



Second report on Azerbaijan

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TABLE OF CONTENTS

FOREWORD	5
EXECUTIVE SUMMARY	6
I. FOLLOW-UP TO ECRI’S FIRST REPORT ON AZERBAIJAN	7
INTERNATIONAL LEGAL INSTRUMENTS	7
CONSTITUTIONAL PROVISIONS AND OTHER BASIC PROVISIONS.....	8
- Citizenship law	8
CRIMINAL LAW PROVISIONS	8
CIVIL AND ADMINISTRATIVE LAW PROVISIONS.....	10
SPECIALISED BODIES AND OTHER INSTITUTIONS	12
EDUCATION AND AWARENESS-RAISING	13
ACCESS TO PUBLIC SERVICES	14
RECEPTION AND STATUS OF NON-CITIZENS	15
- Migrants	15
- Refugees and asylum seekers	15
VULNERABLE GROUPS	15
- Armenians.....	15
- Religious groups	15
NATIONAL MINORITIES	17
CONDUCT OF LAW ENFORCEMENT OFFICIALS	19
MEDIA	20
MONITORING THE SITUATION.....	21
SITUATION REGARDING REFUGEES AND INTERNALLY DISPLACED PERSONS AS A RESULT OF THE CONFLICT OVER NAGORNO-KARABAKH.....	21
- Areas currently not under the effective control of the Azerbaijani authorities	23
II. SPECIFIC ISSUES	24
LACK OF LEGAL STATUS OF NON-CITIZENS STAYING IN AZERBAIJAN	24
- Refugees and asylum-seekers.....	24
- Russian citizens from Chechnya	25
- Long-term residents	27
PERSISTENCE OF THE NEGATIVE CLIMATE AGAINST ARMENIANS	27
BIBLIOGRAPHY	30

Foreword

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.

The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4-5 year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.

The third round reports focus on "implementation". They examine if ECRI's main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with "specific issues", chosen according to the different situations in the various countries, and examined in more depth in each report.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to propose, if they consider it necessary, amendments to the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 15 December 2006 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.

Executive summary

Since the publication of ECRI's first report on Azerbaijan on 15 April 2003, progress has been made in a number of the fields highlighted in that report. In the area of education, access to public school for children of non-citizens without legal status has been improved and measures in favour of teaching human rights as well as minority languages have been taken. Efforts have been made to better combat illegal behaviour on the part of law enforcement officials. A "State Programme on improvement of the living conditions and raising employment for refugees and internally displaced persons (IDPs)" was adopted in 2004 and is currently being implemented. A procedure for granting the status of refugee was put in place and some asylum seekers have already obtained refugee status on this basis.

However, a number of recommendations made in ECRI's first report have not been implemented, or have only been partially implemented. There are still cases of racist and inflammatory speech or the promotion of religious intolerance by some media, members of the general public and politicians, particularly against Armenians, Russian citizens from Chechnya and members of some religious minorities. There are also allegations of racial discrimination on the part of some officials against Armenians living in Azerbaijan. The unsolved conflict over Nagorno-Karabakh continues to have a negative impact on the climate concerning Armenians. Certain categories of non-citizens experience difficulties in obtaining legal status or in exercising the rights which arise from this legal status. This situation concerns refugees and asylum seekers, Russian citizens from Chechnya, and some long-term residents. A number of shortcomings must be remedied in asylum law and practice. There are allegations of cases of harassment on the part of law enforcement and other officials against Armenians, members of some minority religious groups and Russian citizens from Chechnya. Persons displaced as a result of armed conflict in the country continue to experience difficult living conditions. National minorities need more support from the Azerbaijani authorities to protect their languages and cultures. In general, there is a lack of awareness on the part of the Azerbaijani population of the problem of racism and intolerance in Azerbaijan and of the relevant existing criminal, civil and administrative law provisions aimed at combating such phenomena.

In this report, ECRI recommends that the Azerbaijani authorities take further action in a number of areas. It recommends in particular that they provide officials in the judicial system with more training on the importance of adequately applying criminal law provisions to combat racism and intolerance. It asks that a specialised body be set up to combat racism and racial discrimination and that the civil and administrative law provisions prohibiting racial discrimination be strengthened. Measures should be taken to solve the problems linked to the lack of legal status of some categories of non-citizens living in Azerbaijan. ECRI asks that the Azerbaijani authorities take measures aimed at raising the general public's awareness of the problem of racism and intolerance in Azerbaijan and of the need to combat such phenomena. ECRI recommends that the Azerbaijani authorities ensure an adequate response to all instances of discrimination and hate-speech against Armenians and contribute actively to generating a climate favourable to a fair and peaceful solution of the Nagorno-Karabakh conflict.

I. FOLLOW-UP TO ECRI'S FIRST REPORT ON AZERBAIJAN

International legal instruments

1. In its first report on Azerbaijan, ECRI recommended that Azerbaijan ratify the following international legal instruments: Protocol N° 12 to the European Convention on Human Rights (ECHR), the European Social Charter, the European Charter for Regional and Minority Languages, the European Convention on Nationality, the Convention on the Participation of Foreigners in Public Life at Local Level, the European Convention on the Legal Status of Migrant Workers, and the UNESCO Convention against Discrimination in Education.
2. ECRI is pleased to note that Azerbaijan ratified the European Social Charter (Revised) on 2 September 2004. This Charter entered into force in Azerbaijan on 1 November 2004. ECRI is also pleased to note that on 2 October 2006 the Azerbaijani Parliament adopted Law N° 147-IIIQ ratifying the UNESCO Convention against Discrimination in Education. On 12 November 2003 Azerbaijan signed Protocol N° 12 to the ECHR, which provides for a general prohibition of discrimination. The Azerbaijani authorities have indicated that the Protocol will soon be sent to the Parliament for ratification.
3. As regards the European Convention on the Legal Status of Migrant Workers and the Convention on the Participation of Foreigners in Public Life at Local Level, the Azerbaijani authorities have declared that they are currently considering the possibility of ratifying those instruments.
4. The Azerbaijani authorities have explained that they do not consider it possible to ratify in the near future the European Charter for Regional or Minority Languages, which was signed on 21 December 2001. The reason put forward is that there is currently a lack of funds for financing all the measures that need to be taken in order to fully implement this instrument.
5. Azerbaijan has not signed the Convention on Nationality yet. The Azerbaijani authorities have explained that they will first have to amend their legislation on nationality, which for instance does not allow for dual citizenship yet.
6. ECRI notes that since the adoption of its first report, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ratified in 1999, came into force in Azerbaijan on 1 July 2003.
7. Since ECRI's first report on Azerbaijan, the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, entered into force on 1 March 2006. Azerbaijan has not signed this Protocol yet. The Azerbaijani authorities have indicated that they will consider signing and ratifying the Additional Protocol to the Convention on Cybercrime after Azerbaijan's accession to the Convention itself and that the Convention on Cybercrime is currently going through internal procedures.

Recommendations:

8. ECRI reiterates its recommendation that Azerbaijan ratify the following international instruments as soon as possible: Protocol N° 12 to the ECHR, the European Charter for Regional or Minority Languages, the European Convention on the Legal Status of Migrant Workers, the European Convention on the Participation of Foreigners in Public Life at Local Level and the European Convention on Nationality.
9. ECRI recommends that Azerbaijan ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

Constitutional provisions and other basic provisions

- *Citizenship law*

10. In its first report, ECRI recommended that the Azerbaijani authorities ensure that all applicants for naturalisation be thoroughly informed of the motivation for the negative decisions on their applications.
11. ECRI notes with concern allegations according to which there are problems of misinterpretations of the citizenship law by the relevant State officials. Some applicants for naturalisation have allegedly been asked to fulfil conditions which are not required by this law. For instance, some non-citizens have been required to prove that they have lived in the country for the last 10 years or that they are married to an Azerbaijani citizen. This contradicts the law, which only requires that they have lived in the country for the last 5 years, as well as a document proving that the applicant has sufficient command of the official language. In addition, legislation on citizenship stipulates that a person shall obtain Azerbaijani citizenship if he or she is born on Azerbaijani territory (Article 11 of the Law on Citizenship of the Azerbaijan Republic and Article 52 of the Constitution). In practice however, some Russian citizens of Chechen origin have apparently not managed to register their children recently born in Azerbaijan as Azerbaijani citizens¹.

