, a total of 37 criminal cases were brought before courts in Azerbaijan in relation to defamation and insult provisions. Out of these 37 cases, 28 were immediately rejected by courts; four were terminated at the beginning of the examination; one case was closed; three persons were acquitted; and one person received a prison sentence due to repetitive violations of the Criminal Code and the commission of other serious crimes.

### 1.2.1 CONCLUSIONS AND RECOMMENDATIONS

35. The Commissioner reiterates the long-standing demand for decriminalisation of defamation in Azerbaijan. As stressed by the Court, the imposition of criminal sanctions for defamation but also the mere fact that such sanctions can be applied is in itself capable of having a chilling effect on the exercise of freedom of expression.<sup>36</sup>
36. Priority should be given to repealing criminal defamation provisions in favour of civil sanctions designed to restore the reputation harmed. The Commissioner calls on the authorities to take the opportunity of the implementation of the Presidential Decree "On deepening reforms in the judicial and legal system" of 3 April 2019 to fully decriminalise defamation offences.

### 1.3 INTERNET RESTRICTIONS

37. In March 2017, amendments were introduced in the law "on information, informatisation, and protection of information", allowing the authorities to block access to a website if it contains "prohibited information posing a danger to the state or society." Ordered by the Ministry of Transport, Communications and High Technologies, this blocking requires subsequent approval by a court, which should consider it within five days. Access to the website restricted by the authority will remain blocked until the completion of the judicial review.
38. A procedure for content removal was also adopted: in the case of detection of prohibited information on a website, the Ministry of Transport, Communications and High Technologies should immediately warn the website owner and its host provider, who are then obliged to immediately remove that information from the website. Should the website owner fail to remove the content within eight hours of the warning, the relevant executive authority shall appeal to the court to restrict access to the website.
39. Shortly after the adoption of these amendments, on 12 May 2017, a district court in Baku ordered the blocking of a number of websites, including those of the opposition newspaper Azadliq and of the online channel Meydan TV. While these websites were already blocked temporarily since March 2017, the Ministry of Transport, Communications and High Technologies requested courts to block them permanently, claiming that these sites posed a threat to public order. Both the Baku Court of Appeal and the Supreme Court have upheld the blocking of these websites, which is now being challenged before the European Court of Human Rights.<sup>37</sup>
40. The Commissioner is concerned that there is no official information on the total number of websites blocked at any given time. According to the Commissioner's interlocutors, there are currently more than 60 Internet sites blocked in Azerbaijan, with the blocking affecting primarily independent news online that are critical of the government or websites exposing corruption. In September 2017, for instance, the authorities blocked access to the website of the Organized Crime and Corruption Reporting Project (OCCRP) after the organisation published "The Azerbaijan Laundromat" report, implicating the government in various money laundering and lobbying schemes. At the time of the visit, this website was still blocked.
41. It has also been widely reported that the Azerbaijani authorities have been increasingly resorting to bandwidth throttling (slowing down), making certain websites inaccessible in practice. Some of the websites affected by the above-mentioned 2017 court order were allegedly subjected to throttling between November and

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<sup>36</sup> [Cumpănă and Mazăre v. Romania](#), application no. 33348/96, Grand Chamber judgment of 17 December 2004, §§ 113-114.

<sup>37</sup> [Azadliq.info and others v. Azerbaijan](#), application no. 36589/17, communicated on 20 September 2019.

December 2016. Radio Free Europe/Radio Liberty Azerbaijan, Voice of America, and Meydan TV all reported loading and speed issues during this period. An investigation by VirtualRoad (a secure hosting service), confirmed that these websites had been subject to artificially engineered bandwidth throttling on six separate occasions between November and December 2016.<sup>38</sup>

42. Finally, a recent report noted that, while spear phishing and hacking of social media accounts are two common ways to impede the work of journalists and activists, other forms of digital intimidation and surveillance by the authorities in Azerbaijan include impersonating accounts, takedown requests and trolling.<sup>39</sup>

### 1.3.1 CONCLUSIONS AND RECOMMENDATIONS

43. Blocking websites is an extreme measure which may hamper the right to access information. The Commissioner therefore calls on the authorities to bring the legislation and practice affecting Internet freedom in line with European standards.
44. In this connection, according to the case-law of the Court, state authorities should ensure that any restrictions on access to Internet content affecting users under their jurisdiction are based on a strict and predictable legal framework regulating the scope of any such restrictions and afford the guarantee of judicial oversight to prevent possible abuses. In addition, domestic courts must examine whether any blocking measure is necessary and proportionate and, in particular, whether it is targeted enough to impact only on the specific content that requires blocking.<sup>40</sup>
45. The Commissioner would appreciate receiving more information on the number of websites currently blocked in Azerbaijan as well as the legal basis of this blocking and invites the authorities to ensure more transparency in any restrictive measures affecting Internet freedom.

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<sup>38</sup> Freedom House, Freedom on the Net 2018, [Azerbaijan](#). Azerbaijan is ranked as “not free” in the Freedom on the Net [2019 report](#).

<sup>39</sup> [Surveillance and Internet Disruption in Baku](#), February 2019.

<sup>40</sup> [Ahmet Yildirim v. Turkey](#), application no. 3111/10, judgment of 18 December 2012.

## 2 SITUATION OF LAWYERS

### 2.1 THE PROFESSION OF LAWYER

46. On numerous occasions, the Commissioner and her predecessors have stressed the important role lawyers play in serving the cause of justice. The role of defence lawyers is particularly crucial for the protection of human rights in the criminal justice system. In accordance with the well-established case-law of the Court, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial.<sup>41</sup>
47. The Commissioner observes that Azerbaijan suffers from a severe shortage of lawyers. According to the 2018 report of the Council of Europe European Commission for the efficiency of justice (CEPEJ),<sup>42</sup> Azerbaijan had the lowest number of lawyers per 100 000 inhabitants in the Council of Europe area between 2010 and 2016: it had 9 lawyers per 100 000 inhabitants in 2016, for an average of 162 lawyers per 100 000 inhabitants in Council of Europe member states. This shortage is particularly acute in the regions: in 2018, out of 1503 practising lawyers, only 393 worked outside the capital.<sup>43</sup>
48. In its 2016 concluding observations on Azerbaijan, the UN Human Rights Committee expressed concerns “about deficiencies in the implementation in practice of legal provisions guaranteeing access to a lawyer to persons deprived of their liberty, about the low number of lawyers (advocates) in the State party and the May 2016 findings of the Working Group on Arbitrary Detention indicating, inter alia, that many persons arrested and detained have never had the chance to see a lawyer.”<sup>44</sup> While the Commissioner acknowledges that a number of steps have been taken recently by the authorities and the Bar Association to increase the number of lawyers in the country, she found that, three years later, the deficiencies identified by the Human Rights Committee persist.
49. In order to support the development of the legal profession, the President of Azerbaijan signed a decree, on 22 February 2018, on additional measures to develop legal practice in the country. The decree envisaged measures to improve material and technical support for lawyers’ organisations throughout the country, the admission of new members through regular bar exams and the development of professional training and qualifications for lawyers with a view to improving the quality of legal services. Under this decree, regional offices of the Bar Association were opened, to ensure rapid access to legal aid by all citizens and institutions in the regions. However, the difference between the number of members of the Bar Association in the capital and in the regions is still significant.
50. According to the authorities, the number of lawyers has increased from 944 to 1535 persons in 2018, a 62.6% increase compared to previous years. During the visit, the Commissioner was informed by the Chair of the Bar Association that there were approximately 1600 lawyers registered by the Bar Association. The aim was to reach the number of 10.000 lawyers in the country. However, with only 500 to 600 law graduates per year in Azerbaijan, the Chair underlined that this process will take time.

