



**ECRI REPORT
ON AZERBAIJAN**
(fourth monitoring cycle)

Adopted on 23 March 2011

Published on 31 May 2011



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.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

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 provide, if they consider it necessary, comments on 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 fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

The following report was drawn up by ECRI under its own and full responsibility. It covers the situation up to 10 December 2010 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.

SUMMARY

Since the publication of ECRI's second report on Azerbaijan on 24 May 2007, progress had been made in a number of fields covered by that report.

The authorities have made efforts to reform the judicial system and improve the training dispensed to all the actors in this system, including as regards racist offences and discrimination. A free Internet site containing all of Azerbaijan's legislation has also been created, so as to make this legislation more easily accessible by the general public.

The role of the Ombudsperson is becoming increasingly well known in Azerbaijan and the Ombudsperson's office has devoted considerable efforts to awareness-raising activities in recent years. Regional offices have also been opened in several regions.

New arrangements have been introduced to deal with naturalisation applications and the authorities have begun to look more closely into the situation of stateless persons, with a view to remedying problems noted.

As regards minorities, the authorities continue to support cultural activities of national/ethnic minorities and to provide the general school curriculum in three languages (Azerbaijani, Russian and Georgian) as well as the teaching at primary school level of several minority languages. A number of locally distributed newspapers are published in minority languages, and some bodies and provisions exist with the purpose of ensuring that the media show respect for diversity in their work and refrain from any incitement to hatred.

A number of measures have been adopted with the aim of simplifying the procedures in force with respect to migrant workers. In this context, a State Migration Service has been established, a one-stop service point for migrants has been set up, and non-citizens and stateless persons holding a residence permit are now no longer required to apply for entry and exit visas. The authorities are also in the process of drawing up a Migration Code consolidating all the relevant legislation. A presidential decree was also adopted in late 2010, which should facilitate refugees' access to social rights.

The authorities have made significant efforts to improve the living conditions of persons displaced as a result of the conflict over Nagorno-Karabakh. In the field of housing, tent settlements have in particular been replaced by wooden houses; other positive action measures have also been taken in the field of access to other social rights.

In the field of health, the authorities have taken a number of measures to improve access to effective care for the entire population. All migrant workers are reported to be in possession of electronic health cards, designed to facilitate access to health care, as are all children born in Azerbaijan since the introduction of these cards, whatever their parents' legal status.

In the context of the population census carried out in 2009, respondents could answer questions on their citizenship, ethnicity and mother tongue. Following analysis of the information collected, fifteen studies on the situation in Azerbaijan should be published in 2011, which should enable situations of direct or indirect discrimination to be identified, as well as means of combating them.

ECRI welcomes these positive developments in Azerbaijan. However, despite the progress achieved, some issues continue to give rise to concern.

Anti-discrimination legislation remains little known, scattered and infrequently applied. The manner in which provisions of the Criminal Code intended to safeguard national security or to prohibit incitement of ethnic hostility are used against persons belonging to minorities and journalists presenting their points of view also remains of concern.

Whereas civil society reports cases of racist offences acts of racial discrimination on grounds of ethnic origin or religion, very few complaints are lodged concerning such incidents.

Certain restrictive practices and legislative provisions with respect to religious communities have been tightened following the enactment of amendments to the law on freedom of religion in 2009, and religious communities whose applications for re-registration are still pending are exposed to a risk of arbitrary treatment. Some groups complain of manifestations of religious intolerance by the authorities and of sometimes stigmatising media reporting. Moreover, in the absence of a law allowing the performance of alternative civilian service, conscientious objectors reportedly continue to be prosecuted and imprisoned.

The legal framework with respect to national/ethnic minorities remains weak. National/ethnic minorities also report facing practical difficulties in their access to the teaching of minority languages. Moreover, the lack of consultative bodies for minorities has adverse implications for the consideration of their specific needs; difficulties are also reported regarding the registration of national minorities' associations.

Difficulties continue to be reported regarding the naturalisation of stateless persons but also non-citizens who are long-term residents in Azerbaijan. Persons who face problems in obtaining identity documents also encounter serious difficulties in their access to other rights which are dependent on having the necessary papers. For migrant workers, lengthy processing periods for applications for renewal of residence permits create considerable problems, and, due in particular to the high cost of work permits and the waiting time for obtaining them, many employers have recourse to illegal employment practices, leaving migrant workers vulnerable to serious forms of abuse. Undocumented migrants furthermore often have no real means of challenging deportation measures in the courts.

In the field of asylum, recognised refugees still encounter problems in exercising their social rights. The refugee status recognition rate in cases examined by the Azerbaijani authorities is extremely low, a point that is all the more worrying in that no subsidiary form of protection is provided for in Azerbaijani law. Many persons in need of international protection but who do not fulfil the strict criteria laid down by national law find themselves in a very precarious situation, with no legal status and without being able to meet their basic needs.

Serious problems have been reported as concerns the access of undocumented migrant workers to health care, and corruption in the health care system has particularly grave consequences for those with the smallest incomes – notably refugees, asylum-seekers and persons in need of international protection but having no legal status in Azerbaijan. In other fields such as employment and housing, prejudices existing in society reportedly give rise to discriminatory attitudes towards persons belonging to some groups coming within ECRI's mandate.

Displaced persons continue to experience significant difficulties in daily life, in particular in the field of access to social rights, and further measures still appear to be needed to remedy some of the problems found.

The constant negative official and media discourse concerning the Republic of Armenia helps to sustain a negative climate of opinion regarding people of Armenian origin, who remain vulnerable to discrimination.

There are numerous reports of abuses perpetrated by law enforcement officials; certain particularly serious cases have concerned members of groups coming within ECRI's mandate. Abusive methods, including ill-treatment, are reportedly used to extort evidence, and ethnic profiling is also said to be used with regard to certain groups

coming within ECRI's mandate. Allegations of such conduct are still examined by internal police bodies and not by an independent body.

Finally, the lack of detailed information on the situation of various groups coming within ECRI's mandate hinders the identification of areas in which there is direct or indirect racial discrimination and of the best means of combating such discrimination.

In this report, ECRI recommends that the Azerbaijani authorities take further action in a number of areas; it makes a series of recommendations including the following.

ECRI recommends that the authorities ensure that national legislation prohibiting racial discrimination is drafted in a precise and exhaustive manner. It further recommends that the authorities ensure the proper application of existing provisions of criminal, civil and administrative law prohibiting racist acts and racial discrimination, that they raise public awareness of these provisions and reinforce the training provided to judges, lawyers and judicial system officials in this field.

ECRI recommends that the authorities bring the legislation in force in matters of freedom of religion into line with the requirements of the European Convention on Human Rights, strengthen their efforts to combat manifestations of religious intolerance and swiftly adopt a law on alternative civilian service consistent with European standards.

ECRI recommends that the authorities pass a law on the rights of national minorities as soon as possible, and ensure that national minorities' representatives can effectively participate in decision-making processes concerning them.

ECRI urges the authorities to work actively to improve the climate of opinion concerning Armenians coming under Azerbaijan's jurisdiction.

ECRI strongly recommends that the Azerbaijani authorities swiftly complete the procedure for the registration of religious communities currently under way, taking into account the case-law of the European Court of Human Rights. It underlines that, in this connection, it is essential to clarify the legal situation of communities still awaiting a final response from the State Committee for Relations with Religious Organisations or the courts, particularly by clearly specifying that those already registered under the previous legislation must be able to continue to function normally during the transition period.*

ECRI strongly encourages the Azerbaijani authorities to complete the process for adopting a Migration Code as a matter of priority. In this connection, it underlines the need to provide for effective remedies, in particular with a view to asserting rights safeguarded by international instruments such as the European Convention on Human Rights and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.*

ECRI encourages the authorities to intensify their efforts to eliminate cases of statelessness. It recommends that they adopt a series of measures to strengthen the protection of asylum-seekers, refugees, persons in need of international protection and migrant workers in Azerbaijan.

ECRI strongly recommends that the Azerbaijani authorities introduce in the national legislation, alongside refugee status, a subsidiary form of protection covering all persons in need of international protection. In this connection, it strongly encourages them to co-operate closely with the Office of the United Nations High Commissioner for

* *The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.*

Refugees and the civil society organisations concerned and to treat this question as a matter of priority.

ECRI strongly encourages the Azerbaijani authorities to pursue and strengthen their efforts to improve the living conditions of internally displaced persons.

ECRI recommends that the authorities take all necessary measures to ensure that no-one coming within ECRI's mandate is wrongly deprived of health care, and to eliminate any discrimination in the fields of employment and housing.

ECRI urges the authorities to intensify their efforts to eliminate all abusive practices by law enforcement officials, to ensure that the perpetrators of such acts are brought to justice and duly punished, and to establish an independent body to investigate all allegations in this field, and particularly allegations of racial discrimination.

ECRI recommends that the Azerbaijani authorities establish a system for collecting judicial system data, in compliance with European standards on data protection and protection of privacy, breaking down such data according to categories such as ethnic or national origin, religion, language and nationality of complainants and of persons prosecuted, convicted or imprisoned, so as to detect any cases of direct or indirect discrimination against persons belonging to groups coming within ECRI's mandate in their dealings with the judicial system and facilitate the determination of means of combating such discrimination.*

FINDINGS AND RECOMMENDATIONS

I. Existence and implementation of legal provisions

International legal instruments

1. In its second report, ECRI recommended that Azerbaijan ratify as soon as possible Protocol No. 12 to the European Convention on Human Rights (ECHR), which provides for a general prohibition on discrimination, the European Charter for Regional or Minority Languages, the European Convention on the Participation of Foreigners in Public Life at Local Level, the European Convention on Nationality and the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.
2. The authorities have stated that domestic legislation is in conformity with the requirements of Protocol No. 12 to the ECHR, that the ratification of this protocol is currently being looked into by a parliamentary committee and that consultations on the subject have also been initiated with public agencies and the relevant non-governmental organisations. ECRI welcomes this step towards ratification of this fundamental international instrument for combating racial discrimination¹ and notes with interest that, according to the information provided by the authorities, there would seem to be no obstacle to the ratification of this protocol by Azerbaijan as soon as possible.
3. ECRI also notes with interest that Azerbaijan ratified the Convention on Cybercrime on 15 March 2010, thereby eliminating an obstacle to the ratification of the Additional Protocol, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. The authorities have indicated that the Additional Protocol is currently being translated into Azerbaijani so as to permit the launch of the ratification process.
4. *ECRI strongly encourages Azerbaijan to ratify as soon as possible Protocol No. 12 to the ECHR and the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.*
5. The authorities have stated that certain provisions of the European Charter for Regional or Minority Languages are already partially implemented in practice; the instrument's ratification is planned, but will necessitate the identification of additional human and financial resources. ECRI underlines that ratification of the Charter constitutes one of the commitments entered into by Azerbaijan on its accession to the Council of Europe.²
6. The authorities have provided no information concerning progress towards the ratification of the European Convention on Nationality and the Convention on the Participation of Foreigners in Public Life at Local Level. ECRI notes that the number of non-citizens living in Azerbaijan is growing,³ and the ratification of

¹ ECRI's General Policy Recommendation No. 7 defines racial discrimination as any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

² See Opinion No. 222 of the Parliamentary Assembly of the Council of Europe, adopted by the Assembly on 28 June 2000, § 14.i.e, and Resolution Res(2000)14, Invitation to Azerbaijan to become a member of the Council of Europe (adopted by the Committee of Ministers on 9 November 2000 at its 107th Session).