Recommendations:

12. ECRI recommends that the Azerbaijani authorities look into allegations of misinterpretations of the legislation on citizenship by State officials and take all necessary measures to ensure that the legislation be duly implemented in all cases without any discrimination.

Criminal law provisions

13. In its first report, ECRI recommended that specific training on the relevant criminal law provisions against racism and racial discrimination be provided to all actors involved in the criminal justice system, from the police to the prosecuting authorities and the judges. In that report, ECRI also listed the relevant provisions in this field. To recall but a few of them, Article 61.1.6 of the Criminal Code provides as a general aggravating circumstance for determining the punishment of all offences that they are committed on the grounds of, among others, racist, national or religious hatred or fanaticism. Article 154.1 prohibits discrimination on

¹ Concerning the situation of Russian citizens from Chechnya, see also below, Section II - Lack of legal status of non-citizens staying in Azerbaijan: Russian Citizens from Chechnya.

the grounds of, *inter alia*, ethnic origin, language or religious belief. Article 167 prohibits illegal interference in the exercise of religious activities. Article 283 prohibits incitement to national, racial, religious hatred or the debasing of national dignity and discrimination.

14. ECRI notes that there have been virtually no prosecutions or convictions for racist acts or racial discrimination in Azerbaijan over the last 10 years, with two exceptions. The first exception is an enquiry opened by the Investigation Department of the Ministry of National Security in December 2004 on the basis of Article 283-1 (incitement to racial hatred) against an Azerbaijani citizen who translated and published in newspapers and in the form of a paperback some parts of Hitler's book "Mein Kampf". In the framework of the investigation, experts unequivocally established that the extracts in question advocated fascist and racist ideologies. However, it was also established that the translator's goal was to call the Azerbaijani general public's attention to the danger of racist ideology for every society, and that there was no intent to incite to racial hatred. This is why in February 2005, charges against the concerned person were finally dropped. The second exception concerns an enquiry opened on 11 November 2006 for incitement to religious hatred on the basis of Articles 283-1 and 283-2.2 of the Criminal Code. The enquiry concerns the author of an article entitled "Europe and us", referring to Islam and published in a local newspaper, *Senet*, as well as the chief-editor of this newspaper. The court decided to put these two persons in pre-trial detention for two months and the investigations are currently being carried out.
15. The explanation given by the authorities for the lack of prosecutions or convictions for racist acts or racial discrimination is that as a result of the high level of tolerance within society such acts are very rare in Azerbaijan. However, such a statement comes in stark contrast to many reports concerning cases of public statements of a racist and inflammatory nature or the promotion of religious intolerance by some media (particularly TV channels), by some politicians or some members of the general public². ECRI has also received reports from several sources on cases of racial discrimination on the part of some officials against ethnic Armenians living in Azerbaijan³. It has been pointed out that the other explanation for the absence of cases before the courts is the lack of awareness in the criminal justice system, including on the part of the police, of the problems of racism, intolerance and racial discrimination. The general public itself is apparently not sufficiently aware that such acts are criminal offences and that complaints may be lodged with the police or the prosecutor on these grounds. Lastly, lack of confidence in the judicial system has been widely suggested as the reason why people in Azerbaijan often refrain from getting involved with it: they consider that it is pointless to do so, or that applying to a court might even be counterproductive. In this domain, ECRI notes with concern the reports of non-governmental organisations and intergovernmental organisations referring to serious problems in the functioning of the Bar as well as in the functioning and independence of the courts.

² See also below: Media and Section II - Persistence of the negative climate against Armenians.

³ See also below: Section II - Persistence of the negative climate against Armenians.

16. There are general training courses in human rights for police officers, but the courses do not focus particularly on the need to combat racism and racial discrimination. Prosecutors also receive training in human rights. ECRI notes with interest that a Code of ethics for prosecutors is being drawn up and hopes that the code will include provisions on the principle of prohibiting racial discrimination. The Azerbaijani authorities have informed ECRI that, bearing in mind the special importance of the prevention of crimes committed on the basis of hatred, intolerance and discrimination, the relevant themes have been included in the academic curricula of the professional training of judges, prosecutors and other justice officers organised by the Legal Training Centre within the Ministry of Justice. Paying special attention to the improvement of the training for judges and prosecutors, the Azerbaijan–Council of Europe Joint Expert Commission on training issues was established in 2005. This Commission has elaborated some new draft training curricula for judges and prosecutors on the basis of best international practice. According to the Decree of the President of 17 August 2006 on the “Development of justice agencies”, an Academy of Justice was created in Azerbaijan. As regards the Azerbaijani population, to ECRI’s knowledge, the authorities have not conducted any awareness campaigns, for instance through the establishment of a national action plan against racism and xenophobia⁴.

Recommendations:

17. ECRI recommends that the Azerbaijani authorities substantially increase their efforts to provide training to the police, prosecutors, judges, lawyers and trainees in the judicial system on the application of the legislation on racist offences.
18. ECRI recommends that the Azerbaijani authorities inform the general public of the existence of criminal law provisions enabling racially motivated acts or acts of religious intolerance to be punished. It recommends that they take steps to encourage victims to lodge complaints concerning such acts, particularly by substantially improving the functioning of the judicial system and strengthening public confidence in the system.

Civil and administrative law provisions

19. In its first report, ECRI recommended that the Azerbaijani authorities consider adopting civil and administrative law provisions aimed at combating racial discrimination in all fields of life. ECRI regrets that there is no information indicating that any comprehensive anti-discrimination legislation has been adopted or even discussed in Azerbaijan, since last report. As a matter of fact, the relevant authorities have explained to ECRI that they do not consider this issue as a priority, mainly for two reasons: firstly, there are already many provisions prohibiting discrimination, scattered in several laws dealing with many different fields of life such as social security, education, health protection, culture, and the protection of the rights and legal interests of children. Secondly, there have been no cases until now of complaints against the violation of such anti-discrimination clauses on the grounds relevant to ECRI’s work such as race, colour, language, religion, nationality (i.e. citizenship), or national or ethnic origin.

⁴ See below: Education and awareness raising.