#### 2.1.1 ROLE OF THE BAR ASSOCIATION

51. The Azerbaijani Bar Association is the main governing body of the legal profession, established under law, which exercises key functions related to the regulation of the profession. According to the Law on Advocates and Advocate’s Activity, it is a non-governmental, independent, self-governing institution.
52. Among the functions of the Bar Association are: managing admission to the legal profession; disciplinary supervision, issuing opinions on questions related to the activity of advocates pursuant to a request by law

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<sup>41</sup> *Krombach v. France*, application no. 29731/96, judgment of 13 February 2001, § 89.

<sup>42</sup> [2018 edition of the CEPEJ report “European judicial systems - Efficiency and quality of justice”](#), p. 172.

<sup>43</sup> According to the website of the [Azerbaijani Bar Association](#), among the 393 lawyers working in the regions, 143 were engaged as individual lawyers, and among the 1110 working in the capital, 105 were engaged as individual lawyers. There are 27 law offices in Baku and 15 in the regions outside the capital.

<sup>44</sup> Human Rights Committee, [Concluding observations \(2016\), CCPR/C/AZE/CO/4](#), § 24.

enforcement bodies or court presidents; supervisory control over lawyers regarding legalisation of finances; and “resolution of other issues.”

53. In a 2016 Mission Report on the legal profession of Azerbaijan, the International Commission of Jurists (ICJ) underlined that, despite its independence being established and guaranteed in law, in practice the Bar Association has demonstrated institutional weakness and a lack of either capacity or will to defend the independence of the profession.<sup>45</sup> The ICJ notably heard strong concerns from lawyers that the Bar Association is not independent in its operation and acts in close and improper coordination with or direction from the Ministry of Justice, and that it had been in some cases unable or unwilling to protect its members against pressure exerted on them. This view was shared by a number of the Commissioner’s interlocutors.
54. At the end of his mission to Azerbaijan in September 2016, the UN Special Rapporteur on the situation of human rights defenders, Michel Forst, also stressed that “in practice, the Bar Association suffers from significant institutional weaknesses, which raise serious questions about its legitimacy and puts the ability of the body to effectively regulate the profession in severe doubt.”<sup>46</sup>
55. While the Commissioner recognises that the Bar’s new leadership has raised the profile of the Bar Association on the international scene and has instilled a new dynamic in its work, she believes that the role played lately by the Bar Association in the non admission to the Bar of certain categories of persons<sup>47</sup> as well as in the context of disciplinary proceedings<sup>48</sup> points to a deficit of institutional independence.

### 2.1.2 RECENT CHANGES AFFECTING THE PROFESSION

56. The profession of lawyer in Azerbaijan is regulated by the Law on Advocates and Advocate’s Activity of 28 December 1999. This law was amended in November 2017 and changes to the Code of Civil Procedure and the Code of Administrative Procedure excluded lawyers from civil and administrative proceedings before courts unless they are members of the Azerbaijani Bar Association. Until 2017, lawyers who did not belong to the Bar Association were authorised to represent clients in non-criminal cases (*i.e.* civil and administrative law cases) before national courts.
57. While the regulation of the profession is in itself desirable, concerns have been expressed that, due to the lack of independence and legitimacy of the Bar Association, these amendments will negatively affect citizens’ right of access to courts and exacerbate the already acute shortage of lawyers in the country.<sup>49</sup>
58. In a statement issued on 10 November 2017, the co-rapporteurs of the Council of Europe Parliamentary Assembly for the monitoring of Azerbaijan, commenting on the above amendments, underlined that “by reinforcing the monopoly of the Azerbaijani Bar Collegium without reviewing first its role in the governance of the profession based on the principle of independence and high ethical standards, the new legislation is likely to harm the profession of lawyer and citizens’ right of access to the courts.”<sup>50</sup>
59. The Commissioner regrets in particular that no transitional measures for the registration of lawyers who were not members of the Bar Association, such as a temporary registration, were adopted in November 2017, leading to increased problems with regard to representation before courts in non-criminal cases.

### 2.1.3 QUALIFICATION EXAMINATION

60. A few qualification examinations have been organised by the Bar Association since January 2018 and, as a result, new lawyers have been admitted to the Bar.
61. To qualify for the examination, candidates need at least three years of experience, a condition which is seen as too demanding. Suggestions have been made, notably by the Bar Association, to reduce it to one year or 18

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<sup>45</sup> ICJ, “Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan”, [Mission Report](#) 2016, p. 13.

<sup>46</sup> End of mission statement by the Special Rapporteur on the situation of human rights defenders, [Visit to Azerbaijan](#), 22 September 2016.

<sup>47</sup> See below 2.1.3.

<sup>48</sup> See below 2.3.

<sup>49</sup> See the Commissioner’s predecessor’s [Facebook post](#) on this issue, published on 22 November 2017.

<sup>50</sup> “[Azerbaijan: new law ‘likely to harm’ profession of lawyer](#)”, 10 November 2017.



months, to attract more young people to the profession. In order to pass the examination, candidates first have to take a written test, evaluated by electronic means. Successful candidates are then called for an oral exam before the Qualification Commission. The Qualification Commission is composed of 11 members: five members of the Bar Association, three academics designated by the Ministry of Justice and three judges appointed by the Plenum of the Supreme Court. The majority of members of the Qualification Commission are thus not lawyers but are chosen by the executive and the judiciary branches. The final decision rests with the Qualification Commission, which will decide whether the candidate is admitted to the Bar or not, on the basis of their performance in the written and oral examination.

62. Concerns have been raised regarding the oral part of the examination, which can reportedly be used as a barrier to prevent some categories of lawyers from joining the Bar Association.<sup>51</sup> The Commissioner's attention was drawn to the wide discretionary power of the Qualification Commission in this respect, since no objective criteria have been developed for the oral examination. During past qualification examinations, some lawyers working on sensitive human rights issues or with an NGO background have for instance not been admitted to the Bar: despite the fact that they had passed the written test, which is regarded as objective in nature, all of them failed during the oral part of the examination.

#### 2.1.4 CONCLUSIONS AND RECOMMENDATIONS

63. The recent reform affecting the profession of lawyer left many people in Azerbaijan without access to legal assistance and representation. This reform has had an impact in all areas but particularly affected vulnerable people, notably internally displaced persons. The Commissioner is particularly concerned by the low number of practising lawyers in Azerbaijan, and the even smaller number available to represent defendants in the regions outside the capital, as most of the lawyers are concentrated in Baku, thus undermining access to justice. In addition, there is a clear need to strengthen the independence of the Bar Association and its role in the representation and defence of the interest of its members.
64. The government should step up its efforts to effectively address the shortage of lawyers in the country, in particular outside Baku. In the Commissioner's view, some incentives could easily be developed in order to attract more lawyers to the regions. One such incentive would be to organise qualification examinations outside Baku. The Commissioner also supports the proposal of the Bar Association to offer tax breaks to lawyers practising in the regions to motivate them to stay there instead of moving to Baku. Additionally, the Commissioner calls upon the authorities to rethink the reform introduced in 2017 in view of its drastic consequences. Particular attention should be given to the more than 8 000 lawyers whose jobs as legal representatives were abruptly terminated. The profession of lawyer should be made sufficiently attractive and be open enough to permit qualified and experienced persons to represent persons in courts.
65. The Commissioner welcomes the more frequent organisation of qualification examinations by the Bar Association but notes that the qualification process for a lawyer's admission to the Bar, as it stands, suffers from a number of weaknesses. The oral part in particular should be removed or reformed, to ensure fair and objective evaluation. It is essential that the qualification process be transparent, based on objective criteria and free from arbitrariness and undue interference. As underlined in the Council of Europe Committee of Ministers' Recommendation (2000)21 on the freedom of exercise of the profession of lawyer, "Legal education, entry into and continued exercise of the legal profession should not be denied in particular by reason of sex or sexual preference, race, colour, religion, political or other opinion, ethnic or social origin, membership of a national minority, property, birth or physical disability."<sup>52</sup> Furthermore, the Qualification Commission should consist of a majority of members of the legal profession appointed by the Bar Association.<sup>53</sup>

## 2.2 RIGHT TO LEGAL ASSISTANCE

66. The Constitution of the Republic of Azerbaijan<sup>54</sup> states that everyone has the right to receive qualified legal assistance. It adds that, in specific cases envisaged by legislation, legal assistance shall be provided free of

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<sup>51</sup> ICJ [Recommendations](#) to the Azerbaijan Bar Association on the Role and Independence of Lawyers, 8 May 2019, p.4.