³ See below, Vulnerable groups - Migrants.

these instruments would help to facilitate the integration into Azerbaijani society of non-citizens living in the country on a stable basis.

7. *ECRI again recommends that Azerbaijan swiftly ratify the European Charter for Regional or Minority Languages, the Convention on the Participation of Foreigners in Public Life at Local Level and the European Convention on Nationality.*

Constitutional provisions

8. As indicated in ECRI's first report,⁴ Article 25 of the Constitution enshrines the principle of equality for all before the law and the courts. In accordance with paragraph 3 of this article, the state guarantees equal rights and freedoms to all persons irrespective of, inter alia, race, nationality, religion, language, sex, origin and convictions. Restrictions of rights or freedoms of persons or citizens on these grounds are prohibited. Following a referendum held in 2009, two new paragraphs 4 and 5 have been added to this article prohibiting the granting of privileges or the refusal of advantages to anyone on the basis of the above grounds. ECRI concurs with the Venice Commission's analysis that, in view of the existing constitutional provisions, the necessity and normative relevance of these new paragraphs is questionable.⁵
9. Although the Constitution makes no express provision for the possibility of taking positive action measures,⁶ ECRI notes that, under Article 12, the rights and freedoms of persons and citizens mentioned in the Constitution are to be implemented in accordance with the international instruments to which the Republic of Azerbaijan is party. These instruments include the International Convention on the Elimination of all Forms of Racial Discrimination, Article 2 § 2 of which expressly provides for the possibility of taking positive action measures, and the European Convention on Human Rights. Concerning the protection and the promotion of the rights of persons belonging to national minorities, as ECRI indicated in its first report, under Article 45 of the Constitution everyone has the right, and no-one may be deprived of the right, to use his or her mother tongue. Everyone has the right to receive an education or to carry on any creative activity in the language of his or her choice. Azerbaijan is moreover party to the Framework Convention for the Protection of National Minorities.
10. The authorities have stated that the Constitution is directly applicable, but Article 25 has never been relied on before the ordinary courts and, although the Constitutional Court has referred to Article 25 of the Constitution in a number of decisions, none of the cases in question concerned racial discrimination. The authorities ascribe this situation to the climate of tolerance allegedly reigning in Azerbaijan. In this connection, ECRI refers to its comments on this viewpoint below.⁷

⁴ *ECRI, Report on Azerbaijan, CRI(2003)3, § 6.*

⁵ *European Commission for Democracy through Law (Venice Commission), Opinion on the draft amendments to the Constitution of the Republic of Azerbaijan, adopted by the Venice Commission at its 78th plenary session (Venice, 13-14 March 2009), CDL-AD(2009)010, § 23.*

⁶ *By "positive action", ECRI means temporary special measures designed either to prevent or compensate for disadvantages suffered by persons designated by grounds such as "race", colour, language, religion, nationality or national or ethnic origin or to facilitate their full participation in all fields of life. These measures should not be continued once the intended objectives have been achieved. See ECRI's General Policy Recommendation No. 7: National legislation to combat racism and racial discrimination, § 5.*

⁷ *See below, Criminal law provisions.*

Citizenship law

11. In its second report ECRI noted with concern allegations to the effect that, firstly, some applicants for naturalisation had apparently been asked to fulfil conditions additional to those provided for by law and, secondly, some Russian citizens of Chechen origin had apparently been unable to register their children born in Azerbaijan as Azerbaijani citizens. ECRI recommended that the Azerbaijani authorities look into these allegations and take all necessary measures to ensure that the legislation was duly implemented in all cases, without any form of discrimination.
12. Naturalisation is governed by the Law on Citizenship of the Republic of Azerbaijan, which has been in force since 30 September 1998. The authorities have stated that, since ECRI's previous report, responsibility for examining applications for naturalisation has been transferred from the Ministry of the Interior to the new State Migration Service. The authorities moreover underlined that naturalisation requirements are clearly laid down by law⁸ and that reasons must be given for any refusal of an application, which can be challenged in the courts by the person concerned.
13. ECRI notes with interest the new arrangements introduced to deal with naturalisation applications. It hopes that the transfer of this responsibility to the State Migration Service will help ensure that all applications are handled in accordance with the letter and the spirit of the law and notes with satisfaction in this context that, according to information provided by the authorities, 90 stateless persons were granted Azerbaijani citizenship in 2010. It nonetheless notes with concern that non-governmental sources continue to report cases of persons who have been unable to obtain Azerbaijani citizenship although they fulfil the law's requirements; this apparently concerns not just stateless persons but also persons in situations similar to statelessness, in particular former citizens of the Soviet Socialist Republic of Azerbaijan. ECRI notes with interest that the Azerbaijani authorities are reportedly beginning to study this situation so as to identify appropriate solutions. In this context ECRI notes that Azerbaijan is a party to the 1961 Convention on the Reduction of Statelessness and the 1954 Convention relating to the Status of Stateless Persons, both instruments to which it acceded in 1996.
14. *ECRI encourages the Azerbaijani authorities to continue and intensify their efforts to eliminate cases of statelessness in their territory. In this connection, it strongly encourages them to ensure that Azerbaijan's obligations under both the 1961 Convention on the Reduction of Statelessness and the 1954 Convention relating to the Status of Stateless Persons are fully respected.*

Legislation relating to freedom of religion and to conscientious objection

15. ECRI notes that, following the above-mentioned constitutional referendum, some - already restrictive - conditions concerning religious communities were reinforced on the occasion of the adoption, in 2009, of amendments to the law on freedom of religion. Higher fines can now be imposed on foreigners or stateless persons who disseminate religious propaganda, as well as on persons who carry out religious activities at any address other than that registered by their religious community, who publish, import or export religious literature without first obtaining the authorisation of the State Committee for Relations with Religious Organisations (SCRRO), who distribute religious literature without authorisation, who sell religious literature outside authorised premises

⁸ See article 14, paragraph 2 of the Law on Citizenship of the Republic of Azerbaijan.

or who engage in proselytising activities not provided for in the statutes of their religious community.

16. ECRI is very concerned about this situation, which, in its view, is incompatible with the case-law of the European Court of Human Rights. In particular, it draws the authorities' attention to the Court's recent case-law concerning the practice of religious activities on private premises,⁹ and to the case-law regarding prior restrictions on publication¹⁰ and the distinction drawn by the Court between bearing religious witness, which is part of the essential mission of every believer and Church and is not in breach of the Convention, and improper proselytism, which is characterised by unreasonable forms of conduct inconsistent with respect for the freedom of thought, conscience and religion of others.¹¹
17. *ECRI strongly recommends that the Azerbaijani authorities bring the legislation in force in matters of freedom of religion into line with the requirements of the European Convention on Human Rights, taking account of the relevant case-law of the European Court of Human Rights.*
18. In its second report ECRI strongly recommended that persons who refused to perform military service for religious reasons should not be prosecuted or imprisoned, but should be given an opportunity to perform their duty to society in circumstances consistent with their conscientious objection to military service.
19. ECRI notes with regret that, despite express constitutional provisions on the subject, no law allowing the performance of alternative civilian service has yet been adopted.¹² As a result conscientious objectors reportedly continue to be prosecuted and imprisoned. ECRI also notes moreover the recent complaints lodged with the Ombudsperson in this connection. ECRI again stresses the importance of establishing a legal and institutional framework for alternative civilian service¹³ and notes furthermore that this was one of the commitments entered into by Azerbaijan on acceding to the Council of Europe.¹⁴ It notes with interest that, according to information provided by the authorities, a new draft law has been drawn up, and hopes that this will enable the above problems to be resolved.
20. *ECRI urges the Azerbaijani authorities swiftly to adopt a law on alternative civilian service consistent with European standards and also to establish the necessary institutional framework to this end.*

⁹ See *inter alia* *Masaev v. Moldova*, application no. 6303/05, judgment of 2 May 2009.

¹⁰ See *inter alia* *Association Ekin v. France*, application no. 39288/98, judgment of 17 July 2001.

¹¹ See *Kokkinakis v. Greece*, application no. 14307/88, judgment of 25 May 1993, in particular § 48.

¹² *In accordance with paragraph II of Article 76 of the Constitution (Defence of the motherland), "If military service is contrary to a person's convictions, then, in cases provided for by law, an alternative form of military service may be permitted in place of regular military service."*

¹³ *See Recommendation No. R(87)8 of the Committee of Ministers to member states regarding conscientious objection to compulsory military service (adopted by the Committee of Ministers on 9 April 1987 at the 406th meeting of the Ministers' Deputies), Parliamentary Assembly Recommendation 1518 (2001) on the exercise of the right to conscientious objection to military service in Council of Europe member states and the Committee of Ministers' reply "Exercise of the right to conscientious objection to military service in Council of Europe member states" (adopted on 27 February 2002 at the 785th meeting of the Ministers' Deputies).*

¹⁴ *See Opinion No. 222 of the Parliamentary Assembly of the Council of Europe, adopted by the Assembly on 28 June 2000, § 14.iii.g, and Resolution Res(2000)14, Invitation to Azerbaijan to become a member of the Council of Europe (adopted by the Committee of Ministers on 9 November 2000 at its 107th Session).*

21. *It reiterates its strong recommendation that the authorities should not prosecute or imprison those who have refused to perform military service but should give them the opportunity to perform their duty to society in circumstances that are in line with their conscientious objection to military service.*

Legislation on national minorities

22. In its second report ECRI encouraged 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 partners at national and international level and to adopt it as soon as possible. Moreover, as already noted in ECRI's previous report, 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".
23. A law of this kind has still not been adopted, although a law on the rights of national minorities would constitute a key instrument for both protecting their rights and promoting tolerance. In this connection, ECRI refers to the most recent opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities¹⁵ and the findings of the Council of Europe Commissioner for Human Rights on this subject following his visit to Azerbaijan in 2007.¹⁶
24. *ECRI recommends that the Azerbaijani authorities prepare a law on the rights of national minorities, in close co-operation with the Council of Europe and other relevant partners at national and international level, and pass this legislation as soon as possible.*