20. For instance, since its adoption in 1999, the Labour Code prohibits in its Article 16 discrimination in offering employment and in defining rights and duties arising from employment on the grounds, *inter alia*, of nationality, race or religion. However, the authorities have stated that no complaint of racial discrimination in the field of work has been brought to their attention. ECRI understands therefore that until now Article 16 of the Labour Code has not been applied by courts in this area. Apparently, the situation is the same as concerns all other anti-discrimination clauses. However, as mentioned above, several sources report allegations of racial discrimination on the part of some officials against ethnic Armenians living in Azerbaijan. It seems that these cases are not brought to justice by the persons concerned. An explanation of this could be found in the general negative climate of opinion concerning ethnic Armenians⁵ as well as in the fact that the functioning of the Azerbaijani justice system is far from satisfactory⁶.
21. ECRI considers that the civil and administrative legislation could be further improved in the field of combating racial discrimination, particularly as regards the adoption of provisions ensuring its full implementation. For instance in the field of civil and administrative law, given the difficulties complainants face in collecting the necessary evidence in discrimination cases, the law should facilitate proof of discrimination by providing a system of shared burden of proof in such cases, as recommended in ECRI's General Policy Recommendation No 7 on national legislation to combat racism and racial discrimination⁷. A shared burden of proof means that the complainant should establish facts allowing for the presumption of discrimination, whereupon the onus shifts to the respondent to prove that discrimination did not take place.
22. In its first report, ECRI noted that the law provided that identification documents and passports should not contain the indication of the ethnic origin of the holder. Understanding then that the Azerbaijani authorities intended to remove the indication of ethnic origin from birth certificates as well, ECRI welcomed this plan and encouraged the Azerbaijani authorities to carry it out as soon as possible. ECRI notes with interest that in accordance with the Cabinet of Minister's Decision No. 52 dated 1 March 2001 there is no indication of ethnic origin on birth certificates. The Azerbaijani authorities have explained that at present birth certificates are being issued in accordance with the above mentioned Decision.

Recommendations:

23. ECRI recommends that the Azerbaijani authorities ensure the proper implementation of the civil and administrative law provisions prohibiting racial discrimination. It recommends that they inform the general public of the existence of such provisions and that they take steps to encourage victims to lodge complaints concerning acts of racial discrimination.
24. ECRI also recommends that the Azerbaijani authorities complement the existing provisions by adopting comprehensive provisions prohibiting racial discrimination in a precise and exhaustive manner to ensure that all areas of life such as education, access to housing, to public services and to public places and

⁵ See also below: Section II - Persistence of the negative climate against Armenians.

⁶ Concerning the justice system, see also above: Criminal law provisions.

⁷ See in particular Paragraph 11 of General Policy Recommendation No 7 and Paragraphs 29 to 31 of its Explanatory Memorandum.

contractual relations between individuals are covered. On this point, ECRI invites the Azerbaijani authorities to draw on the part of its General Policy Recommendation No 7 on national legislation to combat racism and racial discrimination dealing with civil and administrative law.

Specialised bodies and other institutions

25. In its first report, ECRI welcomed the creation of an office of the Human Rights Commissioner (hereafter: the Ombudsperson). It recommended that sufficient funds be allocated to the Office of the Ombudsperson in order that it may carry out its mandate in an effective manner. It asked the authorities to ensure that this office be widely known throughout Azerbaijan. ECRI also recommended that the Azerbaijani authorities draw inspiration from its General Policy Recommendation N° 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level and consider the possibility of developing the competence of the Ombudsperson in this field.
26. ECRI notes that, since her election, the Ombudsperson has been gradually increasing the activities of her office. This office and its work are widely known in Azerbaijan. The rise in the number of applications every year is a clear sign of this. In 2005, the Ombudsperson reported to the parliament that she received 6 300 complaints for 2004, which means 70 % more than in 2003. In order to facilitate victims' access to this institution, there are several regional offices and the Ombudsperson often travels to the regions in order to meet with the population. In addition, a special Ombudsperson was elected in 2005 for the Nakhchivan Autonomous Republic.
27. The Ombudsperson has informed ECRI that she has taken several initiatives with regard to religious issues. For instance, she initiated, together with the State Committee for Work with Religious Organisations an event on "Religion and Human Rights". She also held a meeting at national level with representatives of the Muslim, Jewish and Russian Orthodox religious groups to discuss the exercise of rights and freedoms of different minority groups and the work of the Ombudsperson concerning human rights in general and discrimination issues in particular. Furthermore, she suggested the establishment of an inter-religious council, called "the Culture of Peace through Religion".
28. The Ombudsperson explained to ECRI that while her office receives some complaints from members of minority groups, such complaints are not linked to racial discrimination or racist acts but rather to more general problems with the police⁸, the courts or other public services. The office of the Ombudsperson regularly organises public events and training on human rights, always stressing in this context the need for tolerance in Azerbaijan. However, it does not seem to ECRI that there is a special emphasis in the office's work on the fight against racism, religious intolerance, racial discrimination or other forms of discrimination. In addition, ECRI is not aware of any plans to increase the Ombudsperson's activities in this field or to set up a separate body for this purpose.

⁸See also below: Conduct of law enforcement officials.

Recommendations:

29. ECRI strongly encourages the Azerbaijani authorities either to emphasise the responsibility and ensure the competence of the Ombudsperson in the field of combating racism and racial discrimination or to set up in the near future an independent specialised body to combat racism and racial discrimination. To this end, the Azerbaijani authorities should draw inspiration from ECRI's General Policy Recommendation No 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level and General Policy Recommendation No 7 on national legislation to combat racism and racial discrimination.
30. ECRI particularly emphasises the need to ensure that the body specialised in combating racism and racial discrimination is entirely independent and has the legal capacity and the necessary human and financial resources to be able to provide victims with the required assistance.

Education and awareness-raising

31. In its first report, ECRI noted that problems of racism and racial discrimination are not generally considered to be the main concerns for members of Azerbaijani society and that there was a corresponding lack of awareness of these issues. It considered that there was an urgent need for the Azerbaijani authorities and society in general to become aware of the various dimensions of racism and racial, national, ethnic or religious discrimination in daily life in Azerbaijan.
32. Concerning school education, the Azerbaijani authorities have informed ECRI that human rights and the principle of tolerance are taught at school through a cross-disciplinary approach during the first years of compulsory schooling. One of the aims of the subject matter "individual and society", taught in secondary schools is to raise pupils' awareness to cultural diversity and particularly religious diversity. According to the Ministry of Education, the principles of tolerance, equality and non-discrimination are systematically taken into account when drafting teaching material and particularly history textbooks. The Ministry of Education explained to ECRI that teachers are provided with training on how to convey the message of tolerance to pupils.
33. Despite some efforts made to promote human rights and tolerance in education and other fields as described above and in other parts of this report⁹, ECRI notes that there is still an urgent need for more general measures aimed at raising awareness among Azerbaijani authorities and society of the various dimensions of racism and racial discrimination in daily life in Azerbaijan. For instance, ECRI understands that no specific steps have been taken to carry out research on the phenomena of racism and racial discrimination in Azerbaijani society. As mentioned above¹⁰, the authorities have not yet taken steps to fulfil their commitment undertaken at the 2001 World Conference against Racism in Durban to adopt and implement "a national action plan against racism, racial discrimination, xenophobia and related intolerance"¹¹.

⁹ See above: Criminal law provisions.

¹⁰ See above: Criminal law provisions.

¹¹ See Paragraph 191 (a) of the Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, according to which the World Conference : "Calls upon States to elaborate action plans in consultation with national human rights institutions, other institutions created by law to combat racism, and civil society and to provide the United Nations High

Recommendations:

34. ECRI recommends that the Azerbaijani authorities strengthen the human rights component of the existing school curricula, notably through further teacher training and the improvement of textbooks. It considers that, in the longer term, the Azerbaijani authorities should consider making human rights, including non-discrimination, a separate compulsory subject at both primary and secondary level.
35. ECRI recommends that the Azerbaijani authorities enhance their efforts to provide education aimed at promoting mutual knowledge and respect and at strengthening pupils' and teachers' ability to deal with diversity.
36. ECRI recommends that the Azerbaijani authorities take measures aimed at raising the general public's awareness of the problem of racism and intolerance in Azerbaijan. The need to combat racial discrimination should also be emphasised in this context, as well as the need to accept and promote cultural diversity. Such a campaign could be part of a more general national action plan against racism, racial discrimination, xenophobia and related intolerance.