<sup>52</sup> [Recommendation No. R\(2000\)21 on the freedom of exercise of the profession of lawyer](#), adopted by the Committee of Ministers on 25 October 2000, Principle II (1).

<sup>53</sup> See in that sense ICJ Recommendations, above, p. 5.

<sup>54</sup> Article 61 of the [Constitution](#) - Right to legal assistance.

charge, at the expense of the state, and that every citizen has the right to receive assistance from a lawyer as from the moment of detention, arrest or accusation of a crime by competent state bodies.

67. On several occasions, the Commissioner's interlocutors have insisted that deficiencies in legal representation in Azerbaijan were not only a matter of quantity, *i.e.* the lack of lawyers, but also a matter of quality, as some lawyers were not representing their clients effectively. As the European Court of Human Rights has emphasised in cases concerning Article 6 § 3 (c) of the Convention, an accused is entitled to legal assistance which is practical and effective and not theoretical or illusory. With regard to Azerbaijan, the Court has addressed various questions relating to legal assistance in domestic proceedings. In a number of cases, the Court found a violation of the right to legal assistance due to the formalistic nature of the representation by a State-funded lawyer.<sup>55</sup> Several other cases concern the lack of legal assistance at the pre-trial stage of the proceedings.<sup>56</sup>
68. These findings were echoed by the 2016 concluding observations of the UN Human Rights Committee, which was also concerned "about reports that lawyers providing legal aid are insufficiently remunerated and take on heavy workloads, which in turn affects the quality of the legal assistance provided, as well as about the deficient legal representation provided by State-appointed lawyers."<sup>57</sup>
69. The right to legal assistance in Azerbaijan is thus hindered through two main difficulties which are discussed below: access to a lawyer and access to free legal aid.

### 2.2.1 ACCESS TO A LAWYER

70. The protection of human rights depends largely on the capacity of lawyers to give prompt and unhindered legal advice that is competent and independent. In Azerbaijan, however, the very low number of registered lawyers relative to the population, coupled with the sometimes distorted perception as to the role of defence lawyers by members of the criminal justice system and law enforcement, has had acute consequences for the effective exercise of the right to liberty and security, the right to a fair trial and for the right to access to justice and effective remedies.
71. In its report following its 2017 *ad hoc* visit to Azerbaijan, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) pointed out that access to a lawyer (almost always an *ex officio* lawyer) at the places of deprivation of liberty visited by the delegation was systematically delayed until after the person had confessed.<sup>58</sup> The CPT stressed that "in this context, the lawyer's presence amounted to a mere formality aimed at providing legitimacy for the confession (by having the lawyer sign under the detained person's statement). It is also noteworthy that, similar to what had been observed in the past, many detained persons stated that they had only been able to meet their lawyer for the first (and frequently last) time at the court hearing on the issue of remand in custody", a situation all the more worrying when seen in the context of the allegations of torture and other forms of ill-treatment referred to in the CPT report.
72. In addition, the CPT delegation was "inundated with complaints about the role and attitude of *ex officio* lawyers; apparently, the lawyers mostly remained silent during the proceedings (both on the premises of law enforcement agencies and in court) and sometimes would not even speak to the detained persons (or tried to

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<sup>55</sup> [Huseynli and Others v. Azerbaijan](#), applications nos. 67360/11, 67964/11 and 69379/11, judgment of 11 February 2016. The Court observed that "during the hearing the State-funded lawyer did not submit any written objections, complaints or motions on the applicant's behalf. In his oral submissions the lawyer simply stated that the applicant was not guilty and asked the court to terminate the administrative proceedings against him." (§ 132). See also [Gafqaz Mammadov v. Azerbaijan](#), application no. 60259/11, judgment of 15 October 2015: the Court observed that the lawyer's oral submissions "consisted of a brief repetition of the applicant's statement and a request addressed to the court to consider the applicant's age and the fact that he had children" (§ 93).

<sup>56</sup> [Huseyn and Others v. Azerbaijan](#), applications nos. 35485/05, 45553/05, 35680/05 and 36085/05, judgment of 26 July 2011, and [Ibrahimov and Others v. Azerbaijan](#), applications nos. 69234/11, 69252/11 and 69335/11, judgment of 11 February 2016. See also [Asadbeyli and Others v. Azerbaijan](#), applications nos. 3653/05, 14729/05, 20908/05, 26242/05, 36083/05 and 16519/06, judgment of 11 December 2012: the applicants either were not promptly allowed contact with a lawyer after their arrest or were provided, belatedly and for form's sake with a State-appointed lawyer whose assistance was ineffective (§ 133).

<sup>57</sup> Human Rights Committee, [Concluding observations \(2016\), CCPR/C/AZE/CO/4](#), § 24.

<sup>58</sup> Report to the Azerbaijani Government on the visit to Azerbaijan carried out by the CPT from 23 to 30 October 2017, [CPT/Inf \(2018\)37](#), 18 July 2018, § 33.

dissuade them from making any complaints). The delegation also received allegations that *ex officio* lawyers had demanded undue payments for any effective assistance to be provided.”

### 2.2.2 FREE LEGAL AID

73. In Azerbaijan, State-funded legal aid is only provided in cases where representation by a lawyer is mandatory under the law, namely in civil cases in last court instance only (cassation), in cases of administrative detention for a limited category of persons,<sup>59</sup> and in criminal cases for suspects and accused persons (not for the victims). There is no specific legislation on legal aid, and no clear criteria for eligibility: the allocation of legal aid is decided by a judge and takes the form of a court appointed defence counsel. It has been highlighted that the lack of a proper legal aid system makes it particularly difficult and/or expensive for citizens to access a lawyer in the regions.<sup>60</sup>
74. A further issue of concern relates to the fact that lawyers providing free legal aid are insufficiently remunerated. The amount paid to lawyers by the state for the provision of free legal assistance to low-income people was tripled by the Presidential Decree of 22 February 2018 and the remuneration for legal aid was increased to 6 manats per hour gross, but lawyers are paying back almost 36% of this amount in taxes. As a consequence, lawyers often try to avoid accepting free of charge cases or take on as many cases as possible and act very superficially in this capacity, in contradiction with their duty to represent to the best of their ability the interests of the persons to whom they are assigned.
75. By virtue of the Presidential Decree of 22 February 2018, the Azerbaijani Bar Association was recommended to provide free legal services for people with low income in need of legal aid. The Chair of the Bar Association stressed in this respect that free legal assistance was provided in 25,000 cases concerning low-income families in 2018. The Commissioner notes that the Presidential Decree of 3 April 2019, providing for legislative, institutional and practical reforms in the justice system, goes one step further as it instructs the Cabinet of Ministers to prepare drafts of legal acts providing that funds allocated in the state budget to pay for legal aid at state expense will be allocated directly to the Bar Association for their centralised accounting and distribution.<sup>61</sup>
76. In addition, the ASAN (Azerbaijan Service and Assessment Network) centres include legal assistance units all around the country providing both free and paid legal services. The Council of Europe and the European Union have also supported the legal clinic of the Academy of Justice of Azerbaijan to provide qualified free legal aid to vulnerable and disadvantaged groups of the population that are financially unable to access legal services.
77. While the Commissioner welcomes these various initiatives, she would like to stress that they should not be a substitute for a state-funded legal aid system incorporating clear eligibility criteria.