Criminal law provisions

25. As ECRI noted in its previous reports, the main criminal law provisions against racism¹⁷ are Article 61.1.6 of the Criminal Code, providing that the commission of any offence on grounds of, inter alia, racist, national or religious hatred or fanaticism shall constitute an aggravating circumstance for determining the sentence; Article 154.1 prohibiting discrimination on the grounds of, inter alia, ethnic origin, language or religious belief; Article 167 prohibiting any illegal interference in the exercise of religious activities; and Article 283, which prohibits discrimination and incitement to national, racial or religious hatred or the debasing of national dignity. Article 103 of the Criminal Code punishes genocide; Article 111 punishes acts committed with a view to establishing or maintaining the dominance of one racial group and oppressing another racial group (apartheid); § 2.12 of Article 120 (murder with aggravating circumstances) provides for a more severe penalty where murder is committed for reasons of national, racial or religious hostility or hatred.
26. In its second report ECRI recommended that the Azerbaijani authorities inform the general public of the existence of criminal law provisions enabling racially

¹⁵ *Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Azerbaijan adopted on 9 November 2007, ACFC/OP/II(2007)007; see in particular §§ 33 to 45.*

¹⁶ *Report by the Commissioner for Human Rights on his visit to Azerbaijan from 3 to 7 September 2007, CommDH(2008)2, § 84.*

¹⁷ *In accordance with ECRI's General Policy Recommendation No. 7 on national legislation against racism and racial discrimination, "racism" means the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons or the notion of superiority of a person or a group of persons.*

motivated acts or acts of religious intolerance to be punished and 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 that system.

27. The authorities have indicated on a number of occasions that, since ECRI's second report, no complaints have been lodged concerning breaches of the relevant criminal law provisions. According to the authorities the fact that very few complaints of racially motivated offences are lodged can be ascribed to the considerable tolerance that prevails in Azerbaijan. This viewpoint nonetheless disregards a number of other worrying elements already highlighted by ECRI in its previous report. Observers continue to draw attention to public statements of a racist or hate-filled nature in some media or by certain politicians and policies running counter to the promotion of religious tolerance.¹⁸ There are also still reports of cases of discrimination towards persons of Armenian origin living in Azerbaijan¹⁹ and of insufficient awareness of the provisions prohibiting racist offences both within the criminal justice system and among the general public. Many sources also stress the widespread lack of confidence in the justice system.
28. This situation, where individuals often perceive the justice system as lacking sufficient safeguards of impartiality and independence, is reportedly not divorced from the fact that a number of persons, in particular journalists or other public figures representing minority views,²⁰ have been prosecuted and even convicted on the basis of either the provisions of the Criminal Code concerning national security or Article 283. Article 283 of the Criminal Code was applied inter alia in a case where, following the publication in the literary journal *Sanat* of an article entitled "Europe and us", referring to Islam, the author and the chief-editor were convicted of incitement to religious hatred.²¹ The same article of the Criminal Code also constituted the basis for the conviction, in 2007, of another journalist, Mr Eynulla Fatullayev, charged with inciting ethnic hostility following the publication of an article entitled "The Aliyevs go to war".²² In the meantime the European Court of Human Rights has found a violation of Article 10 of the ECHR with regard to this conviction and the gravity of the sentence imposed, considering that they amounted to a disproportionate restriction on freedom of expression, which was not necessary in a democratic society.²³ ECRI underlines that, in arriving at this finding, the Court held that the mere fact of discussing the social and economic situation in regions populated by an ethnic minority and voicing an opinion about possible political tension in those regions could not be regarded as incitement to ethnic hostility.
29. ECRI underlines that, although states are obliged to protect national security, this role must not become a pretext for allowing racism, racial discrimination and intolerance to flourish. In this connection, it warns that the provisions of the Criminal Code intended to safeguard national security or to prohibit incitement of ethnic hostility should not be used against persons belonging to minorities

¹⁸ See also below, *Racism in public discourse - Discourse concerning the situation in Nagorno-Karabakh and Vulnerable groups - Religious groups.*

¹⁹ See also below, *Vulnerable groups - Armenians.*

²⁰ See below, *comments on the case of Fatullayev v. Azerbaijan, and Vulnerable Groups - National minorities.*

²¹ At the time of drafting of ECRI's second report on Azerbaijan the criminal investigation into this case was pending: see § 14 of the second report.

²² On the basis of the same facts and by virtue of Article 214 of the Criminal Code the journalist was also found guilty and sentenced for threatening terrorism.

²³ *Fatullayev v. Azerbaijan (application no. 40984/07), judgment of 22 April 2010, final on 4 October 2010.*

coming within ECRI's mandate in such a way as to stifle the legitimate, non-violent expression of minority identities.

30. ECRI notes with interest the creation of a free Internet site containing all of Azerbaijan's legislation, so as to make this legislation more easily accessible by the general public; this site has reportedly been consulted by over 20 000 persons since its launch. However, no information is available concerning a heightened awareness among the general public of the criminal law provisions prohibiting offences of a racist nature and acts of racial discrimination.
31. *ECRI strongly recommends that the Azerbaijani authorities ensure that the manner in which the criminal law provisions aimed at safeguarding national security and prohibiting acts of racism and racial discrimination are applied in practice does not serve as a pretext for punishing individuals peacefully advocating the rights of minority groups; rather, it should enable the diverse range of opinions existing within society to be openly expressed and freely debated, as long as they do not incite hatred against or denigrate other individuals or groups.*
32. *ECRI reiterates its recommendation that the Azerbaijani authorities take steps to encourage victims of racially motivated offences or acts of religious intolerance to lodge complaints. In this connection, it underlines the need for a substantial improvement in the functioning of the judicial system and for reinforced guarantees of its impartiality and independence so as to strengthen public confidence in that system.*
33. *ECRI again recommends that the authorities inform the general public of the existence of criminal law provisions relating to racially motivated offences and acts of racial discrimination and of the existence of remedies against such acts.*
34. In its second report ECRI recommended that the Azerbaijani authorities increase their efforts to provide training to the police, prosecutors, judges, lawyers and judicial system trainees concerning the application of the legislation on racist offences.
35. ECRI takes note with interest of the information provided by the authorities concerning the significant efforts made to reform the judicial system and improve the training dispensed by the Academy of Justice. This training is intended for judges, candidates for judicial office, judicial system employees and lawyers and the course content covers racist offences and discrimination. A similar training course is offered to prosecutors.
36. *ECRI strongly encourages the Azerbaijani authorities to continue and intensify their efforts to train prosecutors, judges, lawyers and judicial system officials regarding the application of the criminal law provisions on racist offences and acts of racial discrimination.*

Civil and administrative law provisions

37. As mentioned by ECRI in its previous reports, there are already provisions prohibiting discrimination scattered in a number of pieces of legislation dealing with different fields of life such as employment, social security, education, health protection and culture. In its second report, noting that no complaints had been registered concerning the violation of such provisions on grounds relevant to its work, ECRI recommended that the Azerbaijani authorities ensure the proper implementation of the civil and administrative law provisions prohibiting racial discrimination, inform the general public of the existence of such provisions and take steps to encourage victims to lodge complaints concerning acts of racial discrimination. It also recommended that the authorities

complement the existing provisions by adopting comprehensive provisions prohibiting racial discrimination in a precise and exhaustive manner.

38. ECRI observes that there have since been no further legislative developments in this field. The authorities indeed consider that the provisions prohibiting racial discrimination, which have their origin in the constitutional provisions on equality and which already exist in various pieces of legislation dealing with different fields of life, are sufficient. Moreover, according to the authorities, the lack of complaints of violations of these provisions on grounds relevant to ECRI's work shows that it is not necessary to go further with the legislation.
39. ECRI underlines the importance of effective legal measures to combat racism and racial discrimination, which constitute an essential element of the overall arsenal of weapons for effectively fighting such discrimination. The combat against racism and racial discrimination also necessitates an integrated approach, so as to afford effective, appropriate protection from the point of view of the victim. Although the existence and the effective application of criminal law provisions raise awareness in society of the seriousness of racism and racial discrimination and can have a strong dissuasive effect, civil and administrative law often offers more flexible legal means, which may facilitate recourse to legal action by victims of racial discrimination. ECRI underlines that adopting a full and exhaustive anti-discrimination law would put the spotlight on the rejection of all forms of discrimination, including racial discrimination, and enable all cases that may arise to be addressed in a consistent and effective manner. Nonetheless, if it is decided not to adopt specific anti-discrimination legislation, it is particularly important that national law should define direct and indirect discrimination and the different forms it takes; provide for the possibility of adopting positive action measures; stipulate that the ban on discrimination applies to all public authorities and to all natural and legal persons and in all fields of life; guarantee the existence of judicial and/or administrative procedures easily accessible by victims; establish a system of shared burden of proof; and provide for effective sanctions. In this connection, ECRI refers to its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, which sets out all of the elements to be included in civil and administrative law so as to provide effective protection against discrimination.
40. *ECRI strongly recommends that the Azerbaijani authorities ensure that national legislation prohibiting racial discrimination is drafted in a precise and exhaustive manner, in particular so as clearly to define direct and indirect discrimination, to cover all fields of life, and to provide for judicial and/or administrative procedures that are easily accessible by victims. In this respect, ECRI again invites the 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.*
41. ECRI notes that allegations of discrimination on grounds of religion or ethnic origin have again been reported to it although no complaints have been lodged with the competent authorities. In this connection, ECRI stresses the need to do everything possible to ensure that the lack of formal complaints is not due to factors such as victims' poor knowledge of their rights, a lack of confidence in the judicial system, a lack of sensitivity on the part of the competent authorities, the absence of effective remedies or failure to publicise the existing remedies.
42. *ECRI recommends that the Azerbaijani authorities ensure the proper implementation of the existing civil and administrative law provisions prohibiting racial discrimination, in particular by reinforcing the training of judges, lawyers and justice system officials in such matters.*

43. *ECRI also recommends that the authorities inform the general public of the existence of these provisions and take steps to encourage victims to lodge complaints concerning acts of racial discrimination. In this context it again underlines the need significantly to improve the functioning of the judicial system.*