Access to public services

37. In its first report, ECRI noted that discrimination in daily life was overlooked by both legislation and society at large. ECRI would like to reiterate in this report that although such a phenomenon may not always manifest itself in an obvious, direct and overt manner, it does exist in daily life in forms which are often more discreet and indirect. Such forms of indirect discrimination taking place in Azerbaijan affect access not only to public services but also to employment, education and housing.
38. For instance, although the legislation in force in Azerbaijan may not contain discriminatory provisions, discrimination can sometimes be present in the way in which legal provisions are applied in practice. Also, due to stereotyping and prejudice concerning them, persons belonging to certain minority groups may not actively seek access to or full enjoyment of, certain rights. This is the case, for instance, of ethnic Armenians living in Azerbaijan but also of other groups such as certain religious minorities or Russian citizens from Chechnya¹². Furthermore, provisions, criteria and practices which are apparently neutral and do not discriminate directly, can still put persons of a specific group at particular disadvantage. An illustration of this comes from the practice of favouritism, corruption and bribes which were already noted as problems in ECRI's first report. Despite increasing efforts from the government to combat such practices, they are still widely recognised as prevalent in Azerbaijani society. It means that in order to benefit from a service or to avoid adverse treatment in a specific situation, one must either be closely linked to someone who works within the public administration or pay a bribe. Such a system benefits those with family members and close friends in public institutions and disadvantages those without connections and who are unable to pay, amongst whom a comparatively larger proportion are members of minority groups.

Commissioner for Human Rights with such action plans and other relevant materials on the measures undertaken in order to implement provisions of the present Declaration and the Programme of Action".

¹² See also below: Section II.

Recommendations:

39. ECRI recommends that the Azerbaijani authorities carry out research on the situation of minority groups in areas such as access to public services employment, housing and education in order to evaluate and address any discrimination they may face. They should endeavour to identify any pattern of indirect discrimination as described above and implement effective policies aimed at tackling such discrimination.

Reception and status of non-citizens

- ***Migrants***

40. ECRI has been able to obtain very little information on migrants, whether from government or other sources. Apart from asylum seekers and refugees, including refugees from Chechnya, referred to in other parts of this report¹³, it would indeed seem that there are very few migrants in Azerbaijan. In addition, non-citizens in Azerbaijan are there only for a very short time, since their plan is generally to move on speedily to another destination. In view of the lack of reliable information, it is difficult to discuss the situation of migrants in Azerbaijan in greater detail. The Azerbaijani authorities have informed ECRI that the Presidential Decree on “the State Programme of the Republic of Azerbaijan on Migration Issues (for 2006-2008)” was adopted on 25 July 2006.

Recommendations:

41. ECRI recommends that the Azerbaijani authorities closely monitor the situation of non-citizens temporarily or permanently staying in Azerbaijan and respond swiftly to any manifestations of intolerance or racial discrimination against such persons.

- ***Refugees and asylum seekers***

42. See below: Section II - Lack of legal status of non-citizens staying in Azerbaijan.

Vulnerable groups

- ***Armenians***

43. See below: Section II - Persistence of the negative climate against Armenians.

- ***Religious groups***

44. In its first report, ECRI recommended that the Azerbaijani authorities look into allegations of obstruction by the police and local authorities to meetings of religious associations. It also noted with concern the existence of hostile and stigmatising propaganda in the media against minority religious groups.

45. As already noted in ECRI’s first report, Muslims constitute around 90% of the Azerbaijani population. The rest includes Christians, Jews and members of other religions. ECRI is pleased to learn that the Azerbaijani population is often described as tolerant towards traditional religious groups and particularly the Jewish community. The latter is generally satisfied with its situation throughout

¹³ See below: Section II - Lack of legal status of non-citizens staying in Azerbaijan.

Azerbaijan, and particularly in the Red Settlement village, close to Guba, where Jewish people live compactly.

46. However, it appears that this religious tolerance does not extend to all minority religious groups. Some of them, and particularly those which are considered as non-traditional (i.e. which appeared only recently in the country), allegedly experience cases of discrimination and intolerance on the grounds of their religion. People who are said to be most vulnerable to religious intolerance are Jehovah's Witnesses, former Muslims who have converted to Christianity, other small Christian communities which arrived after independence and some minority Muslim groups.
47. Problems linked with freedom of religion are still reported to occur in Azerbaijan. While the State Committee for Work with Religious Organisations has indicated that since the beginning of the re-registration process of religious associations in 2002, 373 associations have registered, there are also reports of unnecessary bureaucracy which have prevented some religious associations from registering. This should not have an impact on their religious freedom with the exception that they cannot benefit from the status of legal entity. However, such religious groups are often unduly portrayed as "illegal" by some media, on the sole grounds that they are not registered.
48. The Azerbaijani authorities have explained that they have to counter patterns of religious extremism and that some of the non-traditional religious groups are "radical and aggressive". However, ECRI notes that human rights defenders consider that in general the measures taken are disproportionate to their aim, notably by targeting groups which do not present a real danger of extremism. The police and some local authorities are said to harass some minority religious groups and particularly Muslims belonging to minority streams, using humiliating and arbitrary measures aimed at intimidating the members of such groups. The propaganda by some media against non-traditional religious groups, minority Muslim groups and Muslims who have converted to Christianity allegedly continues, without any intervention from the authorities aimed at preventing or condemning this inflammatory speech.

Recommendations:

49. ECRI strongly recommends that the Azerbaijani authorities pursue and reinforce their efforts to effectively combat manifestations of religious intolerance involving inflammatory speech in the media or harassment by the police and local authorities against members of some religious groups. They should ensure that those responsible for such acts are duly prosecuted and punished in accordance with Azerbaijani law.
50. ECRI recommends that the Azerbaijani authorities ensure that members of religious minorities can fully exercise their freedom of religion. To this end, the authorities should take steps to improve the mechanism of registration so as to avoid unnecessary bureaucracy.
51. Concerning the issue of conscientious objectors, ECRI is pleased to note that the Constitution was amended in 2002 in order to insert a provision according to which all those whose beliefs (including religious beliefs) prevent them from undertaking military service are entitled to ask for an alternative civilian service in cases specified by legislation (Article 76 of the Constitution). However, ECRI expresses its concern at information according to which legislation which should specify the cases where alternative civilian service is possible has not been

adopted so far. Jehovah's Witnesses who refuse to do their military service and ask for an alternative civilian service are apparently still being prosecuted for draft evasion. Despite the change in the Constitution, the courts still convict in such cases. ECRI has been informed that as long as the conflict over Nagorno-Karabakh remains unsolved the general public and members of Parliament will consider military service for all male Azerbaijani citizens as an absolute necessity. The Azerbaijani authorities have informed ECRI that the draft law on alternative civilian service was submitted to the Council of Europe for expert advice. This expert advice was sent to the Government of Azerbaijan at the end of October 2006. The draft Law amended on the basis of this advice has already been submitted to the Parliament for consideration.

Recommendations:

52. ECRI recommends that the Azerbaijani authorities set up as soon as possible a legal and institutional framework for alternative civilian service in conformity with the Constitution.
53. ECRI strongly recommends that those who have refused to perform the alternative civilian service not be prosecuted and imprisoned, but that they be given an opportunity to perform their duty to society in conditions which are in line with their conscientious objection to military service.