### 2.2.3 CONCLUSIONS AND RECOMMENDATIONS

78. The Commissioner observes that the full realisation of the right to legal assistance in Azerbaijan will require rigorous and focused efforts to guarantee effective legal representation in all cases. She urges the Azerbaijani authorities to take all necessary measures to ensure that all persons have effective access to legal services provided by independent lawyers, in accordance with Recommendation (2000)21 on the freedom of exercise of the profession of lawyer.<sup>62</sup>
79. As the CPT has observed, the period immediately following deprivation of liberty is when the risk of intimidation and physical ill-treatment is greatest. Consequently, the possibility for persons taken into police custody to have access to a lawyer during this period of time would constitute a fundamental safeguard against ill-treatment.

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<sup>59</sup> According to Article 66 of the Code of Administrative Offences, State-funded legal aid is applicable to the following category of persons who are detained due to administrative offences: minors; dumb, deaf, blind and other persons who are unable to exercise their right to defence due to physical or mental disabilities.

<sup>60</sup> GR-DEM (Rapporteur Group on Democracy), State of implementation of the commitments entered into by Azerbaijan (June 2015-May 2017), [GR-DEM\(2017\)14](#), 20 June 2017, § 38.

<sup>61</sup> Decree of the President of the Republic of Azerbaijan on Deepening Reforms in the Judicial and Legal System, 3 April 2019, point 13.1.

<sup>62</sup> Recommendation (2000)21, above, Principle IV (1).

The authorities should therefore immediately take measures to ensure that the right of access to a lawyer is effectively guaranteed to all persons as from the very outset of their deprivation of liberty.

80. Recalling the Council of Europe Committee of Ministers' Resolution (78)8 on legal aid and advice, the Commissioner wishes to underline that effective access to justice, particularly by persons who are in an economically weak situation, cannot be achieved without an efficient national system of legal aid and legal advice. She therefore calls on the Azerbaijani authorities to adopt a law on legal aid in line with Council of Europe standards and preserving the independence of lawyers, and ensure that all persons effectively enjoy the right to legal assistance.

## 2.3 DISCIPLINARY PROCEEDINGS AGAINST LAWYERS

### 2.3.1 OVERVIEW

81. The Commissioner and her predecessor have in recent years been regularly alerted by the opening of selective or arbitrary disciplinary proceedings against lawyers who had notably been vocal about alleged human rights violations.
82. In Azerbaijan, disciplinary proceedings in respect of lawyers can be instituted by the Presidium of the Bar Association<sup>63</sup> and are carried out by the Disciplinary Commission, established under the Bar Association. The Disciplinary Commission is composed of members of the Bar and is competent "for consideration of complaints and applications on disciplinary offences committed by lawyers in connection with the exercise of professional obligations (...)".<sup>64</sup> After a disciplinary hearing is held, the Disciplinary Commission adopts an opinion, which is submitted to the Presidium of the Bar Association. Disciplinary sanctions<sup>65</sup> are imposed by the Presidium and range from a remark to a reprimand, a suspension for three months to one year and finally an appeal to a court for disbarment.<sup>66</sup> Disbarment of a lawyer from the Bar Association leads to termination of his or her professional activity as an advocate. Once disbarred, lawyers are unable to represent clients in cases domestically.
83. During her visit, the Commissioner was informed that a certain number of disciplinary proceedings were initiated following complaints by law enforcement officials or other State authorities. However, the Chair of the Bar Association stressed that, out of 274 complaints referred to the Disciplinary Commission for further investigation in 2018, only 33 (12%) complaints were submitted by governmental bodies.<sup>67</sup> The majority of these complaints (82,8%) were actually submitted by citizens. A violation was found in 71 disciplinary proceedings opened in 2018, leading to 29 preliminary notifications, 9 remarks, 15 reprimands and 12 suspensions of activity for a certain period of time. In six cases, the Presidium of the Bar Association decided to suspend the activities of the lawyers concerned until the court's decision regarding the exclusion from the Bar Association.<sup>68</sup>
84. The Commissioner notes that most of the lawyers recently disbarred or who had their licenses suspended are those working on cases considered to be politically sensitive,<sup>69</sup> suggesting that disciplinary proceedings are used as a tool for punishing lawyers who take on sensitive cases. The UN Special Rapporteur on the situation of human rights defenders, Michel Forst, also stressed that, for "those lawyers who are members of the Bar Association, disciplinary proceedings have been one of the main means of retaliation for their human rights or professional activities" and considered that "disbarments of human rights lawyers, together with criminal prosecutions,

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<sup>63</sup> Article 11 of the Law on Advocates and Advocate's Activity of 28 December 1999. The Presidium of the Bar Association is composed of the Chair and Deputy Chair of the Bar Association as well as members of the Bar with at least three years of experience as lawyers, elected by the General meeting of the Bar.

<sup>64</sup> Article 21 of the Law on Advocates and Advocate's Activity of 28 December 1999.

<sup>65</sup> Disciplinary sanctions can be preceded by a disciplinary warning (preliminary notification).

<sup>66</sup> Cases of "exclusion from the membership in the Bar Association" (disbarment) and "a failure to pay membership fees without a good reason for more than six months" are decided on by the courts.

<sup>67</sup> See [2018 Statistical information](#) on disciplinary cases of lawyers, Azerbaijani Bar Association, 13 May 2019.

<sup>68</sup> *Ibid.* In five cases, disciplinary proceedings were opened due to the non-payment of membership fees to the Presidium of the Bar for more than six months without a valid reason, and in one case the decision was based on a complaint filed by a citizen. The Bar Association thus concluded that "no decision has been taken in 2018 to exclude any lawyer from the membership of the Association on the basis of appeals addressed by the governmental bodies."

<sup>69</sup> For instance, those defending human rights defenders, journalists or civil activists, or litigating before the European Court of Human Rights.

searches and freezing of their assets are part of the broader intimidation facing human rights defenders in the country.<sup>70</sup> A number of the Commissioner's interlocutors have also expressed serious concern about threats of disbarment or suspension, used to discourage lawyers from taking on sensitive cases or from filing appeals in these cases. The Commissioner observes that the European Court of Human Rights is currently seized by several complaints alleging that a decision to disbar the applicants from the Bar Association violated the Convention,<sup>71</sup> notably because it was applied for a purpose other than those envisaged by the Convention.

85. The Commissioner is also concerned about consistent allegations, highlighted by NGOs and lawyers who had been subjected to disciplinary proceedings, of procedural shortcomings in such proceedings, as some lawyers were not served with the complaint at the origin of the disciplinary procedure against them, were not notified about the disciplinary hearing or did not receive a copy of the opinion of the Disciplinary Commission; evidences are collected by the Disciplinary Commission against the lawyers (*à charge*) only; and lawyers are not given access to relevant documents, in contradiction with the principle of equality of arms. In general, the disciplinary procedure is reportedly marked by a lack of transparency.
86. In May 2019, the ICJ reported similar flaws in the disciplinary procedure: on a number of occasions lawyers were unable to present their evidence to the Disciplinary Commission or the Commission did not take evidence presented into account; there were long delays in disciplinary proceedings; and the Presidium of the Bar Association failed to provide detailed and substantiated reasons for decisions rather than the mere indication of the relevant articles of the Code of Conduct.<sup>72</sup> Moreover, the ICJ underlined that "institutional independence of the Disciplinary Commission may not necessarily secure actual independence and impartiality of its decisions in practice," as "the decisions of the Disciplinary Commission in such cases may be improperly influenced by the interests of law enforcement or other interests not related to an alleged misconduct of the lawyer."<sup>73</sup>

### 2.3.2 INTERFERENCES WITH THE FREEDOM OF EXPRESSION OF LAWYERS

87. Lawyers, like any other individuals, are entitled to freedom of expression. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights. However, this right is not absolute, and lawyers should always conduct themselves "in accordance with the law and the recognized standards and ethics of the legal profession."<sup>74</sup> This is reiterated in Recommendation R(2000)21 on the freedom of exercise of the profession of lawyer, which provides that lawyers "should enjoy freedom of belief, expression (...) and in particular should have the right to take part in public discussion on matters concerning the law and the administration of justice and suggest legislative reforms."<sup>75</sup>
88. The Commissioner is concerned by the numerous reports she received of disciplinary proceedings being instituted against lawyers for matters such as: speaking out in public on the topic of the independence of the justice system; making remarks during court hearings about the judicial system; denouncing torture in prison or simply publicising information about torture and other ill-treatment, and more generally exposing human rights violations. Concerns were also expressed by the UN Human Rights Committee in 2016 about "adverse

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<sup>70</sup> Report of the UN Special Rapporteur on the situation of human rights defenders, Michel Forst, on his mission to Azerbaijan, 20 February 2017, [A/HRC/34/52/Add.3](#), § 80. Restrictions imposed on lawyers in Azerbaijan were described by the previous Commissioner in [written observations](#) submitted to the European Court of Human Rights on 22 November 2017, on the case of *Bagirov v. Azerbaijan*. This case relates to the disbarment of the applicant, an Azerbaijani lawyer who had been actively involved in the defence of human rights, from the Azerbaijani Bar Association, following remarks he had made at a hearing.