Anti-racism and anti-discrimination bodies

44. In its second report ECRI encouraged the Azerbaijani authorities either to reinforce 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. It emphasised the need to ensure that the designated or specially created body was fully independent and had the legal capacity and the necessary human and financial resources to be able to provide victims with the requisite assistance.
45. ECRI notes with interest that, between 2002 - when the institution of the Ombudsperson was established - and 2009, the Ombudsperson received over 51 000 complaints, including 8 800 in 2009²⁴ and 8 600 in 2008.²⁵ About half of these complaints were, however, deemed inadmissible on one or more of the following grounds: they fell outside the Ombudsperson's competence, they were out of time, they were anonymous, relevant judicial proceedings were already pending or the matter at issue had already been the subject of a complaint.²⁶ On the basis of these figures, it would seem that the institution's role is increasingly well known in Azerbaijan but, paradoxically, the confines of its field of action are still not well understood by the general public.
46. Despite the large number of complaints received, the Ombudsperson has indicated that none included allegations of racial discrimination. The Ombudsperson does not have statistical records broken down by the complainant's ethnic or national origin, religion or other criteria of relevance to ECRI's work. The information provided to ECRI nonetheless shows that a number of trends can be identified: although most of the complaints received by the Ombudsperson concern access to social rights, many of the complaints lodged by persons of Armenian origin concern, inter alia, problems in obtaining identity documents. The Ombudsperson also indicated that complaints had been lodged in the past concerning the prohibition of certain religious works and, in 2010, complaints had been received regarding the non-recognition of conscientious objection on religious grounds. ECRI regrets that there is no systematic collection of data on complainants' origins and the nature of the complaints lodged, as this would not only make it possible rapidly to detect tendencies that disproportionately affect certain groups, but would also allow the more rapid identification of effective counter-measures.
47. In recent years the Ombudsperson's office has devoted considerable efforts to activities aimed at raising awareness of human rights and making the institution

²⁴ *Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, Provision and Protection of Human Rights and Freedoms in Azerbaijan: The Annual Report of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan for 2009 (summary), p. 4.*

²⁵ *Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, Provision and Protection of Human Rights and Freedoms in Azerbaijan: Summary of the Annual Report for 2008, p. 6.*

²⁶ *48.9% in 2009: see Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, Annual Report for 2009 (summary), p. 4; 51.2 % in 2008: see Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, Summary of the Annual Report for 2008, p. 6.*

better known. Regional offices have also been opened in Quba, Cheki, Gandja and Jalilabad. ECRI notes this information with satisfaction. It underlines the importance of continuing such efforts so that the institution's role and responsibilities and the confines of its action are better known and there is a better understanding of racial discrimination issues within the country. In this connection, it also emphasises that, to fight racism and racial discrimination as effectively as possible, the body responsible for these matters must be clearly identifiable by the public.

48. *ECRI recommends that the Azerbaijani authorities either clearly designate the Ombudsperson as the specialised national body for combating racism and racial discrimination, so that this institution is easily identifiable by any victim of such acts, or set up, in the near future, an independent specialised body to combat racism and racial discrimination. It again 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 financial and human resources to be able to provide victims with the requisite assistance.*
49. *ECRI recommends that the Ombudsperson introduce a system of statistical records breaking down complaints by category and complainants by ethnic origin, nationality, religion and language. Such information should in all cases be collected in full conformity with the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group.*

II. Racism in public discourse

Discourse concerning the situation resulting from the conflict over Nagorno-Karabakh

50. In its second report ECRI recommended that the Azerbaijani authorities contribute more actively to generating a climate where Armenians do not feel threatened when publicly exposing their identity. It urged the authorities to ensure an adequate response to instances of hate speech towards Armenians.
51. ECRI notes that, although the Azerbaijani authorities' discourse concerning Armenia, Armenians and the situation resulting from the conflict over Nagorno-Karabakh has scarcely changed since its previous report, the authorities underline the fact that there is a tolerant attitude to Armenians living among the Azerbaijani population. According to the authorities, the Azerbaijani population as a whole has no difficulty distinguishing between persons of Armenian origin and the actions of the Republic of Armenia. The authorities also underline that, once the conflict over Nagorno-Karabakh has been settled, no-one of Armenian origin will have cause to fear the hostility of the rest of the population.
52. ECRI draws attention to the difficulty of reconciling the fact that such harsh comments concerning another state are made on a regular basis and the prospect of sustainably creating a society whose members having links with this state are not discriminated against. In this connection, it points out that - unlike the authorities - many civil society sources report that persons of Armenian origin encounter discrimination in their daily lives.²⁷ In these circumstances ECRI considers that the authorities' hypothesis of a possible rapid change in the generally negative climate of opinion is unrealistic.
53. *ECRI urges the Azerbaijani authorities to work actively to improve the climate of opinion concerning Armenians coming under Azerbaijan's jurisdiction. It*

²⁷ See below, *Vulnerable groups – Armenians*.

underlines that all the political parties must take a firm stance against all forms of racism, discrimination and xenophobia and convey a clear political message in favour of diversity and pluralism; they must also avoid addressing issues of relevance to the Armenians in a negative light.

Media

54. In its second report ECRI encouraged 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 group coming within ECRI's mandate. It recommended that the authorities engage in a debate with the media and other relevant players on how this could best be achieved.
55. ECRI notes that there is a Broadcasting Council, which was established in 2002 in accordance with the law. There are also legal provisions²⁸ prohibiting the broadcasting via the audiovisual media of any material inciting racial discrimination. Concerning the press, the Press Council is a self-regulatory body, which adopted a code of ethics for the print media (including Internet content) in 2003. This code contains provisions governing the way the press handles questions relating to the ethnic and religious minorities. A reinforcement of this code of ethics is currently under consideration. These two councils report that they receive few complaints concerning hate speech or discriminatory remarks, but any complaints they do receive are carefully examined. For example, the Press Council asked a newspaper that had published an article which might cause offence to Christians to withdraw the article from its web-site, which was done; in another case, the Press Council accepted the complaint of a person of Armenian origin, whose ethnicity had unjustifiably been mentioned in a press item, and recommended that the newspaper retract the relevant statements.²⁹
56. Despite these provisions many sources state that the situation regarding the media has scarcely changed since ECRI's previous report. It continues to be reported that the media are lacking in objectivity and help to spread a negative image of certain ethnic/national or religious minorities, in particular through the way they report on the conflict over Nagorno-Karabakh or their manner of presenting various religious groups. Although occasional articles cover the situation of people belonging to minorities, and a number of newspapers are published in minority languages and distributed locally, many sources maintain that the criminal prosecutions brought against certain journalists or editors of publications representing the views of groups coming within ECRI's mandate have contributed to creating a media scene characterised by scant diversity.
57. ECRI underlines the importance of media outlets that make it possible to give expression to the interests of the various ethnic/national, religious or other communities that exist within society. At the same time, it is essential that the media show respect for this diversity in their work and refrain from any incitement to hatred. While ECRI notes with interest the bodies and provisions that exist in this field, it is a matter of concern for it that both civil society and international actors concur that the current situation is unsatisfactory. ECRI deplores the fact that much media coverage of the Republic of Armenia is highly critical, without drawing a clear distinction between that state and persons of Armenian origin coming under the jurisdiction of Azerbaijan, and that the expression of the point of view of a group coming within ECRI's mandate is increasingly perceived as entailing a risk of criminal prosecution for the author.

²⁸ *In particular, Article 32, paragraph 2, § 5 of the Broadcasting Law.*

²⁹ *See also below, Vulnerable/Target Groups – Armenians.*

It emphasises in particular that this situation is not conducive to reinforcing the fight against racism and racial discrimination.

58. *ECRI strongly 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 group coming within ECRI's mandate. It again recommends that the authorities engage in a debate with the media and other relevant players on how this could best be achieved.*

III. Racist violence

59. The Azerbaijani authorities have stated that they do not collect specific data on hate crimes. They however underlined that, out of the 19 000 to 20 000 offences registered each year, in recent years no complaint has been lodged by a victim alleging that he or she has suffered discrimination or racism. The authorities moreover do not collect information on the national or ethnic origin, religion or language of victims of ordinary offences or concerning other characteristics of relevance to ECRI's mandate.
60. ECRI notes that according to the information available to it, it does not appear that racist violence is a major problem in Azerbaijan. ECRI regrets, however, that it is difficult to form a precise picture of the situation regarding racist violence for lack of full data on the application of the relevant provisions of the Criminal Code and reliable statistics broken down by ethnic origin. It notes that, for lack of such information, there is no clear basis for assessing the frequency of incidents of racist violence in Azerbaijan, for effectively preventing such acts and for combating racist violence where manifestations do occur. ECRI underlines that, even though acts of this kind are rarely reported, that does not mean that they are never committed, since the victims are sometimes reluctant to make themselves known or to report the racist aspects of an offence on account of a sense of shame, for fear of reprisals or because they consider it unlikely that this aspect of their complaint will be given any serious follow-up.
61. *ECRI recommends that the Azerbaijani authorities set up a system for the systematic, full monitoring of all incidents that could qualify as racist violence. In this connection, it draws the authorities' attention to its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, and in particular to part III of this recommendation concerning the role of the police in combating racist offences and monitoring racist incidents.*
62. In this connection, ECRI also refers to the recommendations made in other parts of this report concerning monitoring of the situation with regard to racism and racial discrimination.

IV. Vulnerable/target groups

Religious groups

- **Registration of religious communities**

63. In its second report ECRI recommended that the Azerbaijani authorities ensure that members of religious minorities can fully exercise their freedom of religion, including by taking steps to make registration arrangements more flexible.
64. In May 2009 amendments to the law on freedom of religion entered into force. These amendments require communities to re-register so as to be able to continue functioning. According to the figures provided by the authorities, before the new provisions entered into force there were 534 registered religious communities. At the end of 2010, 510 communities had been registered under the new provisions, including approximately 150 registered for the first time; about thirty applications had been turned down. The registered communities include 493 Islamic communities, 9 Christian, 6 Jewish, 1 Hare Krishna and 1 Baha'i. According to the SCRRO, the sole criterion taken into account in considering all these applications was the due submission of all the required documents; reasons were given for any decision to refuse registration, and registration could go ahead once all the discrepancies noted had been remedied.