National minorities

54. In its first report, ECRI encouraged the Azerbaijani authorities to prepare legislation concerning the rights of national minorities in close co-operation with the Council of Europe and other relevant interlocutors at national and international level and to adopt it as soon as possible. On acceding to the Council of Europe, Azerbaijan committed itself to adopting, within three years of its accession (i.e. before 25 January 2004), "a law on minorities which completes the provisions on non-discrimination contained in the Constitution and the Criminal Code and replaces the presidential decree on national minorities". At present, there is still no specific statutory legislation in Azerbaijan concerning the rights of national minorities. The rights of national minorities are therefore only protected on the basis of the relevant constitutional provisions, primary legislation not specifically dealing with this issue and the presidential decree mentioned above. ECRI notes that some officials have expressed the view that a specific law on national minorities would not be necessary as minorities' rights were already sufficiently protected by the existing pieces of legislation.

Recommendations:

55. ECRI once more encourages the Azerbaijani authorities to prepare a law on the rights of national minorities in close co-operation with the Council of Europe and other relevant interlocutors at national and international level and to adopt it as soon as possible.
56. In its first report, ECRI recommended that the Azerbaijani authorities keep the situation as concerns the availability of mother tongue education for national minorities under review and ensure that it reflected the genuine requirements of these groups.
57. Altogether national minorities represent 10 % of the population in Azerbaijan according to the 1999 census. Among others, there are Lezgins (the largest minority group, making up 2,2% of the population), Talysh, Russians, Avar, Tats,

etc. The specific situation of Armenians is addressed in another part of this report¹⁴.

58. The Azerbaijani authorities have informed ECRI that the languages of national minorities living in Azerbaijan are taught in public schools in regions where these minorities live compactly. In general, two hours a week are devoted to teaching minority languages from the first to the fourth grade. Apart from a great number of Russian schools, especially in the capital city of Baku, there are also some Georgian and Jewish schools in Azerbaijan. ECRI notes that the Azerbaijani authorities have recently made efforts in order to improve the quality of teaching of several minority languages, including Lezgin and Talysh. They have published textbooks in these languages to replace old or foreign textbooks which were not appropriate. However, according to several sources, the textbooks for learning other minority languages such as Tats and Avar are still unsuitable. In addition, there are too few teachers for these minority languages, and the teachers are poorly trained. The Azerbaijani authorities have stated that the Ministry of Education is taking measures to improve the situation with regard to these issues.
59. More generally, the government has adopted a number of measures concerning not only education but also access to public services and the media aimed at reinforcing the use of Azerbaijani as the official language¹⁵. For instance, the current regulations on media require that a minimum of 75 % of all programmes broadcasted by both public and private TV and radio channels be in Azerbaijani. However, ECRI notes that there are a number of TV and radio-programmes as well as several newspapers in minority languages.
60. As explained to ECRI, representatives of national minorities understand the will to guarantee that the State language becomes the language of communication throughout Azerbaijan. Nevertheless, some have insisted on the need for the government to complement this policy by increasing its support in favour of minority languages and cultures in several fields ranging from education to media. Such support is essential for addressing the apparently diminishing importance of minority languages in the country.
61. ECRI notes the general view that national minorities are well represented in public and political life and particularly in parliament. However, there is currently no specific public body where representatives of national minorities could express their views on the public affairs of interest to them. It has been so since the disappearance of the Council for National Minorities, which was originally set up in 1993 and which does not meet anymore. According to several sources, national minorities generally hesitate to come forward to claim their linguistic and cultural rights, particularly due to the general climate resulting from the conflict over Nagorno-Karabakh. It seems that those who have tried before to publicly defend national minorities' rights have at the least experienced accusations of "working for the enemy" or of "separatism", for instance by some media or some politicians.

¹⁴See below: Section I - Persistence of the negative climate against Armenians.

¹⁵ See in particular the 2002 Law on State language.

Recommendations:

62. ECRI recommends that the Azerbaijani authorities continue and step up their efforts to improve the quality of teaching of minority languages and cultures in public schools.
63. In general, ECRI recommends that the Azerbaijani authorities monitor the implementation of the legislation on languages in order to identify any problems that national minorities may face in this regard. Where necessary, the authorities should take steps ensuring that this legislation and its implementation do not impact negatively on the development of national minorities' languages.
64. ECRI recommends that the Azerbaijani authorities continue and step up their efforts aimed at supporting national minorities' cultures. They should envisage reinforcing mechanisms at local and national level allowing for due consultation of national minorities' representatives in all decision-making processes which are of interest to them.

Conduct of law enforcement officials

65. Noting widespread reports that law enforcement officials do not always treat persons with the full respect of their human rights, in its first report ECRI encouraged the Azerbaijani authorities to consider the establishment of an independent body which would investigate all allegations of human rights violations by the police. ECRI also hoped that the Ombudsperson would play an active role in this area.
66. ECRI is concerned that illegal behaviour, such as arbitrary arrests, excessive use of force, ill-treatment and even torture on the part of law enforcement officials continue to be widely reported. In addition, corruption within law enforcement agencies is said to be prevalent. ECRI notes the widely held view that minority groups are apparently not particularly targeted by illegal behaviour on the part of some law enforcement officials. However, as indicated in other parts of this report, some small religious groups and Russian citizens from Chechnya are allegedly subject to harassment on the part of members of the police¹⁶. ECRI notes that members of these minority groups are more vulnerable to illegal behaviour by law enforcement officials. It is important for everyone, including members of minority groups in Azerbaijan, that the behaviour of law enforcement officials improves.
67. ECRI notes that the Azerbaijani authorities have taken a number of steps to combat illegal behaviour on the part of law enforcement officials. For instance, the Ombudsperson can visit police establishments and pre-trial detention facilities to check on detention conditions. The Office of the Ombudsperson also runs a 24-hour hotline for complaints of ill-treatment committed by law enforcement officials. The Azerbaijani authorities have informed ECRI that over the period 2003-2006, 383 officials of the Ministry of Interior were brought to justice or sanctioned under administrative law for the violation of human and civil rights and freedoms. According to NGOs however, investigations still too seldom

¹⁶ See above: Religious groups and below: Section II - Lack of legal status of non-citizens staying in Azerbaijan: Russian Citizens from Chechnya.

lead to punishment, which does nothing to remove the impression that law enforcement officials enjoy a degree of impunity.

Recommendations:

68. ECRI strongly recommends that the Azerbaijani authorities take further steps to put an end to all illegal behaviour by law enforcement officials and particularly towards members of certain minority groups. It is important for the Azerbaijani authorities to make clear to society that such conduct by law enforcement officials will not be tolerated and will be punished.
69. ECRI strongly encourages the Azerbaijani authorities to provide law enforcement officials with all the resources which they need in order to be able to operate in a satisfactory manner and in total compliance with the rights of members of minority groups with whom they are in contact. That also requires even greater efforts to provide human-rights training and to raise awareness of issues of racism and racial discrimination.
70. ECRI again recommends establishing an independent body to investigate all allegations of misconduct by law enforcement officials and particularly allegations of racial discrimination, and to ensure that perpetrators are brought to justice and duly punished.

Media

71. In its first report on Azerbaijan, ECRI strongly supported the adoption and implementation by the media profession of codes of self-conduct which would favour a more responsible type of reporting. ECRI invited the authorities to support initiatives undertaken by members of civil society and the media profession itself in the field of interest to ECRI.
72. ECRI expresses in several parts of this report its concern about cases of racist and inflammatory speech or the promotion of religious intolerance by some media (particularly TV channels)¹⁷. It notes with interest information according to which some journalists, particularly from the written media, have followed training on ethics, including on the need to avoid spreading stereotypes and prejudices in the context of the conflict over Nagorno-Karabakh. In addition, some events have been organised by international organisations (notably OSCE and the Office of the United Nations High Commissioner for Refugees) to raise media professionals' awareness of the need to report in an objective and accurate manner on minority groups, such as asylum seekers for instance. As several sources have insisted on the crucial role that media play in shaping the general climate of opinion in Azerbaijan, it is important that all media become a tool for promoting mutual respect and diversity, rather than diffusing negative portrayals of minority groups living in the country.

