

# **ECRI REPORT ON AZERBAIJAN**

**(fifth monitoring cycle)**

Adopted on 17 March 2016

Published on 7 June 2016

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## FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members 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 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 monitoring deals with all member States of the Council of Europe on an equal footing. The work takes 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, those of the third round at the end of 2007, and those of the fourth round in the beginning of 2014. Work on the fifth round reports started in November 2012.

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

ECRI's reports are not the result of inquiries or testimonial evidence. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both 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 ECRI report.

The fifth round country-by-country reports focus on four topics common to all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

**The following report was drawn up by ECRI under its own responsibility. It covers the situation up to 11 December 2015; developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.**





## SUMMARY

**Since the adoption of ECRI's third report on Azerbaijan on 23 March 2011, progress has been made in a number of fields.**

People in Azerbaijan have a general attitude of openness with regard to many of the minorities historically present in the country. There is a number of administrative and civil law provisions prohibiting discrimination. Moreover, the Supreme Court has emphasised the need to apply international conventions, some of which provide for protection against racism.

There is no information about hate-speech incidents in connection with many historical minorities. Azerbaijan has repeatedly hosted international forums on intercultural dialogue; in 2014 it set up the Baku International Multiculturalism Centre. The Ombudsperson has organised awareness-raising campaigns to promote tolerance. No violent hate crime based on ethnic affiliation has been registered in Azerbaijan during the last five years.

Azerbaijan has implemented ECRI's recommendation to adopt a Migration Code. Its Article 77 on the "adaptation" of foreigners could lay the ground for integration policies for migrants; these could include language and integration courses. The authorities have also undertaken efforts to improve historical minorities' access to public services and labour market by decentralisation and the construction of infrastructure such as schools and roads to remote villages.

Some civil-society organisations that promote the rights of lesbian, gay, bisexual and transgender (LGBT) persons have been founded and the police protected LGBT people during the 2012 Eurovision Contest in Baku.

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

No reliable statistical data is available to evaluate the situation in the country in many fields of relevance for ECRI's work. In addition, civil society and independent media have been severely hit by a wide-ranging crackdown, and the OSCE was ordered to close down its local office.

The grounds of colour, language, citizenship and ethnic origin are not explicitly mentioned in several criminal-law provisions that concern racism. Incitement to violence and support for groups promoting racism is not punishable. Neither civil nor administrative law contains a definition of direct and indirect racial discrimination and Azerbaijan has not enacted comprehensive legislation in these fields. Furthermore, the Ombudsperson's mandate is limited to the public sector and there is still no institution responsible for combating racism and discrimination in the private sector.

Political leaders, educational institutions and media have continued using hate speech against Armenians; an entire generation of Azerbaijanis has now grown up listening to this hateful rhetoric. Human rights activists working inter alia towards reconciliation with Armenia have been sentenced to heavy prison terms on controversial accusations and there are big concerns that hate speech provisions have been misused against the Talysh minority. Hate speech is also targeted at LGBT persons.

The on-going wave of hate speech could lead to racist and homo/transphobic violence. In addition, in 2012 the authorities pardoned, released and promoted Ramil Safarov, who had been sentenced in Budapest to life imprisonment for the murder of an Armenian army officer, without taking into account the risk of cultivating a sense of impunity for the perpetrators of racist crime. There have been a considerable number of violent attacks against LGBT persons; many have been committed by family members of the victims. Religious hatred and intolerance was also the motive for hate crime.

The authorities have not developed comprehensive integration policies for migrants or historical minorities. The Migration Code contains harsh restrictions on the rights of migrants. Several historical minorities suffer from higher degrees of poverty and below-average health and education services than the majority.

Several provisions of the Law on Freedom of Religious Belief are contrary to international standards. Minority Muslim and “non-traditional” religious communities have been subject to many restrictions and discrimination including police raids, police and pre-trial detention, closing of places of worship, the ban on praying outside mosques, censorship of religious literature and heavy penalties. Azerbaijan has not passed a law on alternatives to military service. The Ombudsperson’s contribution to the upholding of human rights and freedoms in several critical areas can be significantly improved.

The vast majority of the population are prejudiced towards LGBT people. As a result, LGBT people are obliged to hide their sexual orientation and gender identity and they experience everyday discrimination in most fields of life. Nonetheless, the authorities have done little in this field, and there is no legal text explicitly protecting LGBT people from violence and discrimination.