65. It follows from the information available to ECRI that a certain number of the religious communities formerly registered have not yet been able to be re-registered. Some communities refused registration have challenged this decision in the courts, and at the time of drafting this report judgment was still pending in these cases either at first instance or on appeal. For these communities and for those which have not yet received a reply, the legal situation is unfortunately unclear. The authorities have asserted that the old registration remains valid as long as the community concerned complies with the conditions attaching to it; however, the representatives of these communities remain in a state of uncertainty as to their true freedom to carry on their religious activities without encountering judicial problems. Moreover, a number of observers point out that this is the third general registration process for religious communities since Azerbaijan gained its independence and wonder whether it is necessary to repeat this kind of exercise so often.
66. While acknowledging that Azerbaijan is not the only country to apply a policy requiring the registration of religious communities, ECRI underlines that the repetitive implementation of such procedures places a heavy administrative burden on these communities. It is particularly concerned about the legal uncertainty surrounding the situation of communities still waiting for a final reply from the SCRRO or the courts, which exposes them to a risk of arbitrary treatment. In this connection it notes with concern that, despite repeated attempts to find solutions permitting their registration, some communities complain of receiving contradictory replies from the authorities, which increases the uncertainty of their current situation. In addition, ECRI underlines that, according to the case-law of the European Court of Human Rights concerning Articles 9 and 11 of the ECHR, any refusal to re-register communities that have existed in the country for some time and have been lawfully conducting their activities there must be based on particularly weighty, compelling reasons.³⁰
67. *ECRI strongly recommends that the Azerbaijani authorities swiftly complete the procedure for the registration of religious communities currently under way, taking into account the case-law of the European Court of Human Rights. It underlines that, in this connection, it is essential to clarify the legal situation of communities still awaiting a final response from the State Committee for Relations with Religious Organisations or the courts, particularly by clearly specifying that those already registered under the previous legislation must be able to continue to function normally during the transition period.*

- **Other questions linked to freedom of religion**

68. In its second report ECRI strongly recommended that the Azerbaijani authorities pursue and reinforce their efforts to effectively combat manifestations of religious intolerance towards members of some religious groups, notably by the media, the police and local authorities.
69. Although the best known religious groups in Azerbaijan (notably the registered Muslim communities, the Jewish communities, the Orthodox Church and the Catholic Church) seem to report no special difficulties in exercising their freedom of religion, others such as non-registered Muslim groups, Jehovah's Witnesses and Protestant communities complain of many manifestations of religious intolerance concerning them. Examples are heavy-handed police interventions during meetings of religious communities held in locations not registered in their name, with the arrest of those present, confiscation by the

³⁰ See *inter alia* the cases of the *Moscow Branch of the Salvation Army v. Russia*, application no. 72881/01, judgment of 5 October 2006, and of the *Church of Scientology Moscow v. Russia*, application no. 18147/02, judgment of 5 April 2007.

customs or police authorities of religious literature intended for an individual's personal use, and even in some cases forced shaving of the beards of certain Muslims by the police. In recent years a number of non-citizens have moreover been deported pursuant to the legislation prohibiting religious proselytism by foreigners. Some religious communities state that local government authorities' lack of knowledge of the provisions in force in this field also poses problems. Lastly, sometimes sensational or stigmatising media reporting concerning certain communities reinforces the prejudices that may already exist towards them.

70. As regards the specific issue of the importation of religious literature, this is prohibited without the prior authorisation of the SCRRO. Authorisation may be refused if the work in question promotes religious intolerance or includes insults to other religions. The SCRRO indicated that, in 2009, the distribution of 2 332 religious works was authorised, compared with 380 works that were banned. In 2010, the figures were approximately 1750 works authorised versus 375 banned. Some civil society sources underline that, even where the importation of a work is authorised, the SCRRO stipulates the number of copies that can be brought into the country, which is often far lower than the quantity requested and which the community that made the request may need.
71. ECRI takes note that according to the information provided by the authorities, any interference by the State in the exercise of religious freedoms is carried out in strict conformity with the law. It observes that the introduction of restrictive legislation with regard to religious communities³¹ and a certain number of the restrictive practices described above seem to be the authorities' way of responding to the fear that forms of politically motivated religious extremism may emerge in Azerbaijan. ECRI underlines that, even if they are legitimate, fears of this kind must not cause the authorities to lose their objectivity vis-à-vis religious minorities or to introduce practices imposing unreasonable requirements on them. ECRI refers to its concerns, as set out above, regarding the conformity of the legislation in force with the European Convention on Human Rights.³² In the same context, it also refers to its above considerations warning against the use with regard to persons belonging to minorities of provisions intended to safeguard national security or to prohibit incitement of hatred in such a way as to stifle the legitimate, peaceful expression of minority identities. It again underlines that such practices involve a danger of generating or heightening feelings of mistrust within the minorities being targeted and may thus prove counter-productive. It also points out that opening up to diversity and dialogue among the different groups in society helps both to combat racism and to reinforce national security.
72. *ECRI strongly recommends that the Azerbaijani authorities ensure that the legislation in force is applied in a manner that fully respects freedom of religion, as safeguarded by the European Convention on Human Rights.*
73. *In this connection, ECRI again recommends that the authorities reinforce their efforts to effectively combat manifestations of religious intolerance towards members of some religious groups, in particular harassment by the police or local authorities and inflammatory remarks in the media. Apart from any preventive measures to this end, they should ensure that those responsible for such acts are duly prosecuted and punished in accordance with Azerbaijani law.*

³¹ See also above, *Existence and implementation of legal provisions – Legislation on freedom of religion.*

³² See also above, *Existence and implementation of legal provisions – Legislation on freedom of religion.*

Migrants

74. In its second report, noting that very little information was then available on the situation of migrants in Azerbaijan, ECRI recommended that the 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.
75. Azerbaijan has been a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families since 1999. According to the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), as far as Azerbaijan is concerned migration flows have changed in recent years, becoming more complex. Today, Azerbaijan is a country of transit and of destination: many migrant workers live within its territory. ECRI notes with interest in this connection that, since its second report, the authorities have adopted a number of measures aimed inter alia at simplifying the procedures in force in this field. For instance, Decree No. 560 of 19 March 2007 established a State Migration Service, a one-stop service point ("single window") for migrants was set up by presidential decree on 4 March 2009, and non-citizens and stateless persons holding a residence permit are now no longer required to apply for entry and exit visas when crossing the country's borders. The authorities also stated that they were drawing up a Migration Code consolidating all the relevant legislation. In addition, brochures to inform non-citizens and stateless persons about the new provisions and procedures have been published on paper and on the website of the State Migration Service; the latter is also in the process of setting up an electronic system for receiving applications from non-citizens and stateless persons. ECRI welcomes the efforts being made by the authorities, which it regards as a positive development that could help to eliminate all forms of discrimination against such persons.
76. ECRI notes that the establishment of the State Migration Service and the one-stop service point constitutes an unquestionable progress in so far as this system means that migrants no longer have to deal with many different administrative authorities. The authorities have also indicated that thanks to the new system, the time taken to deal with requests for the issuance of work permits and temporary residence permits has been reduced: the Ministry of Labour no longer has one month but 7 working days to examine such requests, and the State Migration Service 20 working days; moreover, applications to renew work permits must be lodged at least 22 working days before the permits' expiry. However, it seems that in practice, the new system has still not made it possible to eliminate all the problems in this field. In particular, it has been reported that the processing of applications for renewal of residence permits remains a lengthy process, sometimes even exceeding the validity of the current permit, which creates considerable difficulties for the persons concerned, who sometimes end up in an irregular situation, with all the consequences that entails. Such persons encounter difficulties, inter alia, in obtaining birth certificates for their children where the mother's identity documents are not in order; state schools refuse to enrol these children, and as the parents are usually unable to meet the cost of sending them to private school, the children do not attend school at all; nor do such persons benefit from health insurance cover.
77. With specific regard to migrant workers, to be able to work legally they must be in possession of a valid work permit. Under the system established by law, it is for the employer to carry out the formalities for obtaining the required work permit and to pay the related fee, which amounts to AZN 1000 per permit. Permits have a validity of one year and cannot be renewed more than four

times. The fee for renewing a permit is also AZN 1000; in both cases, this amount reflects the authorities' aim to ensure that migrant workers only replace local workers where there exists a genuine need. Any employer in breach of these rules can incur heavy fines. ECRI notes that, although the system put in place has the merits of being clear and of making employers fully responsible for their acts, many civil society sources report that there are serious problems in practice. This is because, due in particular to the high cost of work permits and the waiting time for obtaining or renewing them, many employers have recourse to illegal employment practices. However, once migrant workers have become illegally employed they are vulnerable to serious forms of abuse. Cases have been reported where employers knowingly hired migrant workers without work permits and, for example, subsequently confiscated their passports and other identity documents, imposed extremely harsh working conditions, withheld workers' wages, failed to provide them with health insurance cover, or imposed restrictions on their freedom of movement – workers without legal documents having for instance been forced to live on the building sites where they are employed or in camps which they could leave only with the camp supervisor's permission. In this connection, ECRI underlines that migrant workers and members of their families, including those without regular status, must have the same rights as Azerbaijani citizens to file complaints and avail themselves of effective remedies before the courts. It is also important that labour inspectors should not be obliged under the applicable provisions³³ to communicate the names of workers in an irregular situation to the immigration authorities, and should be able to focus on the measures necessary to remedy the abuses perpetrated by employers.

78. In addition, ECRI has been informed that any undocumented migrant who is stopped by the authorities can be deported immediately. The persons concerned are usually unaware of the substantive rules governing residence in Azerbaijan; even though the authority that delivers the deportation decision is required to inform the individuals concerned of the remedies available, without access to counselling or legal assistance, they have no real means of challenging the deportation measure in the courts before they are removed from the country. These problems are not confined to people who have recently entered the country but can also concern migrant workers who have been hired illegally and who do not dare to contact the labour inspectorate and even persons who have been living in Azerbaijan for several years and who, for some reason or another, find themselves in an irregular situation. In this last case, in particular, the lack of a means of effectively challenging the deportation measure can have serious implications for the private and family life of the persons concerned.
79. ECRI is aware that the migration situation in Azerbaijan is currently changing, since until only recently it was not regarded as a country of destination for migrants. ECRI hopes that, after gaining experience in applying the new provisions and procedures, the authorities will be in a position rapidly to identify means of eliminating the problems posed by the length of certain procedures at present. It also notes that some of the concerns set out above have already been closely examined by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, which issued a series of recommendations aimed at remedying the problems noted.³⁴

³³ *The authorities have referred in this respect to Resolution No. 214 of the Cabinet of Ministers, dated 6 December 2000.*

³⁴ *Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Concluding observations, CMW/C/AZE/CO/1, 19 May 2009.*

80. *ECRI strongly encourages the Azerbaijani authorities to complete the process for adopting a Migration Code as a matter of priority. In this connection, it underlines the need to provide for effective remedies, in particular with a view to asserting rights safeguarded by international instruments such as the European Convention on Human Rights and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.*
81. *ECRI recommends that the Azerbaijani authorities ensure that the law does not impose an obligation on labour inspectors who have had to deal with cases of racial discrimination against migrant workers in an irregular situation to communicate information permitting the identification of the victims to the immigration authorities.*
82. *ECRI recommends that the Azerbaijani authorities take all necessary measures to ensure that migrants in an irregular situation are not removed from the country without having benefited from legal assistance.*
83. *ECRI strongly encourages the Azerbaijani authorities to implement all of the recommendations made to them by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, so as to fully safeguard the rights of all migrant workers present in Azerbaijani territory.*