Recommendations:

73. ECRI encourages the Azerbaijani authorities to impress on the media, without encroaching on their editorial independence, the need to ensure that reporting does not contribute to creating an atmosphere of hostility and rejection towards members of any minority groups, including Armenians, asylum seekers, refugees and other non-citizens, as well as members of religious and national minorities.

¹⁷ See above: Criminal law provisions; Religious groups; National minorities and below: Section II - Russian Citizens from Chechnya; - Persistence of the negative climate against Armenians.

ECRI recommends that the Azerbaijani authorities engage in a debate with the media and members of other relevant civil society groups on how this could best be achieved.

Monitoring the situation

74. ECRI is worried about the lack of adequately detailed information about the situation of the various minority groups in Azerbaijan. It finds that no specific steps have been taken to improve matters in this area. In ECRI's view, the collection of data broken down by ethnic origin would make it easier to identify areas of life in which there is direct or indirect racial discrimination and to find the best means of combating those forms of discrimination. ECRI notes with interest in this respect that statistics broken down by ethnic origin on the employment rate of Azerbaijani citizens were collected during the 1999 census. However, this census is too old to be considered as reflecting the current situation and particularly the changes which have occurred since then in the economic and social conditions in the country. Therefore new statistics are needed to genuinely depict the situation of minority groups. The authorities have informed ECRI that the next census will not take place before 2009.

Recommendations:

75. ECRI encourages the Azerbaijani authorities to look into means of setting up a full and coherent system of data collection so as to evaluate the situation regarding the different minority groups in Azerbaijan and determine the extent of manifestations of racism and racial discrimination. Such a collection system would have to conform to European standards on protection of data and private life. In particular, the Azerbaijani authorities should ensure that this be done in all cases with due respect to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. In addition, the system of data collection on racism and racial discrimination should take the gender dimension into account, in particular from the standpoint of possible double or multiple discrimination.

Situation regarding refugees and internally displaced persons as a result of the conflict over Nagorno-Karabakh

76. As already mentioned in ECRI's first report, for over a decade, Azerbaijan has been involved in an armed conflict over the Nagorno-Karabakh region, a part of the territory of Azerbaijan mainly populated by ethnic Armenians. As a result of this conflict, which has left thousands of both civilians and military dead, Azerbaijan does not currently exercise effective control of Nagorno-Karabakh as well as of other parts of its territory adjacent to this region¹⁸. Another consequence of this conflict is the presence of hundreds of thousands of refugees and internally displaced persons (IDPs) on the territory of Azerbaijan under the control of the Azerbaijani authorities. These include refugees from Armenia and persons displaced from Nagorno-Karabakh and the adjacent regions. Although other ethnic origins are represented among these persons, the vast majority of the refugees and displaced persons are ethnic Azerbaijani. These persons are victims of racial discrimination, because they have been expelled or forced to flee by the Armenian side on the grounds of their ethnic origin and are as yet unable to return to their homes.

¹⁸ See *Resolution 1416 (2005): Parliamentary Assembly of the Council of Europe*, The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference, 25 January 2005, para. 1.

77. ECRI regrets that, since the adoption of its first report in June 2002, conditions are not yet in place for the peaceful return of refugees and internally displaced persons to the place where they previously lived. In addition, these persons still experience great difficulties in the economic and social fields, partly linked to a high unemployment rate amongst them. Their dire living conditions also have a negative impact on access to education for their children. For example, they do not always have the means to pay for transport to school or to buy the necessary school supplies. Many refugees and IDPs are still dependent on government aid, including the small monthly allowance paid to them. Housing is another area where the situation needs to be improved. Some families still live in inadequate places such as tent camps, railway carriages, public buildings including schools, etc.
78. ECRI notes with concern that according to several reports, some refugees and IDPs are illegally occupying private properties belonging to ethnic Armenians as well as to members of other ethnic minorities. In the Decree of the Cabinet of Ministers n° 232 of 4 November 2004, the Cabinet of Ministers recommends that the Azerbaijani courts take the necessary steps to prevent evictions of IDPs from their non-permanent living places in public buildings and “other items regardless of their property status”. On the basis of this decree and others, the courts have until now rejected the claims concerning the right to reclaim the illegally occupied goods, particularly arguing that this right will be suspended as long as the conflict over Nagorno-Karabakh remains unsolved. Such a status quo has apparently put the private owners of properties occupied by refugees or IDPs in a very difficult situation. To ECRI’s knowledge, no measures have been taken to ensure that financial or material compensation be awarded to the victims of such illegal occupations.
79. ECRI is pleased to note recent signs showing that the situation of refugees and internally displaced persons in Azerbaijan is improving. Over the last years, thanks to the resources of the State Oil Fund and other financial sources, the government has implemented a number of decrees, and taken many measures aimed at improving the living conditions of refugees and IDPs. For instance, in 2004, the Government adopted by decree the “State Programme on improvement of the living conditions and raising employment for refugees and IDPs” and its corresponding Action Plan. Since then, new settlements have been built, job opportunities have been created and steps to promote local integration have been taken in favour of refugees and IDPs. The Azerbaijani authorities have informed ECRI that in the last three years, the Parliament has adopted one law, the President has signed 13 decrees and orders, and the Cabinet of Ministers has adopted 39 decisions and orders aimed at improving the legal basis of the social issues concerning the refugees and IDPs. According to the Azerbaijani authorities, some 222 million manats (200 million EUR) were allocated in 2006 to deal with the social problems facing refugees and IDPs.
80. ECRI is aware that there is still a long way to go before the situation of refugees and IDPs in Azerbaijan can be deemed satisfactory, particularly as regards the exercise of the right to a voluntary return to the place where they previously lived. While they rightly hope to be able to return home as soon as possible, which means that their present places of residence are temporary, ECRI believes that it must at all times be possible for them to feel fully part of the Azerbaijani population.

81. In order to favour the full reconciliation of all people living in the region, the restoration of mutual confidence among the members of the different communities and, ultimately, allow the return of all refugees and displaced persons to their homes in the full respect of their rights and dignity, in its first report ECRI called on the Azerbaijani authorities to pursue a constructive dialogue with all the relevant national and international interlocutors with a view to solving the conflict over Nagorno-Karabakh. ECRI notes that since the publication of its first report on Azerbaijan, several high-level meetings have taken place between the Azerbaijani and Armenian governments in order to find a peaceful solution to this conflict. ECRI welcomes these initiatives and hopes that they will lead to a swift and peaceful resolution of the conflict.

Recommendations:

82. ECRI recommends that the Azerbaijani authorities continue and intensify their efforts to ensure that refugees and internally displaced persons have decent living conditions, in particular as regards housing. Furthermore, ECRI encourages the Azerbaijani authorities to take measures aimed at assisting mutual integration of refugees and internally displaced persons and the local population and to take particular care that refugees and internally displaced persons fully enjoy civil, economic and social rights, including employment and education.
83. ECRI recommends that the Azerbaijani authorities look into any allegations of illegal occupation of private properties by refugees or internally displaced persons. Where necessary, they should take all appropriate steps to ensure that the owners recover their property or, otherwise, that adequate alternative accommodation and/or satisfactory compensation be granted to the injured parties. In particular, ECRI recommends repealing the provision of Decree n° 232 asking courts to prevent evictions of IDPs from their non-permanent living places regardless of their property status.
84. ECRI recommends that the Azerbaijani authorities keep on fulfilling the undertaking given upon Azerbaijan's accession to the Council of Europe to "continue efforts to settle (the Nagorno-Karabakh) conflict by peaceful means only" and "to settle international and domestic disputes by peaceful means and according to the principles of international law (...), resolutely rejecting any threatened use of force against its neighbours."
85. ECRI further recommends that the Azerbaijani authorities take measures to raise public awareness of the benefits of a fair and peaceful solution to the Nagorno-Karabakh conflict and to foster mutual understanding.