**In this report, ECRI requests that the authorities take action in a number of areas; in this context, it makes a series of recommendations, including the following.**

The authorities should ratify Protocol No. 12 to the European Convention on Human Rights (ECHR) and bring their criminal law into line with ECRI’s General Policy Recommendation No. 7 on national legislation to combat racism. At the same time, they should enact comprehensive anti-discrimination legislation and establish a specialised body to combat racism and discrimination.

The authorities should ensure that public officials at all levels refrain from hate speech towards Armenians and create adequate conditions for the development of a diverse and independent civil society.\* The police and prosecution services should establish dialogue and friendly cooperation with groups at risk of hate speech and hate crime and thoroughly investigate all cases of alleged hate motivated offences. At the same time, when applying the hate speech provisions, they should give due consideration to freedom of expression, religion and association.

The authorities should draw up comprehensive integration strategies for persons with migration backgrounds and historical minorities. They should also develop a set of indicators and collect statistical data to measure the impact of these strategies. Obstacles to registration of migrant workers should be removed and a single authority should be designated to lead and co-ordinate the development of comprehensive integration policies for historical minorities.

The authorities should swiftly complete the procedure for the registration of religious communities and ensure that there are no violations of their members’ freedom of religion. Furthermore, the authorities should implement the recommendations made by the Venice Commission and OSCE/ODIHR on the Law on Freedom of Religious Belief and apply the current legislation in strict compliance with Articles 9 and 14 ECHR. Azerbaijan should also fulfil the undertaking given upon accession to the Council of Europe to enact legislation on alternatives to military service.\* Finally, the authorities should adopt and implement an action plan for LGBT persons.

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\* This recommendation will be subject to a process of interim follow-up by ECRI not later than two years after the publication of this report.

## FINDINGS AND RECOMMENDATIONS

### I. Common topics

#### 1. Legislation against racism and racial discrimination<sup>1</sup>

##### - Protocol No. 12 to the European Convention on Human Rights (ECHR)

1. Azerbaijan<sup>2</sup> has still not ratified Protocol No. 12 to the ECHR (adopted on 4 November 2000), which it signed on 12 November 2003. The authorities have stated that ratification is under consideration by the Parliament, as they did during the previous monitoring cycle. The Ombudsperson's office recommends acceleration of the ratification process. ECRI considers ratification of this instrument, which provides for a general prohibition on discrimination, to be vital in combating racism and racial discrimination.

2. ECRI reiterates its recommendation to Azerbaijan to ratify Protocol No. 12 to the European Convention on Human Rights as soon as possible.

##### - Criminal law

3. ECRI has already examined on three occasions the extent to which Azerbaijani legislation is in line with its General Policy Recommendation (GPR) No. 7 on national legislation against racism and racial discrimination. Therefore, in this fourth report it will address only the remaining shortcomings.

4. Article 283 of the Azerbaijani Criminal Code (CC) criminalises incitement to national, racial, social or religious hostility, humiliation of national dignity or restriction of rights or incitement to granting of privileges to citizens on national, racial, social or religious grounds if committed publicly or by using mass media.<sup>3</sup> The penalty is increased if the act is committed by using force or the threat of using force. In line with § 18a of GPR No. 7, this provision covers incitement to hatred and discrimination. However, incitement to violence and the grounds of colour, language, citizenship and ethnic origin are not explicitly covered and there is no case law on these issues. Furthermore, incitement to discrimination only against nationals, but not against foreigners, is punishable.

5. Insults, defamation and threats of serious bodily harm or murder are punishable under Articles 147, 148<sup>4</sup> and 134 CC on slander, insult and threats; committing these offences on the grounds of national, racial or religious hatred and fanaticism constitutes an aggravating circumstance under the general provision of Article 61.1.6 CC. This is not fully in line with § 18b and c of GPR No.7, as there are no special provisions on racially motivated public insults, defamation and threats. Azerbaijani criminal law does not contain a special provision criminalising all public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons (§ 18d of GPR No. 7). Such acts may only be punishable under Article 111 CC on apartheid and racial discrimination.

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<sup>1</sup> According to ECRI's General Policy Recommendation (GPR) No.7, "racism" shall mean 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. "Racial discrimination" shall mean 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.