<sup>71</sup> Case of *Elchin Namazov v. Azerbaijan*, application no. [74354/13](#), lodged on 7 November 2013, communicated on 3 September 2015; case of *Khalid Bagirov v. Azerbaijan*, application no. [28198/15](#), lodged on 15 October 2015, communicated on 24 June 2016; case of *Alayif Hasan oglu Hasanov v. Azerbaijan*, application no. [68035/17](#), lodged on 7 September 2017, communicated on 4 June 2018; case of *Afgan Mammad oglu Mammadov v. Azerbaijan*, application no. [43327/14](#), lodged on 27 May 2014, communicated on 3 September 2018; case of *Mehdiyev v. Azerbaijan*, application no. 36057/18, not communicated yet; case of *Yalchin Imanov v. Azerbaijan*, not communicated yet.

<sup>72</sup> ICJ [Recommendations](#) to the Azerbaijan Bar Association on the Role and Independence of Lawyers, 8 May 2019, p. 9.

<sup>73</sup> *Ibid.*

<sup>74</sup> [Basic Principles on the Role of Lawyers](#), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 27 August to 7 September 1990, Principle 23.

<sup>75</sup> Recommendation (2000)21, above, Principle I (3).

repercussions, such as disbarment, against lawyers who make critical statements about State policies and State officials and against lawyers representing victims of torture, human rights defenders, activists and journalists.”<sup>76</sup>

89. The recent disbarment of Yalchin Imanov, who has notably acted as defence lawyer for a number of Azerbaijani human rights defenders, is a striking example. Yalchin Imanov reported about torture in Gobustan prison, after visiting one of his clients in August 2017. However, the Azerbaijani authorities refused to investigate his allegations. Instead, he was accused of disseminating false information. On 20 November 2017, the Presidium of the Bar Association adopted a decision to suspend the powers of Yalchin Imanov as an advocate and to refer his case to a court with a view to his disbarment. Mr. Imanov was disbarred by a court in February 2019. The decision of the Presidium of the Bar Association, in April 2018, to suspend the licences of lawyers Asabali Mustafayev and Nemat Karimli for one year is yet another illustration of disturbing disciplinary proceedings. These proceedings were initiated following a complaint by the Deputy Prosecutor General about critical statements made by the lawyers in the media, regarding high profile criminal cases on which they were working.
90. The Chair of the Bar Association told the Commissioner that these proceedings only concerned a handful of lawyers who were “trouble-makers” and behaved unethically, notably using social networks to spread false information. However, the Commissioner considers that such disciplinary proceedings unjustifiably interfere with lawyers’ freedom of expression. Lawyers should in particular be able to speak freely about human rights, as also made clear in the Basic Principles on the Role of Lawyers.<sup>77</sup> The Commissioner observes that, in a recent judgment concerning Azerbaijan, the Court found a violation of Article 10 (right to freedom of expression) following the Bar Association Presidium’s refusal to admit the applicants - two well-known civil society activists and lawyers - to the Bar in 2005 and 2006 due to various statements made and articles they published, concerning the state of the legal profession in the country.<sup>78</sup> While this judgment relates to the admission to the profession, it sets out important principles which are also relevant for the conduct of disciplinary proceedings.
91. The Commissioner further notes that the new Code of Conduct, adopted by the Conference of members of the Bar Association on 7 December 2017, contains some provisions which might be used to unduly restrict lawyers’ freedom of expression. For instance, Article 2.13 requires lawyers to refrain from actions and statements - in media, on social networks, and in public places - about the decisions of the Bar Association’s bodies that may create false and misleading public perception. Lawyers should also not spread false and defamatory information about the state, non-state actors and their authorised representatives and not engage in “non-ethical expressions and behaviours” against those individuals in the media, social networks and public statements. In addition, Article 2.5 stipulates that lawyers should be objective in their speeches and correspondence. In the Commissioner’s view, these provisions are very vague and open to wide interpretation, which may lead to the imposition of disciplinary sanctions against lawyers legitimately exercising their right to freedom of expression.

### 2.3.3 CONCLUSIONS AND RECOMMENDATIONS

92. The Commissioner is particularly concerned by the use of disciplinary measures on improper grounds, such as expressing critical views, as well as by the lack of clear criteria for the imposition of disciplinary sanctions, in particular disbarment. The Commissioner underscores that lawyers should comply with ethical standards and be able to engage in professional activities without fear of retaliation.
93. The Commissioner calls on the Bar Association to strengthen the procedural safeguards to ensure that complaints against lawyers are dealt with through transparent and fair proceedings. She recalls that, according to Recommendation (2000)21 on the freedom of exercise of the profession of lawyer, “disciplinary proceedings should be conducted with full respect of the principles and rules laid down in the European Convention on Human Rights, including the right of the lawyer concerned to participate in the proceedings and to apply for judicial review of the decision” and “the principles of proportionality should be respected in determining

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<sup>76</sup> Human Rights Committee, [Concluding observations \(2016\), CCPR/C/AZE/CO/4](#), § 28.

<sup>77</sup> Basic Principles on the Role of Lawyers, Principle 14: “Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.”

<sup>78</sup> [Hajibeyli and Aliyev v. Azerbaijan](#), application nos. 6477/08 and 10414/08, judgment of 19 April 2018.

sanctions for disciplinary offences committed by lawyers.”<sup>79</sup> Principles 27 to 29 of the Basic Principles on the Role of Lawyers also set forth rules for the conduct of disciplinary proceedings against lawyers. The UN Special Rapporteur on the independence of judges and lawyers has stressed in this regard that “disbarment should only be imposed in the most serious cases of misconduct, as provided in the professional code of conduct, and only after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer.”<sup>80</sup>

94. The Commissioner also recalls that lawyers have the right to express their views on matters of public interest, including on the functioning of the judiciary and the prosecution and penitentiary services, in a proportionate way, and their freedom to do so must be safeguarded. The European Court of Human Rights specifically stressed that “a lawyer should be able to draw the public’s attention to potential shortcomings in the justice system; the judiciary may benefit from constructive criticism.”<sup>81</sup> It also reiterated that the freedom of expression of lawyers is related to the independence of the legal profession, which is crucial for the effective functioning of the fair administration of justice.<sup>82</sup>
95. The Commissioner considers that, beyond the persons directly affected, disciplinary proceedings are likely to have a chilling effect on other lawyers<sup>83</sup> who wish to participate in the public debate on issues related to the administration of justice and the protection of human rights. In the Commissioner’s opinion, the Presidium of the Bar Association should show higher level of tolerance towards legitimate criticism of the functioning of the judiciary and greater restraint in opening disciplinary proceedings.
96. The Commissioner urges the authorities to ensure that disciplinary proceedings are not instrumentalised. She recommends that the Code of Conduct be reviewed, in thorough consultation with lawyers and civil society representatives, to bring it into line with international standards on freedom of expression and ensure that no disciplinary sanctions are applied in retaliation to the legitimate exercise of this freedom.