- ***Areas currently not under the effective control of the Azerbaijani authorities***

86. As already pointed out, the current situation prevents ECRI from covering the position of populations living in Nagorno-Karabakh and the occupied territories around this region, as these parts of the territory of Azerbaijan are currently not under the effective control of the Azerbaijani authorities, to which the present report is addressed. In line with its mission, however, ECRI registers its concern at reports of human rights violations having taken place in these areas since its last report, particularly in the field of freedom of religion.

II. SPECIFIC ISSUES

Lack of legal status of non-citizens staying in Azerbaijan

87. There are several categories of non-citizens living in Azerbaijan who experience difficulties in obtaining legal status or in exercising the rights which arise from this legal status. This situation concerns refugees and asylum seekers in general, Russian citizens from Chechnya, and some long-term residents.

- *Refugees and asylum-seekers*

88. In its first report, ECRI recommended that the Azerbaijani authorities strengthen their efforts to cater for the primary needs of all refugees present on the territory of Azerbaijan. It also asked for the establishment of a refugee determination procedure.

89. ECRI is pleased to learn that a refugee determination procedure was established in 2004. The Government Refugee Status Determination Department indicates that “there are about 4000 persons from other countries in Azerbaijan who intend to obtain a ‘refugee’ (asylum-seekers) status”. The Department has received 574 applications so far; 68 individuals have been granted refugee status, 437 applications were rejected and the cases of 39 individuals are currently being examined. According to Article 6 of the 1999 Law on Status of Refugees and Forcibly Displaced Persons, unless otherwise provided by the Constitution or legislative acts, the refugees have the same rights and duties as the Azerbaijani citizens. However, ECRI expresses its concern at information according to which they encounter difficulties in practice in the exercise of their rights, and particularly their social rights. Allegedly, some local authorities illegally refuse to deliver to refugees the stamp registering their place of residence. As a result, the refugees are faced with great difficulties in obtaining some rights for which residence registration is a legal precondition. For instance, there are reports of problems of refusals in fields such as registration of births and marriages, access to work, and the right to set up a company. The Azerbaijani authorities have explained to ECRI that a Presidential Decree is currently being adopted to find solutions to the social problems that asylum seekers face and to establish temporary residence centres at the borders and other places for asylum seekers.

90. As regards asylum-seekers, the situation is not yet satisfactory in Azerbaijan, despite the progress achieved concerning the refugee determination procedure. There are allegations according to which persons arriving at the border are still under the risk of being sent directly back to where they come from or to another place in breach of the principle of *non-refoulement* and without being given access to the asylum procedure. In this respect, ECRI recalls that under Article 3 of the ECHR as interpreted by the European Court of Human Rights, persons cannot be deported or extradited to a country in which they are likely to be subjected to torture or inhuman or degrading treatment.

Recommendations:

91. ECRI recommends that the Azerbaijani authorities take steps to ensure that the Law on Status of Refugees and Forcibly Displaced Persons is applied in such manner that applicants benefit from the highest level of protection for which they are eligible. In this respect, ECRI recommends that all officials involved in the procedure for examining asylum applications be given thorough training in the law and in human rights in general, including the right to be free from racism and racial discrimination.

92. ECRI recommends that the Azerbaijani authorities examine the allegations according to which refugees meet with administrative obstacles when attempting to exercise their rights, and that they take measures rapidly if necessary. It specifically recommends that they launch an information campaign to make sure that all public bodies are fully aware of the rights which come with refugee status.

- ***Russian citizens from Chechnya***

93. In its first report, ECRI examined the situation of Russian citizens from Chechnya living in Azerbaijan and asked in particular that the right for their children to go to school be respected in practice.

94. ECRI expresses its deep concern at the extremely difficult situation of Russian citizens who fled the armed conflict in Chechnya and who have been living in Azerbaijan for several years. In September 2006, there were 2 223 persons who had fled Chechnya registered with the UNHCR office in Azerbaijan. It is difficult to establish the actual number of this group as many have left the country without informing anybody. In recent years, the number of persons arriving from Chechnya in Azerbaijan has been very low. Therefore, most Chechens who currently stay in Azerbaijan have been living there for several years. During all this time, they have been unable to obtain or even to apply for refugee status as provided for by the 1951 Convention relating to the Status of Refugees, in spite of the fact that Azerbaijan acceded to this Convention on 12 February 1993. Even now that the refugee determination procedure is in place, these persons are not able to exercise their right to apply for asylum in practice. According to many sources, the authorities merely refuse to register their applications for asylum, apparently because of the political sensitiveness of the issue. The Azerbaijani authorities have explained to ECRI that they are in the process of verifying the identity of these persons in order to be able to decide on their status. They stated that they experience difficulties in obtaining information from Russia about the persons concerned and that is why they have not managed to take a decision until now. ECRI is concerned by the practice of the Azerbaijani authorities of informing the Russian authorities about attempts by Russian citizens to seek political asylum. Such a practice puts the persons who are persecuted for political reasons at risk. According to several sources, there are other Russian citizens and citizens from other countries who find themselves in a similar situation, i.e. that due to political considerations, they are not even allowed to register their application for asylum with the Azerbaijani authorities.

95. Russian citizens from Chechnya living in Azerbaijan are left in a legal limbo. They are tolerated on Azerbaijani territory but do not get any documents from the authorities legalising their presence. The only document they can show if they are arrested by the police for instance, is a piece of paper indicating that they are registered with the United Nations High Commissioner for Refugees (UNHCR) office in Azerbaijan. This situation gives rise to many complex issues in the daily lives of the persons concerned. Given the absence of any legal status, they are deprived de facto of essential human rights such as the right to work. They also encounter huge difficulties in the field of housing. For instance, they are often confronted with private landlords who either refuse to rent them a flat on the grounds that they are illegally staying in the country or who take the opportunity to ask for excessive prices. In general, the persons concerned still depend on the humanitarian aid provided by the UNHCR and other organisations. Representatives of the Chechen community have informed ECRI that many of them are in bad health, particularly children who have psychological disorder

arising from the trauma caused by the armed conflict. However, these persons do not have adequate access to healthcare.

96. ECRI believes that it is necessary and urgent to find a solution for Russian citizens from Chechnya without legal status and other non-citizens who are left in a similar situation. A solution would be to consider granting a temporary status on humanitarian grounds to those who would meet the conditions for obtaining this status. However, ECRI notes that, as it stands, Azerbaijani legislation does not provide for any subsidiary form of protection, such as a temporary status on humanitarian grounds.
97. For a long time, Chechen children were refused access to local public schools. However, ECRI notes with interest that the government started to allow Chechen children to register in public schools in 2003. According to an UNHCR estimation, in 2005, approximately 70 % of refugees' and asylum-seekers' children aged 6-17 registered with the UNHCR received education in schools. For the others, the lack of access to school seems to result from several factors such as the lack of money to pay transport costs and adequate clothing.
98. According to several non-government sources, Russian citizens from Chechnya are reportedly harassed by law enforcement officials. They reportedly have a negative reputation among the Azerbaijani population, sometimes reflected in the media, because they are often depicted as terrorists or criminals.