Refugees and asylum-seekers

84. In its second report ECRI recommended that the Azerbaijani authorities take steps to ensure that the Law on the Status of Refugees and Forcibly Displaced Persons is duly applied, that they examine the allegations according to which refugees meet with administrative obstacles when attempting to exercise their rights and that they take rapid measures in this respect if necessary. It also recommended that all officials involved be given thorough training in the applicable law and in the most relevant fundamental human rights.
85. As mentioned in ECRI's previous report, the authorities established a procedure for the determination of refugee status in 2004. This is now a responsibility of the State Migration Service. By law, persons with recognised refugee status have the same rights as Azerbaijani citizens. However, their situation remains a cause for concern, as they apparently still encounter problems in exercising their social rights. This would seem to be because other public bodies do not systematically recognise the card certifying their refugee status,³⁵ which leads to difficulties in registering their place of residence. Like asylum-seekers, refugees consequently continue to encounter difficulties in other fields dependent on residence registration such as registration of births, access to employment or performance of a commercial activity (setting up a business). ECRI also notes with concern that asylum-seekers are required to obtain a work permit in order to have access to the Azerbaijani employment market; this exposes them to the same problems as are encountered by migrant workers, as set out above. In this connection, ECRI notes with interest the adoption, in late 2010, of a presidential decree aimed at ensuring that all the authorities concerned recognise the card issued to refugees. It hopes that this measure will also facilitate their access to social rights and that similar measures will be taken in respect of asylum-seekers, who find themselves in an even more precarious situation.
86. *ECRI recommends that the Azerbaijani authorities closely examine the practical impact of the new presidential decree aimed at ensuring full recognition of the official documents issued to refugees and take all the necessary measures to*

³⁵ *This card certifies the identity of the refugee and confirms their right to reside in and move freely throughout the territory of Azerbaijan.*

eliminate the administrative obstacles that refugees and asylum-seekers may encounter when seeking to exercise their rights. It again recommends that the authorities launch an information campaign to make sure that all public bodies are fully aware of the rights which come with refugee status.

87. ECRI is also concerned about information that the refugee status recognition rate in cases examined by the Azerbaijani authorities is extremely low.³⁶ This information is all the more worrying in that no subsidiary form of protection is provided for in the Azerbaijani legislation relating to refugees; the consequences of this situation for persons present in Azerbaijani territory are examined below.³⁷ ECRI takes note of the information provided by the authorities that training on human rights, asylum issues and the relevant international standards has been offered to staff working in the State Migration Service; it also notes with interest that it is intended to provide further such training in future.
88. *ECRI strongly encourages the Azerbaijani authorities to pursue and strengthen the training dispensed to all staff participating in the procedure for examining asylum applications, so as to ensure that no-one who may legitimately claim refugee status is denied the international protection they need.*
- ***Asylum-seekers from the Chechen Republic in the Russian Federation and other persons in need of international protection***
89. In its second report ECRI made a series of recommendations concerning asylum-seekers from the Chechen Republic in the Russian Federation and other persons in need of international protection but not having refugee status. In particular it called on the authorities (i) to ensure that these persons had the possibility of exercising their right to apply for asylum; (ii) to introduce in their legislation a subsidiary form of protection; (iii) to settle the problems these persons encounter in meeting their basic needs; (iv) to ensure that any illegal or discriminatory act committed by law enforcement officials against these persons was duly punished; and (v) to actively combat all forms of prejudice against and stereotyping of these persons.
90. Since Azerbaijani law says nothing about subsidiary forms of protection, many persons in need of international protection but who do not fulfil the strict criteria laid down by national law still have no legal status under Azerbaijani law. The number of people in this situation is currently estimated at about 2 000; most of them come from the Chechen Republic in the Russian Federation. When dealing with such cases, UNHCR issues a protection letter that affords the person concerned informal, but generally effective, protection against refoulement; however, this document does not allow access to the employment market. These persons are accordingly dependent on the humanitarian aid provided by UNHCR and other international bodies. The lack of legal status also adversely affects their access to other social rights such as access to health care, a problem which is especially serious since their state of health is often poor. These persons' living conditions have also reportedly deteriorated in recent years as a result of the dual impact of the rise in the cost of living in Azerbaijan and the reduction in the aid provided by international bodies. Furthermore, these persons often encounter difficulties in finding housing, in particular because of the prejudice existing within the majority population towards persons originating from the Chechen Republic. Unlike other persons

³⁶ See *UNHCR Statistical Yearbook 2008, Statistical Annex, Table 10, Asylum applications and refugee status determination by country of asylum and level in the procedure, 2008, p. 97.*

³⁷ See below, *Asylum seekers from the Chechen Republic in the Russian Federation and other persons in need of international protection.*

in need of international protection, those coming from the Chechen Republic are also subject to a degree of ethnic profiling and are more often required to submit to identity checks or searches and are at greater risk of becoming the victims of abuses perpetrated by law enforcement officials.

91. ECRI remains concerned about the situation of persons in need of international protection who are not recognised as refugees under Azerbaijani law and to whom national law accords no subsidiary form of protection. It notes that, although they are tolerated in Azerbaijani territory, these persons find themselves in a very precarious situation, with no legal status and without being able to meet their basic needs.
92. *ECRI strongly recommends that the Azerbaijani authorities introduce in the national legislation, alongside refugee status, a subsidiary form of protection covering all persons in need of international protection. In this connection, it strongly encourages them to co-operate closely with the Office of the United Nations High Commissioner for Refugees and the civil society organisations concerned and to treat this question as a matter of priority.*
93. *ECRI strongly recommends that, pending the adoption of these legislative provisions, the authorities swiftly take all necessary measures to ensure that asylum-seekers from the Chechen Republic in the Russian Federation and other persons in need of international protection have access to social rights, such as housing and health care, and are able to carry on an occupation. In this connection, it underlines the need to grant them a clear legal status such as to facilitate their access to these rights.*
94. ECRI also refers to the recommendations made elsewhere in this report on fighting discrimination in the fields of employment and housing and on the conduct of law enforcement officials.

Stateless persons and persons in similar situations

95. In its second report ECRI urged the Azerbaijani authorities to ensure that all non-citizens who are long-term residents in Azerbaijan are able to secure legal status. Although the authorities stated at the time that they were working on this matter, there seems to have been little change in the situation until recently. ECRI notes with interest the authorities' indication that they have granted either citizenship or a residence permit to some Afghan citizens who have been resident for long periods in Azerbaijan. However, it draws the authorities' attention to the need to solve all of these problems, which have a significant impact on the persons concerned (mainly Afghan men married to Azerbaijani women, often with children born on Azerbaijani soil and holding Azerbaijani citizenship). These persons often find themselves in a stalemate, since they are refused a residence permit if they cannot prove that their place of residence is registered with the relevant local authority, but cannot register their place of residence without a residence permit. As for the other categories of persons whose situation is discussed above, these persons are barred from the employment market because they have no legal status; they accordingly often depend on humanitarian aid for their livelihood. In this connection, ECRI notes with interest that the authorities have begun to look more closely into these issues, in co-operation with UNHCR, with a view to forming a more precise picture of the situation and remedying the problems noted; it hopes that the discussions currently taking place will soon bear fruit.
96. Moreover, cases continue to be reported of persons of Armenian origin who were born in Azerbaijan and live there permanently, but who did not immediately apply for an Azerbaijani passport at the time when these passports replaced the former Soviet Union passports and who today find themselves in a

situation of de facto statelessness. They are unable to exercise their rights as Azerbaijani citizens. In addition, attempts to have the courts overturn administrative decisions refusing to issue these persons with identity documents have proved unsuccessful. According to the information in ECRI's possession, a few hundred people of Armenian origin are thus deprived of the Azerbaijani citizenship to which they may have a legitimate claim, with all the consequences that entails for their access to social rights.

97. In this connection, ECRI refers to the recommendations already made above concerning the law on citizenship.³⁸

Armenians

98. As mentioned in other parts of this report, persons of Armenian origin are at risk of being discriminated against in their daily lives. Certain people born of mixed Armenian-Azerbaijani marriages choose to use the name of their Azerbaijani parent so as to avoid problems in their contacts with officialdom; others who did not immediately apply for Azerbaijani identity documents when the former Soviet passports were done away with today encounter difficulties in obtaining identity papers.³⁹ These problems and the prejudice reigning within society with regard to Armenians also cause serious difficulties of access to social rights.
99. ECRI is still deeply concerned about the fact that the constant negative official and media discourse concerning the Republic of Armenia helps to sustain a negative climate of opinion regarding people of Armenian origin coming under the Azerbaijani authorities' jurisdiction. This prejudice is so ingrained that describing someone as an Armenian in the media is considered by some people - including by certain Armenians themselves - to qualify as an insult that justifies initiating judicial proceedings against the persons making such statements. ECRI underlines the seriousness of this situation, where it seems that persons belonging to the group discriminated against in this way may themselves have interiorised this discriminatory attitude.
100. ECRI is moreover puzzled by the contradictory information it has received as to the number of persons of Armenian origin currently living in Azerbaijan. On the basis of the previous census, 120 700 Armenians were living in Azerbaijan in 1999. The authorities have indicated that the number of Armenians living in Nagorno-Karabakh or the areas affected by the conflict over it could be estimated at about 120 000, in line with the results of the last census carried out in the region during the Soviet era. Outside those areas, 700 people declared themselves as being of Armenian origin. In view of the situation in Nagorno-Karabakh and the areas affected by the conflict over it, it was again not possible to count the real number of Armenians living in this part of the country during the census carried out in 2009; the estimated figure of 120 000 will accordingly be deemed still current for these areas and only the figure of 700, corresponding to the number of persons actually counted in the remainder of Azerbaijani territory, is likely to change. ECRI points out that these explanations, albeit clear, differ strikingly from the figure of 30 000 Armenians living in the parts of Azerbaijan under the Azerbaijani authorities' effective control, which is regularly cited by the authorities. ECRI considers that questions can be raised as to the reasons why less than 3% of those concerned are prepared officially to declare themselves as belonging to this group. Thought should be given, inter alia, to the measures that might be taken to eliminate the prejudices and stereotyping existing within the majority population

³⁸ See above, *Existence and implementation of legal provisions - Citizenship law.*

³⁹ See above, *Vulnerable groups - Stateless persons and persons in similar situations.*

that can give rise to discriminatory attitudes towards persons of Armenian origin.