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<sup>79</sup> [Recommendation No. R\(2000\)21 on the freedom of exercise of the profession of lawyer](#), adopted by the Committee of Ministers on 25 October 2000, Principle VI (3) and (4).

<sup>80</sup> Report of the UN Special Rapporteur on the independence of judges and lawyers, Mónica Pinto, on the independence of lawyers and the legal profession, 22 August 2016, [A/71/348](#), § 96.

<sup>81</sup> [Morice v. France](#), application no. 29369/10, Grand Chamber judgment of 23 April 2015, § 167.

<sup>82</sup> [Hajibeyli and Aliyev v. Azerbaijan](#), application nos. 6477/08 and 10414/08, judgment of 19 April 2018, § 60.

<sup>83</sup> See the recent case of [L.P. and Carvalho v. Portugal](#), applications nos. 24845/13 and 49103/15, judgment of 8 October 2019, in which the Court found a violation of Article 10 of the Convention after two lawyers were found liable for criticising two judges while acting in their capacity as representatives. The Court stressed that the penalties imposed on the applicants had been apt to have a chilling effect on the profession of lawyer as a whole, especially with regard to lawyers’ defence of their clients’ interests.

### 3 HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS

#### 3.1 GENERAL OVERVIEW OF INTERNAL DISPLACEMENT

97. The issue of internal displacement resulting from the unresolved conflict over the Nagorno-Karabakh region remains one of the main priorities for the government of Azerbaijan. While the search for a peaceful solution to the Nagorno-Karabakh conflict is a commitment undertaken by Azerbaijan and Armenia upon their accession to the Council of Europe, the peace process has been stalled for many years. Since 1994, mediation attempts have taken place under the auspices of the Co-Chairs of the Organisation for Security and Cooperation in Europe (OSCE) Minsk Group.
98. The conflict produced around 700,000 internally displaced persons (IDPs) in Azerbaijan and some 250,000 ethnic Azerbaijanis, who had fled from Armenia, were recognised as refugees in 1992 and naturalised in 1999. At the same time, 335,000 Armenian refugees from Azerbaijan and 78,000 IDPs from regions in Armenia bordering Azerbaijan have been registered within Armenia.<sup>84</sup>
99. The vast majority of IDPs in Azerbaijan originate actually not from the Nagorno-Karabakh region itself, but from the seven districts surrounding the Nagorno-Karabakh region. During her visit, the Commissioner met and talked to a number of persons displaced from these areas, the vast majority of whom expressed the wish to return to their homes.
100. According to official statistics provided by the State Committee for Affairs of Refugees and Internally Displaced Persons<sup>85</sup> to UNHCR, there were 620,422 registered IDPs in the country at the end of 2018.<sup>86</sup> Although many of the IDPs have effectively been integrated during the 25-year period since their displacement, the government insists that all or the vast majority (including children who were born after the displacement) should still be classified as IDPs. The Commissioner notes an inclination in Azerbaijan to maintain IDPs in their status, and even though 25 years have passed, to regard the situation of IDPs as still being temporary, since the return to their original homes is the durable solution prescribed by the authorities.
101. The Internal Displacement Monitoring Centre (IDMC) estimates for its part the total number of IDPs in Azerbaijan at around 344,000 people.<sup>87</sup> IDMC's estimate is based on an analysis of data provided by the government's State Committee for Affairs of Refugees and IDPs. According to its data, there were around 644,000 IDPs in Azerbaijan as of December 2018. The figure is divided into two groups: 344,000 people living in protracted displacement who still have unmet needs in terms of access to housing, employment, education and health; and 300,000, the government reports, as having been relocated to temporary housing. IDMC has accounted for this second group as having achieved a partial solution to displacement because they have been relocated and receive assistance from the government.
102. The Commissioner commends the important steps taken by the authorities to address the human rights issues of IDPs. A policy to deal with internal displacement has been in place since 1993 and a substantive part of the state budget has been devoted to addressing the needs of IDPs. Azerbaijan has a body of legislation on the protection and assistance of IDPs: the 1999 law on the status of refugees and IDPs and the 1999 Law on the Social Protection of Internally Displaced Persons and Persons Equated to Them. These laws have been supplemented by specific presidential decrees, adopted to improve access to employment and protect IDPs from eviction.
103. The last comprehensive report on the human rights situation of IDPs in Azerbaijan was published by the UN Special Rapporteur on the human rights of internally displaced persons (hereinafter "the UN Special

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<sup>84</sup> See the Court's judgment [Chiragov and Others v. Armenia](#), application no. 13216/05, Grand Chamber judgment of 16 June 2015, § 25.

<sup>85</sup> The State Committee for Affairs of Refugees and IDPs is a governmental agency within the Cabinet of Ministers of Azerbaijan in charge of regulation of the issues related to refugees and IDPs in Azerbaijan, including humanitarian aid and accommodation.

<sup>86</sup> UNHCR, [Population Statistics](#) 2018, Azerbaijan.

<sup>87</sup> IDMC, [Global Report on Internal Displacement 2019](#).



Rapporteur”), Chaloka Beyani, in April 2015,<sup>88</sup> following his official mission to the country in May 2014. In his report, the Special Rapporteur emphasised the abiding need to find durable solutions to the protracted situation of IDPs in Azerbaijan. He notably called on the international community and all parties concerned to work towards reaching a peaceful settlement to the unresolved armed conflict in and around the Nagorno-Karabakh region, with the aim of fully restoring the human rights of IDPs in Azerbaijan, in particular their right to voluntary return in safety and dignity, if they so wish. In the Commissioner’s opinion, the recommendations set out in the 2015 report of the UN Special Rapporteur continue to be relevant today.

### 3.1.1 CONCLUSIONS AND RECOMMENDATIONS

104. As the Committee of Ministers’ Recommendation 2006(6) on internally displaced persons<sup>89</sup> has underlined, IDPs are entitled to enjoy the entire spectrum of human rights, without discrimination. They have in particular the right to return voluntarily, in safety and in dignity, to their homes or places of habitual residence, or to resettle in another part of the country, in accordance with the Convention.<sup>90</sup>
105. The Commissioner expresses the hope that, in line with the UN Special Rapporteur’s recommendations, a durable solution for the affected population in Azerbaijan will be found. In this regard, the Commissioner wishes to reiterate the importance of overcoming the decades-long impasse and finding a peaceful solution to the Nagorno-Karabakh conflict, so that those IDPs who wish to return may do so on a voluntary basis, in safety and dignity.
106. However, the Commissioner would like to stress that the very nature of the conflicts or disasters at the origin of displacement also requires the consideration of other durable solutions and options. A durable solution can be achieved not only through the voluntary return and reintegration of IDPs at places of origin, but also through local integration (typically, in host communities), or settlement elsewhere in the country. These options are not mutually exclusive. Local integration or settlement in another part of the country should neither be regarded as a measure of last resort, nor perceived as negating the right of the individuals to return to their places of origin, once the requisite conditions are in place and make it possible for them to return.<sup>91</sup> In the Commissioner’s view, limiting IDPs’ prospects to only one - returning to their places of origin - entails the risk of creating a lost generation.<sup>92</sup>
107. The Commissioner has been following with much attention and hope the recently intensified diplomatic contacts between the Armenian and Azerbaijani authorities. In particular, she found it encouraging to hear about the agreement between the Foreign Minister of Azerbaijan and the Foreign Minister of Armenia on the need to take concrete measures to prepare the populations of both countries for peace.<sup>93</sup> The Commissioner fully supports this important goal, hoping that this could pave the way for possible agreements on other important issues, including the situation of IDPs.