<sup>2</sup> Nagorno Karabakh and seven adjacent occupied territories are not under the effective control of the Azerbaijani authorities to whom this report is addressed. Therefore, ECRI will not examine the situation in this area.

<sup>3</sup> Translation from UN Committee on the Elimination of Racial Discrimination (CERD) 2015: § 45.

<sup>4</sup> See in this context the recommendations made in CoE, European Commission for Democracy through Law (Venice Commission) 2013 and CoE Commissioner for Human Rights 2014: 2.

6. The public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes (§ 18e of GPR No.7) is not punishable. The public dissemination or distribution of material with a racist content (§ 18f of GPR No. 7) can be prosecuted under Article 283 CC only when leading to incitement to hatred. Dissemination and distribution without this result and the preparatory acts described in § 18f of GPR No. 7 are not punishable.
7. Incitement to hatred by an organised group is punishable under Article 283.2.3 CC and Article 218 CC criminalises the creation and leadership of and participation in criminal organisations with the purpose of committing serious offences. This is not fully in line with § 18g of GPR No. 7, according to which the creation of and participation in any racist organisation should be punishable.
8. § 18h of GPR No. 7 on discrimination in the exercise of one's public office or occupation is covered by Article 154 CC on the violation of the right to equality on the grounds of race, citizenship, religion or belief, language, origin and other grounds not falling under ECRI's remit, Article 111.0.3 CC (cf. above) and Article 109 CC on the persecution of a group or organisation for racial, national, ethnic, cultural or religious motives as well as on "sexual belonging" or on grounds of another motive prohibited by the norms of international law. Unfortunately, the ground of colour is not explicitly mentioned in these provisions.
9. ECRI recommends that the authorities bring their criminal law, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should (i) include the grounds of colour, language, citizenship and ethnic origin in all criminal law provisions aimed at combating racism and discrimination, (ii) criminalise incitement to violence and incitement to discrimination of foreigners and (iii) criminalise the creation or the leadership of a group which promotes racism; support for such a group; and participation in its activities.

- **Civil and administrative law**

10. In its third report, ECRI recommended that the Azerbaijani authorities draft national legislation prohibiting racial discrimination in a precise and exhaustive manner. Whereas a Law on Guarantees of Gender Equality was passed in 2006, Azerbaijan has not yet enacted comprehensive legislation on discrimination on the grounds of race, colour, language, religion, citizenship, national or ethnic origin, sexual orientation or gender identity.
11. Article 25.3 to 5 of the Azerbaijani Constitution (AC) guarantees the equality of rights and freedoms to everyone and prohibits the restriction of rights and freedoms on the grounds of race, citizenship, religion, language, sex, origin, belief, or political or social affiliation. No-one shall be refused advantages or privileges on these grounds and everyone shall be guaranteed equal rights in any proceedings before state authorities and bearers of public authority.<sup>5</sup> ECRI welcomes the fact that this provision clearly prohibits discrimination at the level of constitutional law as recommended in §§ 2 and 4 of GPR No. 7. The considerable number of administrative and civil law provisions prohibiting discrimination show the will of the authorities to combat discrimination in all areas. They include, for example, Article 5 of the Law on Police, Article 20 of the Law on Mass Media, Article 7.0.7 of the Law on Public Television and Radio Broadcasting, Article 8 of the Law on Protection of Health, Article 5.2 of the 2009 Law on Education and Article 16 of the Labour Code.<sup>6</sup> ECRI also welcomes the fact that the Supreme Court has emphasised the need to apply the international

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<sup>5</sup> In accordance with Article 69 AC, foreigners and stateless persons enjoy, while staying in the Republic of Azerbaijan, all rights equally with the citizens of the Republic of Azerbaijan and should fulfil all duties where not otherwise provided for by law or international agreements, translation from CERD 2015: 56.