101. ECRI refers to the recommendations made in other parts of this report concerning the need to adopt an appropriate response to all cases of discrimination and hate speech against Armenians, and to its recommendations concerning the application of the relevant legal provisions.⁴⁰ It considers that the Azerbaijani authorities should actively contribute to generating a climate where all persons of Armenian origin living in Azerbaijan can declare their ethnic origin without fear.

National/ethnic minorities

102. In its second report ECRI recommended that the Azerbaijani authorities continue and step up their efforts to improve the quality of teaching of minority languages and cultures in state schools and monitor the implementation of the legislation on languages in order to identify any problems that national/ethnic minorities may face in this regard. ECRI also recommended that the authorities continue and step up their efforts aimed at supporting national/ethnic minorities' cultures.
103. In addition to being a party to the Framework Convention for the Protection of National Minorities, on 15 February 2010 Azerbaijan also acceded to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions. The authorities support many cultural activities implemented by national/ethnic minorities so as to promote their cultures and folklore. The general school curriculum is taught in three languages in Azerbaijan: Azerbaijani, Russian and Georgian. With regard to the other languages used by national minorities in Azerbaijan, Talysh, Avar, Udi, Tat, Tsakhur, Khinalig and Kurdish are taught for the first four years of primary school, and Lezgin for nine years, in the regions where these groups are concentrated. Despite these significant efforts, civil society sources continue to report difficulties of access to school textbooks for the teaching of minority languages and a lack of teachers for these subjects; the overall duration of the teaching and the number of hours of teaching per week are also reportedly insufficient to ensure a real command of these languages. In this connection, ECRI refers to the most recent opinion on Azerbaijan of the Advisory Committee on the Framework Convention for the Protection of National Minorities,⁴¹ which addresses these matters in detail.
104. At a more general level, difficulties are reported regarding the registration of national minorities' associations. Although some of the difficulties mentioned seem to be encountered by the population as a whole, it is important to ensure that they do not have the effect of impeding the expression of national minority cultures or the representation of the specific interests of persons belonging to these minorities. In this connection, ECRI notes that the media, in particular the audiovisual media, seem to afford scant opportunities for the expression of minority cultures.
105. ECRI is moreover particularly concerned about the approach adopted by the authorities that consists in regarding the expression of certain ethnic or religious identities as a threat to national security. While acknowledging that states are obliged to combat terrorism, ECRI points out that the fight against terrorism must never become a pretext for misuse of criminal prosecutions or for other repressive measures against individuals on account of their ethnic origin. It

⁴⁰ See above, *Racism in Public Discourse - Discourse concerning the situation in Nagorno-Karabakh; Existence and implementation of legal provisions - Criminal law provisions.*

⁴¹ *Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Azerbaijan adopted on 9 November 2007, ACFC/OP/II(2007)007.*

stresses that a lack of transparency in relations between the public authorities and persons belonging to minorities can generate a counter-productive climate of mistrust. In this context it refers to the Council of Europe Commissioner for Human Rights' analysis of the case of Mr Novruzali Mammadov, editor-in-chief of a Talysh-language newspaper, who recently died in prison after having been convicted of treason in court proceedings held in camera.⁴² It also underlines that carrying out an effective investigation into all deaths or cases of alleged ill-treatment of prisoners is not only an obligation flowing directly from the European Convention on Human Rights, but also, in the case of victims belonging to ethnic minorities, constitutes an essential means of preserving the confidence of members of minority groups in the impartiality and independence of the entire judicial system.

106. With regard to the representation of minorities' specific interests and consultation between minorities and the state, in its second report ECRI recommended that the authorities envisage reinforcing the mechanisms in place. Many observers have noted that the Council for National Minorities, established in 1993, is no longer active; it seems that there are no longer any consultative bodies for the minorities that include minority representatives and deal with all areas of life in which the interests of the persons concerned are at stake. The lack of such bodies has adverse implications both for the consideration of their specific needs by other state bodies and for minorities' participation in decision-making on matters that concern them. Similar concerns have already been voiced by the Advisory Committee on the Framework Convention for the Protection of National Minorities⁴³ and the Council of Europe Commissioner for Human Rights.⁴⁴
107. *ECRI recommends that the authorities reactivate the Council for National Minorities or establish another consultative body for national minorities so that national minorities' representatives can effectively participate in decision-making processes concerning them.*

Roma

108. ECRI has been informed that Roma groups are living in Azerbaijan, notably in regions other than the capital, without having been recognised as a national minority or having applied for such status. According to some sources, many Roma children are not registered in the civil status records, which poses significant problems of access to social rights, in particular access to education and health care.
109. *ECRI recommends that the authorities ensure that all Roma are registered in the civil status records.*

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

110. ECRI notes that according to UNHCR's estimations, approximately 586 000 persons were displaced within Azerbaijan as a result of the conflict over Nagorno-Karabakh.⁴⁵ In its second report, ECRI recommended that the

⁴² *Report by the Commissioner for Human Rights on his visit to Azerbaijan from 1 to 5 March 2010, CommDH(2010)21 (only available in English).*

⁴³ *Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Azerbaijan adopted on 9 November 2007, ACFC/OP/II(2007)007, §§ 150-155.*

⁴⁴ *Report by the Commissioner for Human Rights on his visit to Azerbaijan from 3 to 7 September 2007, CommDH(2008)2, § 85.*

⁴⁵ *This situation was described at §76 of ECRI's second report on Azerbaijan.*

Azerbaijani authorities continue and intensify their efforts to ensure that refugees and internally displaced persons (IDPs) have decent living conditions, in particular as regards housing. It also recommended that the authorities take measures to remedy problems found in the area of illegal occupation of private properties by refugees or internally displaced persons⁴⁶.

111. Most IDPs presently live in urban centres such as Baku or Sumgayit; others live essentially in areas close to the occupation line of the territories in question. ECRI notes with interest that since its second report, the Azerbaijani authorities have made significant efforts in the framework of the “State Programme on improvement of the living conditions and raising employment for refugees and IDPs” adopted in 2004. According to information provided by the authorities, the last 12 tent settlements have been replaced with wooden (“Finnish”) houses, more than a million square metres of housing have been built, and persons who live in this new housing are also given a plot of land to allow them to grow vegetables and fruit. In the course of 2009 and 2010, 2 982 displaced families (13 419 persons) were thus able to settle in new housing. Public works have also been carried out to improve the school or hospital infrastructure in 67 villages. Moreover, in the framework of this Programme, 4 107 persons have found permanent work and 4 458 temporary work; several hundred persons have been able to follow training courses or carry out public works; more than 174 000 persons have found work in the agricultural sector and more than 25 000 seasonal jobs have been offered.
112. ECRI welcomes the positive action measures put in place in the framework of the above Programme and which aim to remedy the de facto inequality experienced by IDPs. It stresses the importance of such measures to allow all members of the population to participate in society on an equal footing. ECRI notes, however, that some significant problems continue to be reported, such as the fact that some IDP settlements are situated in remote areas or very close to the frontline, access to drinking water in some cases, and access to employment; as regards persons living in urban centres, they are sometimes housed in buildings that are insalubrious or in a state of disrepair. Moreover, as concerns illegal occupation of private properties by IDPs, although the authorities have indicated that they were able to place two displaced families in alternative accommodation in 2010, it seems that an overall plan of action is still lacking to remedy problems in this field.
113. Other difficulties, in particular as concerns access to identity documents and social rights, continue to be reported;⁴⁷ ECRI notes that while some highly welcome positive action measures have already been taken in these fields, further measures still appear to be needed to remedy some of the problems found. ECRI also notes that some actors underline that the fact that IDPs remain in a precarious situation may in part be due to a certain use of their plight for political reasons.
114. *ECRI strongly encourages the Azerbaijani authorities to pursue and strengthen their efforts to ensure that persons who have been internally displaced (IDPs) as a result of the conflict over Nagorno-Karabakh have decent living conditions, in particular as regards housing and access to other social rights. In this context, it also recommends that the authorities strengthen their efforts to*

⁴⁶ This question has since been the subject of judgments of the European Court of Human Rights, which has found violations of Article 1 of Protocol No. 1. See for example *Mirzayev v. Azerbaijan*, application no. 50187/06, judgment of 03/12/2009, of which the execution is currently being examined by the Committee of Ministers of the Council of Europe.

⁴⁷ See for example *European Commission Humanitarian Aid and UNHCR, Azerbaijan: Analysis of Gaps in the Protection of Internally Displaced Persons (IDPs), October 2009*.

remedy problems found in the area of illegal occupation of private properties by IDPs.

VI. Areas currently not under the effective control of the Azerbaijani authorities

115. As already pointed out in ECRI's previous reports, the current situation prevents ECRI from covering the circumstances 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 whom the present report is addressed. In accordance with its mandate, ECRI registers its concern at reports of human rights violations having taken place in these areas since its last report, particularly with regard to issues possibly coming within ECRI's mandate.

VII. Discrimination in various fields

116. In its second report ECRI recommended that the Azerbaijani authorities carry out research into the situation of groups coming within ECRI's mandate in fields such as access to public services, employment, housing and education in order to evaluate any discrimination (including indirect discrimination) they may face and to adopt and implement effective policies aimed at tackling such discrimination.
117. In general, ECRI notes that persons faced with problems of access to identity documents - in particular persons in need of international protection but who do not qualify as refugees in accordance with the definition applied under Azerbaijani law, stateless persons and persons in similar situations, and Roma – encounter serious difficulties of access to other rights, notably social rights. If the parents have no identity papers, this constitutes a significant obstacle to registration of their children in the civil status records even where the children were born in Azerbaijan⁴⁸; it would also seem that children without documents are generally denied access to education, whether in state schools (which refuse to enrol them) or private schools (due to their parents' lack of resources).
118. ECRI draws the Azerbaijani authorities' attention to the importance for all individuals of having a clearly determined legal status and holding documents attesting to that status, not only as a means of proving their identity but also to guarantee access to other fundamental rights, such as the rights to education, employment and housing. Apart from health care, which is dealt with in greater detail in the next section of this report, in subsequent sections of this report devoted to other more specific matters ECRI does not revert to the issue of access to these rights by the various categories of persons without official documents in Azerbaijan. In this connection, it refers to the other parts of this report setting out its analysis of the situation of the different categories of persons concerned and to the recommendations made therein with the aim of guaranteeing both access to a clear legal status for all those who can lay claim to it and access to other fundamental rights.