### 3.2 LIVING CONDITIONS

108. IDPs are widely distributed throughout Azerbaijan, with the majority settled in the capital Baku and its surroundings. While many IDPs initially lived mostly in IDP camps in the south, the government has completed

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<sup>88</sup> [Report of the Special Rapporteur on the human rights of internally displaced persons - Mission to Azerbaijan \(A/HRC/29/34/Add.1\)](#). See also the report prepared by the Norwegian Helsinki Committee on the “[Human Rights Situation of IDPs in Azerbaijan](#)”, 2018.

<sup>89</sup> Recommendation Rec(2006)6 of the Committee of Ministers to member states on internally displaced persons, adopted by the Committee of Ministers on 5 April 2006.

<sup>90</sup> See also the UN [Guiding Principles on Internal Displacement](#), which assert in particular the right of IDPs to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.

<sup>91</sup> See the Commissioner’s Human Rights Comment “[Europe’s duty to internally displaced persons](#)”, 29 May 2018.

<sup>92</sup> See the Human Rights Comment “[Internally displaced persons in Europe: Another lost generation?](#)”, 3 September 2012.

<sup>93</sup> [Press Statement by the Co-Chairs of the OSCE Minsk Group](#), 16 January 2019.

the construction of new settlements in different regions of the country.<sup>94</sup> As a result, the last tented camp was demolished in 2007 and the direst cases of inadequate housing such as railway wagons have been closed.

109. For many years, the government has been paying for the use by IDPs of utilities, such as gas, water and electricity. In early 2017, the government introduced changes aimed at making the IDP assistance policy based on the actual needs of IDPs - rather than their status as IDPs - and moving from in-kind to cash-based assistance. IDPs now receive a monthly allowance, which has recently been increased by 50%, reaching 60 manats per person per month. According to the State Committee for Affairs of Refugees and IDPs, this allowance is being paid into the bank accounts of approximately 500 000 IDPs. In addition, IDPs are exempted from a number of taxes and fees.
110. The Commissioner welcomes the efforts made by the Azerbaijani authorities to improve the living conditions of IDPs, especially in the areas of housing and employment. As a result, the poverty level among IDPs has decreased from 75% to 12 %, according to the authorities.<sup>95</sup>

### 3.2.1 HOUSING

111. The UN Special Rapporteur concluded, in his 2015 report, that although the government had taken positive steps to meet the housing needs of IDPs, some IDPs continued to live in dormitories and collective centres in dire or substandard conditions. While in Baku, the Commissioner visited the old dormitories of the Technical University in the Yasamal district, where 163 families, totalling 615 persons, are living, some of them since 1993. She could observe that the families live in cramped accommodations, with only one small room for a family of 4 or more.
112. The Commissioner also visited a newly constructed settlement in the Sabunchu district of Baku. She was informed that over the period 2001-2016, the government constructed 95 such new settlements in more than 30 cities and districts at the expense of the funds allocated from the State Oil Fund and other sources.<sup>96</sup> The Government also reported that 7,000 IDP-families yearly benefited from relocation to new accommodation in 2016 and 2017, bringing the total percentage of IDPs who have benefited from relocation to around 40%. In 2018, the government ensured the resettlement of 5,600 IDP-families to new residential areas. It is envisaged that, in 2019, new residential buildings will be constructed for approximately 7,000 IDP-families.
113. The Commissioner recognises the important progress made by the authorities, by relocating IDPs to specially constructed settlements and providing them with housing free of charge. However, she remains concerned that since IDPs are treated as “guests” pending the return to their original homes or places of habitual residence, they have no possibility to acquire ownership rights over the apartments in which they have been resettled. Further concerns relate to the allocation of housing, which does not necessarily take into consideration the specific needs of IDPs and is tainted by allegations of corruption, leading to several protests by IDPs over poor living conditions.
114. During the 1990s, some IDPs were also settled in empty apartments, which were the property of non-IDPs. This situation has engendered several complaints before the European Court of Human Rights. In all these cases,<sup>97</sup> the Court found violations of Article 6§1 (right to a fair trial) and Article 1 of Protocol No. 1 (protection of property) of the Convention because of the non-enforcement of final judicial decisions ordering the eviction of IDPs who were unlawfully occupying the applicants' apartments; the applicants were the lawful owners or tenants of the apartments. In June 2019, the Committee of Ministers of the Council of Europe, supervising the execution of these judgments,<sup>98</sup> noted with interest the measures undertaken by the authorities in recent years to provide IDPs unlawfully residing in other persons' apartments with alternative housing, and strongly

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<sup>94</sup> UNHCR [submission](#) for the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review Third Cycle – Azerbaijan, October 2017.

<sup>95</sup> Report of the Working Group on the Universal Periodic Review, [Azerbaijan](#), A/HRC/39/14, 11 July 2018, § 21.

<sup>96</sup> These settlements included 150 schools, 6 music schools, 1 art school, 51 cultural centres, 59 day-care centres, 58 healthcare facilities, 718 km of roadway, 960 km of water pipeline, 1,605 km of power line, 442 km of gas pipeline, 66 km of communications lines, 26 km of heating pipelines, 163 km drainage network, and 830 electric transformers.

<sup>97</sup> Mirzayev group of cases, see *Mirzayev v. Azerbaijan*, application no. [50187/06](#), judgment of 3 December 2009.

<sup>98</sup> Decision CM/Del/Dec(2019)1348/H46-2, adopted by the Committee of Ministers on 6 June 2019.

encouraged the authorities to do their utmost to abide by the time frame of mid-2020 set for IDPs' resettlement.<sup>99</sup>

115. Property rights issues were also addressed in two judgments of the Court concerning the loss of homes, land and property as a result of the Nagorno-Karabakh conflict.<sup>100</sup> In both cases, the Court indicated that "pending a comprehensive peace agreement it would appear particularly important to establish a property claims mechanism, which should be easily accessible and provide procedures operating with flexible evidentiary standards, allowing the applicants and others in their situation to have their property rights restored and to obtain compensation for the loss of their enjoyment."

### 3.2.2 LIVELIHOOD OPPORTUNITIES

116. Despite numerous efforts to increase self-reliance and livelihood possibilities for IDPs,<sup>101</sup> particularly those residing in the new settlements, the unemployment rate among the IDP population is higher (about 15%), compared to the general population countrywide (about 5%).<sup>102</sup> Obstacles to income generating and employment opportunities for IDPs include the sometimes remote location of new settlements, the lack of infrastructure in these settlements, as well as the fact that in some instances the arable land which was distributed could not be used due to lack of irrigation water.<sup>103</sup> The situation is especially severe for IDPs living close to the Line of Contact. The UN Special Rapporteur on the right to food recently stressed that, in rural areas, IDPs only have access to seasonal agricultural work, making it difficult for them to access decent work opportunities.<sup>104</sup> In general, government subsidies and aid represent by far the greatest part of IDP incomes.
117. Furthermore, registration obligations might hamper income generation and self-reliance opportunities, especially for persons living in the rural regions and urban areas outside Baku. IDPs are obliged to reside where they have been registered in order to benefit from state assistance. The majority of IDPs live in settlements and are registered at their designated place of residence, thus affecting their choice of residence. IDPs who change their district of residence, for instance to move to big cities for jobs, will in most cases not be included on the government assistance lists in the new district and face the risk of being deprived of assistance from the state. There have been instances of families separated on this ground, with one person looking for job opportunities in another part of the country while the rest of the family stays behind to keep state assistance.
118. The UN Human Rights Committee indicated in its last concluding observations regarding Azerbaijan that it "remains concerned about reports that the residence registration system, including for internally displaced persons, remains a precondition for the full enjoyment of certain rights, such as those to employment, social security and education; and the choice of residence for resettled internally displaced persons is restricted in practice,"<sup>105</sup> thus affecting their freedom of movement.
119. Another important aspect in this context is the right to education, which is key to strengthening young IDPs' skills in their access to employment. The Commissioner notes that internally displaced children are entitled to

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<sup>99</sup> According to [information](#) submitted by the Government of Azerbaijan to the Committee of Ministers in March 2019, domestic court decisions have been enforced in 18 cases. In order to implement these judgments, the government adopted additional measures to improve the housing conditions of IDPs. On 21 February 2011, the President of Azerbaijan signed an order which indicated that the government should "build, in the towns of Baku and Sumgayit and in the Absheron region, multi-storey residential buildings for 1210 IDP families (5445 IDPs) temporarily residing in apartments and houses belonging to other persons in Baku and Sumgayit". The resettlement of IDPs residing in the apartments belonging to other individuals, in particular those concerned in the judgments and decisions of the Court, is envisaged in March-April 2020.