Recommendations:

99. ECRI urges the Azerbaijani authorities to ensure that Russian citizens from Chechnya as well as any other non-citizens have the possibility of exercising their right to apply for the refugee status provided by the 1951 Convention relating to the status of refugees. These persons should be offered a legal status, even temporary, enabling them to exercise their economic and social rights in Azerbaijan.
100. In this respect, ECRI recommends that the Azerbaijani authorities introduce in their legislation, alongside the refugee status, a temporary status on humanitarian grounds. It encourages the Azerbaijani authorities to co-operate closely with the UNHCR and human rights NGOs on the working out of this subsidiary form of protection.
101. ECRI strongly recommends that the Azerbaijani authorities look into the humanitarian situation of Russian citizens from Chechnya who have been living in the country for several years and settle the problems which they encounter in meeting their basic needs, such as access to housing and healthcare. The Azerbaijani authorities should pay particular attention to the specific needs of children, notably in the field of access to healthcare and education.
102. ECRI strongly recommends that the Azerbaijani authorities take all the necessary steps to ensure that any illegal, arbitrary or discriminatory acts committed by law enforcement officials against Russian citizens from Chechnya are duly punished. It also recommends that they conduct an awareness raising campaign aimed at the general public and officials, particularly the police, in order to combat all forms of prejudice against and stereotyping of persons of Chechen origin, especially those that equate them with criminals or terrorists.

- **Long-term residents**

103. In its first report, ECRI recommended that the Azerbaijani authorities ensure that all non-citizens who are long-term residents in Azerbaijan are able to secure legal status.
104. ECRI deplores that the situation of long-term residents without legal status described in its previous report has not improved. These persons are mainly Afghan men married to Azerbaijani women, often with children who were born on Azerbaijani soil and have Azerbaijani citizenship. As with the Russian citizens from Chechnya, long-term residents are tolerated on the Azerbaijani territory but do not obtain any documents from the authorities legalising their presence. When they try to regularise their situation, they find themselves in a stalemate. For instance, when they try to obtain a residence permit, the authorities apparently ask them to prove that their place of residence is registered with the local authorities. However, the local authorities refuse to register their place of residence if they cannot prove that they have a residence permit. These persons are not allowed to work and therefore, live in difficult conditions, depending mainly on humanitarian aid. The State Committee for Refugees and Internally Displaced Persons has informed ECRI that it is currently dealing with this problem and that a solution should be found soon. However, no details were given as to which solution will be applied to this painful issue.

Recommendations:

105. ECRI once more urges the Azerbaijani authorities to ensure that all non-citizens who are long-term residents in Azerbaijan are able to secure legal status.

Persistence of the negative climate against Armenians

106. In its first report, ECRI recommended that the Azerbaijani authorities ensure an adequate response to all instances of discrimination and hate-speech against Armenians, including through the use of the relevant legal provisions. It also encouraged the Azerbaijani authorities to contribute more actively to generating a climate where Armenians do not feel threatened when exposing their identity publicly.
107. ECRI deeply regrets that since the adoption of its first report in 2002, the situation as concerns ethnic Armenians living in Azerbaijan (hereafter: Armenians) has not improved at all. While ECRI continues to receive alarming information concerning racism and racial discrimination against this group of persons, the Azerbaijani authorities have not demonstrated their will to tackle this problem. On the contrary, the general attitude among national and local authorities is rather to purely and simply deny that Armenians are confronted with problems in Azerbaijan. ECRI is surprised by this position which comes in stark contrast to information from numerous national and international non-governmental sources. Armenians are often referred to as the most vulnerable group in Azerbaijan in the field of racism and racial discrimination. The issue is sufficiently serious for Armenians to sometimes be described as “second-class citizens” in Azerbaijan. This situation is generally said to be a consequence of the overall negative climate in Azerbaijan generated by the conflict over Nagorno-Karabakh.
108. According to official sources the number of Armenians living on Azerbaijani territory outside Nagorno-Karabakh and the occupied zones amounts to 30 000, Non-official sources estimate that the real number is probably lower, around

20 000. These persons are almost exclusively persons married to Azerbaijanis or of mixed Armenian-Azerbaijani descent.

109. A first problem is apparently the discrimination with which Armenians are confronted in their daily lives, particularly in access to public services. Allegedly, some officials merely refuse to proceed with request from Armenians when they discover their ethnic origin. The discrimination amounts sometimes to harassment which prevents the persons concerned from exercising their basic rights such as the right to pension allowance or the right to work. Judicial proceedings opened by Armenians trying to secure their rights are said to systematically fail due to the general negative climate against Armenians¹⁹. As mentioned in another part of this report, some refugees and IDPs have been occupying properties belonging to Armenians who are still unable to regain their property²⁰.
110. Another problem is the oral and written inflammatory speech on the conflict over Nagorno-Karabakh. These statements do not only target Armenia and Armenian citizens. It also often portrays Armenians living in Azerbaijan as enemies and traitors. ECRI is concerned to learn that some media, and particularly certain TV channels, some members of the general public, some politicians and even some authorities at local and national levels apparently fuel negative feelings among society towards Armenians in general, and ethnic Armenians living on Azerbaijani territory in particular. At present, ECRI notes that no steps have been taken to use the relevant criminal law provisions to prohibit material inciting to racial hatred against Armenians²¹. As already described in ECRI's first report, the mere attribution of Armenian ethnic origin to an ethnic Azerbaijani may be perceived as an insult. Thus, there have continued to be trials for slander and insult opened by public figures against persons who had publicly and falsely alleged their Armenian ancestry.
111. One of the consequences of discrimination and inflammatory speech against Armenians is that many Armenians keep a low profile in Azerbaijan, trying as much as possible to avoid drawing attention to themselves. They often seek to hide their ethnic identity, for instance through changing their names.
112. This negative climate mainly resulting from the conflict over Nagorno-Karabakh does not only have an impact on Armenians living in Azerbaijan. It also allegedly affects Azerbaijani individuals or NGOs assisting Armenians when they try to exercise their basic rights. They are reportedly victims of anonymous threats, defamation campaigns in some media and harassment by some authorities. They are often publicly and falsely accused of "having Armenian roots" and of treason to Azerbaijan. Another consequence of this negative climate is that Azerbaijani individuals travelling to Armenia or to the occupied territories of Azerbaijan are victims of threats, harassment and attacks on their goods or persons on the grounds that they "betray their country". ECRI notes that so far, the Azerbaijani authorities have not taken adequate steps to protect the relevant persons from these acts. In its first report, ECRI already expressed its concern at the lack of opportunities available for members of civil society to resume dialogue in order to favour the full reconciliation of all people living in the region and the restoration of

¹⁹See above: Criminal law provisions; Civil and administrative law provisions.

²⁰See above: Situation regarding refugees and internally displaced persons as a result of the conflict over Nagorno-Karabakh.

²¹See above : Criminal law provisions.

mutual confidence among members of the different communities. Apparently, the situation has not evolved much in this field.

113. ECRI reiterates that a fair and peaceful solution of the conflict over Nagorno-Karabakh would have a positive impact on the general sentiments of the Azerbaijani population towards Armenians, including those living at present on the territory of Azerbaijan under the effective control of the Azerbaijani authorities²².

Recommendations:

114. ECRI strongly recommends that the Azerbaijani authorities contribute more actively to generating a climate where Armenians do not feel threatened when exposing their identity publicly.
115. ECRI once more urges the Azerbaijani authorities to ensure an adequate response to all instances of discrimination and hate-speech against Armenians, including through the use of the relevant legal provisions. They should also ensure an adequate response to harassment and hate-speech against persons trying to defend Armenians' basic human rights or travelling to Armenia or to the occupied territories of Azerbaijan.

²² See also the recommendations made above: Situation regarding refugees and internally displaced persons as a result of the conflict over Nagorno-Karabakh.

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