Health care

119. In recent years the authorities have taken a number of measures to improve access to effective health care for the entire population. They have for instance introduced electronic health cards designed to facilitate individuals' access to health care. According to the authorities, all migrant workers are in possession of such cards, as are all children born in Azerbaijan since the introduction of

⁴⁸ ECRI notes that according to information provided by the authorities, the births of 4 children whose mother is Chechen with Russian citizenship, 6 children both of whose parents are Roma and 3 children one of whose parents is Roma have been registered since 1 July 2008.

these cards, whatever their parents' status. Conversely, health cards are not issued for persons in need of international protection who are tolerated in Azerbaijani territory but have no legal status under Azerbaijani law. The authorities nonetheless stress that health care is still provided, whether or not the patient holds an electronic health card. They also point out that emergency care is provided free of charge by the hospitals to persons in need of it. ECRI nonetheless notes that serious cases have been reported of undocumented migrant workers who suffered occupational accidents but had no form of health care cover.

120. *ECRI strongly recommends that the Azerbaijani authorities take all necessary measures to ensure that no-one coming within ECRI's mandate is wrongly deprived of health care on any discriminatory ground due to their lack of legal status in Azerbaijan. In this connection, it underlines that persons in need of urgent medical treatment should not be required to produce a valid residence permit.*
121. According to civil society sources, the high degree of corruption in the Azerbaijani health care system jeopardises the entire population's access to health care. However, the fact that many public health care professionals require patients to pay them bribes so as to receive appropriate treatment has particularly grave consequences for those with the smallest incomes - notably refugees, asylum-seekers and persons in need of international protection but having no legal status in Azerbaijan. Such persons generally do not have the means to turn to private medical centres. They thus find themselves deprived of any access to health care other than coverage of the most basic needs, emergencies or childbirth. ECRI notes that this situation is especially serious since the state of health of these persons, who have often long been experiencing harsh living conditions, is generally poorer than that of the rest of the population. Lastly, it underlines that health care is a fundamental social right and that it is absolutely essential to prevent discrimination in this field and to eliminate all forms of discrimination that may exist.
122. *ECRI strongly recommends that the Azerbaijani authorities take all necessary measures to eradicate all forms of corruption that may exist in the health care system, which have a particularly serious impact on persons having no legal status in Azerbaijan.*

Employment and housing

123. In spite of the constitutional and legislative provisions that prohibit discrimination in the fields of employment and housing,⁴⁹ it can be seen on the basis of the information gathered by ECRI that in these fields of daily life, prejudice in Azerbaijani society leads to often discriminatory behaviour towards persons belonging to groups coming within ECRI's mandate. For instance, in the field of access to employment persons of Armenian origin apparently tend to conceal their identity when applying for jobs and in the workplace as they fear that they will be denied access to employment or suffer discrimination or harassment if they reveal it. Concerning access to housing, landlords are reportedly often reluctant to lease flats to persons from the Chechen Republic, whom they generally regard as dangerous.

⁴⁹ See Article 25 of the Constitution (examined above: see Existence and Implementation of Legal Provisions – Constitutional provisions) and Articles 6 and 16 of the Labour Code. Article 6 sets out the principle of equal opportunities whatever a person's race, nationality, religion, language, sex, marital status, place of residence, economic standing, social origin, age, political views, affiliation with trade unions or other public associations, professional standing or beliefs; Article 16 prohibits discrimination on these grounds in the field of employment.

124. ECRI regrets the lack of data permitting a more precise evaluation of the situation. It considers that these allegations should be closely examined so as to form a better idea of the prejudices and other mechanisms at issue and to counter them. It is also important to facilitate access to the courts for victims of such behaviour.
125. ECRI has already drawn the Azerbaijani authorities' attention to the need to reinforce the anti-discrimination legislation, to ensure the due application of the legal provisions already in force in this sphere and to raise public awareness of both the need to combat all forms of racism and racial discrimination and the remedies available for victims.
126. *ECRI recommends that the Azerbaijani authorities take all necessary steps to counter prejudice within society against persons belonging to groups coming within ECRI's mandate.*

Administration of justice

127. As mentioned elsewhere in this report, there are no judicial system statistics broken down by categories such as ethnic or national origin, religion, language or nationality. This applies to prosecutions brought against persons belonging to groups coming within ECRI's mandate, the number of prisoners belonging to minority groups or the number of cases referred to the courts by persons belonging to such groups. It can nonetheless be seen from the information received by ECRI and analysed in the other sections of this report that, firstly, from the standpoint of the persons belonging to groups coming within ECRI's mandate, their experience of dealing with the judicial system is globally negative and, secondly, they lodge very few complaints of racial discrimination or racism with the judicial authorities.
128. *ECRI recommends that the Azerbaijani authorities establish a system for collecting judicial system data, in compliance with European standards on data protection and protection of privacy, breaking down such data according to categories such as ethnic or national origin, religion, language and nationality of complainants and of persons prosecuted, convicted or imprisoned, so as to detect any cases of direct or indirect discrimination against persons belonging to groups coming within ECRI's mandate in their dealings with the judicial system and facilitate the determination of means of combating such discrimination.*

VIII. Conduct of law enforcement officials

129. In its second report ECRI recommended that the Azerbaijani authorities take further steps to put an end to all illegal behaviour by law enforcement officials, particularly towards certain members of groups coming within ECRI's mandate, and provide law enforcement officials with all necessary resources to this end. It also encouraged the authorities to intensify their efforts to provide human-rights training and to raise law enforcement officials' awareness of the issues of racism and racial discrimination.
130. ECRI is very concerned about the numerous reports of abuses perpetrated by law enforcement officials. Although such behaviour apparently affects the entire population, ECRI notes that certain particularly serious cases have concerned members of groups coming within its mandate. According to many sources, false accusations are made, in particular against persons belonging to minority ethnic or religious groups, and in some cases persons falsely accused of offences coming under the provisions of the Criminal Code relating to breaches of national security are at risk of being tried behind closed doors and sentenced to very severe penalties. Abusive methods, including ill-treatment, are

reportedly used to extort evidence, and in particular to force confessions from persons charged with offences. Ethnic profiling is also said to be used with regard to certain groups coming within ECRI's mandate.⁵⁰

131. Due to the lack of comprehensive statistics broken down according to the various criteria relevant to ECRI's mandate, it is impossible to make a realistic assessment of the frequency of such practices in the case of persons belonging to groups coming within ECRI's mandate or of the extent of any discrimination against them. ECRI nonetheless underlines that serious problems are reported and it is urgent to remedy them so as to eliminate all abusive practices, including discriminatory conduct, by law enforcement officials.
132. *ECRI urges the Azerbaijani authorities to intensify their efforts to eliminate all abusive practices by law enforcement officials and to ensure that the perpetrators of such acts are brought to justice and duly punished. In this connection, it strongly recommends that they take all necessary measures to identify any form of discriminatory conduct towards persons belonging to groups coming within ECRI's mandate with a view to eliminating it.*
133. ECRI notes with interest that Azerbaijan has ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and that, pursuant to Article 3 of this protocol, the Ombudsperson has been designated as the national preventive mechanism. In this context ECRI underlines that it is essential that the Ombudsperson should be allocated all the resources necessary to the effective performance of her role in preventing ill-treatment of persons deprived of their liberty, without this jeopardising the fulfilment of her other responsibilities for helping to reinforce the fight against racism and racial discrimination.
134. In its second report ECRI recommended that the authorities establish an independent body to investigate all allegations of misconduct by law enforcement officials and particularly allegations of racial discrimination. The authorities have not followed up this recommendation, with the result that allegations of this kind are still examined by internal police bodies. ECRI again underlines the importance of assigning such investigations to independent bodies and, in this context, recalls that members of groups coming within ECRI's mandate are often reluctant to file complaints against law enforcement officials, particularly where they lack confidence in the police.
135. *ECRI reiterates its recommendation that the authorities establish an independent body to investigate all allegations of misconduct by law enforcement officials and particularly allegations of racial discrimination.*

IX. Monitoring of racism and racial discrimination

136. ECRI remains concerned about the lack of adequate detailed information on the situation of various groups in Azerbaijan coming within its mandate. It underlines that, in its view, the collection of data broken down by categories such as national or ethnic origin, religion, language or citizenship would make it easier to identify areas in which there is direct or indirect racial discrimination and to find the best means of combating such discrimination.
137. ECRI notes with interest that, in the context of the population census carried out in 2009, respondents could answer questions on their citizenship, ethnicity and mother tongue; other questions for instance covered the social and economic fields, housing and how long the respondent had been living in Azerbaijan. The

⁵⁰ See above, *Vulnerable groups - Refugees and asylum-seekers - Asylum-seekers from the Chechen Republic in the Russian Federation.*

authorities have indicated that the information collected is still being analysed and that 15 studies on the situation in Azerbaijan should be published in 2011. ECRI hopes that this will enable the identification of any situations of direct or indirect discrimination in these areas as well as means of combating them.

138. *ECRI strongly recommends that the Azerbaijani authorities look into means of setting up a full and coherent system of data collection so as to evaluate the situation regarding the different groups in Azerbaijan coming within ECRI's mandate and determine the extent of manifestations of racism and racial discrimination. Such a collection system would have to conform to European standards on data protection and protection of privacy. In particular, the Azerbaijani authorities should ensure that the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group are fully respected in all cases. In addition, the system for collecting data on racism and racial discrimination should take the gender dimension into account, in particular from the standpoint of possible double or multiple discrimination.*

INTERIM FOLLOW-UP RECOMMENDATIONS

The three specific recommendations for which ECRI requests priority implementation from the Azerbaijani authorities are the following:

- ECRI strongly recommends that the Azerbaijani authorities swiftly complete the procedure for the registration of religious communities currently under way, taking into account the case-law of the European Court of Human Rights. It underlines that, in this connection, it is essential to clarify the legal situation of communities still awaiting a final response from the State Committee for Relations with Religious Organisations or the courts, particularly by clearly specifying that those already registered under the previous legislation must be able to continue to function normally during the transitional period.
- ECRI strongly encourages the Azerbaijani authorities to complete the process for adopting a Migration Code as a matter of priority. In this connection, it underlines the need to provide for effective remedies, in particular with a view to asserting rights safeguarded by international instruments such as the European Convention on Human Rights and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- ECRI recommends that the Azerbaijani authorities establish a system for collecting judicial system data, in compliance with European standards on data protection and protection of privacy, breaking down such data according to categories such as ethnic or national origin, religion, language and nationality of complainants and of persons prosecuted, convicted or imprisoned, so as to detect any cases of direct or indirect discrimination against persons belonging to groups coming within ECRI's mandate in their dealings with the judicial system and facilitate the determination of means of combating such discrimination.

A process of interim follow-up for these three recommendations will be conducted by ECRI no later than two years following the publication of this report.

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