<sup>100</sup> [Chiragov and Others v. Armenia](#), application no. 13216/05, Grand Chamber judgment of 16 June 2015, and [Sargsyan v. Azerbaijan](#), application no. 40167/06, Grand Chamber judgment of 16 June 2015.

<sup>101</sup> According to the authorities, some 2,000 IDPs have for instance received preferential loans to fund businesses through the National Entrepreneurship Support Fund.

<sup>102</sup> IOM [Humanitarian Compendium](#), Azerbaijan 2018.

<sup>103</sup> The issue of water supplies to various areas near the Line of Contact remains of concern, as it is notably depending on the Sarsang water reservoir located in Nagorno-Karabakh.

<sup>104</sup> [Statement](#) by Ms. Hilal Elver, United Nations Special Rapporteur on the right to food on her visit to the Republic of Azerbaijan, 11 October 2019.

<sup>105</sup> Human Rights Committee, [Concluding observations \(2016\)](#), CCPR/C/AZE/CO/4, § 30.

various aids, such as free textbooks. Tuition fees are waived for those studying in State higher and secondary educational institutions.

120. However, the Commissioner is concerned that a majority of internally displaced children study in schools which were built or intended just for IDPs and are thus being educated separately from the rest of the population. As relayed by various interlocutors to the Commissioner, the rationale for segregated schooling is that it facilitates the adaptation of internally displaced children to their displacement and will ease their integration in case of return.
121. The UN Special Rapporteur cautioned, in his 2015 report, against prolonged segregation which is not in the best interests of the child and society as a whole. He stressed that “special measures for separate education may be necessary for logistical reasons in the immediate aftermath of displacement, but the justification weakens as displacement continues, even if parents support the practice. Segregation reinforces IDP stigmatization and their isolation from the broader community and encourages nostalgia for the past, hampering their integration and adding to their precarious social position.”<sup>106</sup>

### 3.2.3 CONCLUSIONS AND RECOMMENDATIONS

122. The Commissioner commends measures implemented by the government and aimed at improving the socioeconomic situation of IDPs. She encourages the authorities to further enhance access by IDPs to all economic and social rights, in particular the right to adequate housing and the right to employment. It is particularly important to ensure that livelihood opportunities are provided, in order to ensure that IDPs achieve self-sufficiency and do not entirely depend on government assistance.
123. Furthermore, the Commissioner reiterates the UN Special Rapporteur’s recommendation regarding the importance of diversifying alternative housing strategies to include access to ownership of property or rental subsidies to facilitate the local integration of IDPs if they so wish.<sup>107</sup>
124. The Commissioner welcomes steps taken recently to secure more transparency in the distribution of housing and hopes that these steps will be conducive to better implementation in practice of the freedom to choose one’s residence.
125. As regards education, the Commissioner has already underlined the serious consequences of educating children separately, stressing that such isolation harms the social integration of the students and weakens the bonds of social cohesion.<sup>108</sup> She calls on the authorities to promote mixed schooling in order to facilitate the integration of internally displaced children in society. The authorities should also make certain that internally displaced children have access to quality education through comprehensive, inclusive educational policies.
126. Finally, the Commissioner underlines the importance of mapping the specific needs of IDPs, in order to better respond to the various challenges they are facing. In this context, the Commissioner calls on the State Committee for Affairs of Refugees and IDPs to give its full support to any needs-based assessment project carried out in the country.

### 3.3 PARTICIPATION IN PUBLIC AND POLITICAL LIFE

127. According to the Committee of Ministers’ Recommendation 2006(6) on internally displaced persons,<sup>109</sup> member states should take appropriate legal and practical measures to enable internally displaced persons to effectively exercise their right to vote in national, regional or local elections and to ensure that this right is not infringed by obstacles of a practical nature. Principle 22, paragraph 1 (d), of the Guiding Principles on Internal Displacement

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<sup>106</sup> [Report of the Special Rapporteur on the human rights of internally displaced persons - Mission to Azerbaijan \(A/HRC/29/34/Add.1\)](#), § 42.

<sup>107</sup> [Report of the Special Rapporteur on the human rights of internally displaced persons - Mission to Azerbaijan \(A/HRC/29/34/Add.1\)](#), § 77.

<sup>108</sup> See the Commissioner’s [Position Paper](#) “Fighting school segregation in Europe through inclusive education”, 12 September 2017.

<sup>109</sup> Recommendation [Rec\(2006\)6](#) of the Committee of Ministers to member states on internally displaced persons, § 9.

adds that IDPs have the right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise that right.

128. In Azerbaijan, while IDPs have the right to vote in parliamentary and presidential elections, their right to participate in municipal elections is restricted: they cannot vote in the municipality where they reside and cannot stand as candidates, as they retain the right to vote for the constituency from which they are displaced. However, local councils in their constituencies of origin have been suspended since the outbreak of the Nagorno-Karabakh conflict. The government nevertheless maintains constituencies in IDP areas of origin, in readiness for the time when the return of IDPs will become possible.<sup>110</sup> Their reasoning for this is that giving IDPs the same voting rights as other residents would be seen as an acknowledgement that these people cannot return.
129. The Commissioner further observes limited participation of IDPs in public life. Although some NGOs dealing with IDP issues have been established by IDPs themselves,<sup>111</sup> their voices are often not heard, and they are not included in political decision-making. This problem is compounded by the absence of any independent media outlet dedicated to IDPs.

### 3.3.1 CONCLUSIONS AND RECOMMENDATIONS

130. An effective participation in decision-making processes implies the right of the IDPs to vote and stand for elections, especially at the local level, as local authorities play a key role in promoting and sustaining their inclusion in the host communities.<sup>112</sup> The Commissioner is concerned that, in Azerbaijan, participation in political life is limited due to IDPs' inability to vote in municipal elections in the constituencies where they reside. The Commissioner calls on the authorities to ensure the right to vote of IDPs in municipal elections at their current place of residence, in line with the Committee of Ministers' Recommendation 2006(6) on internally displaced persons.
131. Improvements in the areas of freedom of expression and freedom of association would also be beneficial to the full participation of IDPs in public and political life.
132. Moreover, as recently stressed by the Commissioner, it is imperative that state authorities ensure the full participation of IDPs in decision-making processes, and involve host communities to address broader concerns related to the inclusion policies. IDPs should be empowered to make a voluntary and informed choice as to which durable solutions they would like to pursue, once the necessary conditions are in place, and be able to participate in the planning and management of their preferred options.<sup>113</sup>
133. The Azerbaijani authorities should systematically involve IDPs themselves in the planning, implementation and monitoring of all its policies regarding IDPs.

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<sup>110</sup> [Report of the Special Rapporteur on the human rights of internally displaced persons - Mission to Azerbaijan \(A/HRC/29/34/Add.1\)](#), § 51.

<sup>111</sup> Norwegian Helsinki Committee, "[Human Rights Situation of IDPs in Azerbaijan](#)", 2018, p. 31.

<sup>112</sup> See Recommendation 419(2018) and Resolution 431(2018) on "[Voting rights at local level as an element of successful long-term integration of migrants and IDPs in Europe's municipalities and regions](#)", adopted by the Council of Europe Congress of Local and Regional Authorities on 7 November 2018.

<sup>113</sup> See the Commissioner's Human Rights Comment "[Europe's duty to internally displaced persons](#)", 29 May 2018.