<sup>6</sup> For other provisions prohibiting discrimination see CERD 2015: 18 et seq.; IOM 2013a: 106 et seq.

conventions binding on Azerbaijan, which include further provisions against racism. However, it is not clearly set out that the general constitutional prohibition of discrimination applies not only to the public, but also to the private sector (§§ 4 and 7 of GPR No. 7).<sup>7</sup> Also, neither civil nor administrative law contains a clear definition of direct and indirect racial discrimination. Furthermore, no text has been identified that would prohibit discrimination in the important field of housing.<sup>8</sup> Given these significant gaps in the protection against discrimination, ECRI again encourages the Azerbaijani authorities to implement the above mentioned recommendation from its previous report to draft national legislation prohibiting racial discrimination in a precise and exhaustive manner.<sup>9</sup>

12. While Azerbaijani law does not explicitly provide for positive measures for disadvantaged groups (§ 5 of GPR No. 7), in 2010, the Constitutional Court approved the use of this concept with regard to gender discrimination.<sup>10</sup> No provision in Azerbaijani law addresses the special forms of discrimination enumerated in § 6 of GPR No. 7. Whereas state bodies shall, in accordance with Article 71.1 AC, protect the rights and freedoms set forth in the Constitution, no provision places public authorities under a duty to positively promote equality and to prevent discrimination as recommended in § 8 of GPR No. 7. Concerning public procurement, ECRI welcomes the fact that, in accordance with Article 6.2.6 of the Public Procurement Act, contractors shall not be accepted if they have been convicted within the preceding five years for offences connected with their professional activity; while this can encompass a conviction for one of the offences described in §§ 3 to 9 and thus contribute to the fight against racism and discrimination, Azerbaijani law does not stipulate that contractors need to positively promote a policy of non-discrimination on the grounds covered by ECRI (§ 9 of GPR No. 7).
13. According to the authorities, conciliation procedures are available only in the field of criminal, but not civil or administrative anti-discrimination law. Furthermore, victims of discrimination can lodge a complaint with the Ombudsperson only in the field of public, but not of civil law. This is not fully in line with § 10 of GPR No. 7 according to which all victims of discrimination should have easy access to judicial and administrative proceedings, including conciliation procedures.<sup>11</sup> There is no special rule on the sharing of the burden of proof in discrimination cases (§ 11 of GPR No. 7). Victims can obtain compensation under Articles 21 of the Civil Code and 290 of the Labour Code.<sup>12</sup> Compensation for non-pecuniary damage is mentioned only in Articles 195 et seqq., 288 and 290.3 of the Labour Code (§ 12 of GPR No. 7).
14. Articles 130.4 and 140.5 AC and Article 13.2.8 of the Constitutional Law on the Human Rights Commissioner (Ombudsperson) (CLO) provide for legal tools to review the conformity of laws and other regulations with the prohibition of discrimination (§ 13 of GPR No. 7). Discriminatory provisions in individual or collective contracts and other legal acts could be considered invalid under Articles 337.1, 338 and 2.1 of the Civil Code (§ 14 of GPR No. 7), but no case

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<sup>7</sup> ECRI considers that the legal concept of the third-party effect of basic rights, which might apply to the Azerbaijani fundamental right to equality, is not sufficient to make it clear to the whole population that discrimination is also prohibited between private individuals.

<sup>8</sup> CERD 2015.

<sup>9</sup> For details see § 37 to 40 of ECRI's 3<sup>rd</sup> report on Azerbaijan.

<sup>10</sup> Azerbaijani Constitutional Court, decision of 2 March 2010 (without case number), <http://www.constcourt.gov.az/decisions/173>.

<sup>11</sup> The IOM considers that the lack of an effective legal aid mechanism (§ 26 of GPR NO. 7) in Azerbaijan seriously impedes access to justice in cases of discrimination, IOM 2013a: 111. The authorities have informed ECRI that nine regional legal aid centres have been established. Several projects are under way to improve access to justice by developing legal aid, Ministry of Justice 2013 and UNICEF 2014.

<sup>12</sup> IOM 2013a: 109.

law has been brought to ECRI's attention. Harassment on the grounds falling under ECRI's mandate is not explicitly prohibited under Azerbaijani law (§ 15 of GPR No. 7).<sup>13</sup>

15. The authorities have not indicated any regulation providing for an obligation to suppress public financing of organisations which promote racism (§ 16 of GPR No. 7).<sup>14</sup> Article 58.4.2 AC stipulates that organisations whose activities violate the Constitution and laws of Azerbaijan may be disbanded by court decision. In accordance with Articles 16.1 and 4.4 of the Law on Political Parties, political parties shall be dissolved by court decision if they instigate racial, national or religious hatred, perpetrate other acts contrary to the constitutional order or incompatible with the country's international legal obligations. Non-governmental bodies that violate requirements arising from the legislation of Azerbaijan can be given notice by the competent authority to end such violations (Article 31.2 of the Law on Non-Governmental Organisations LNGO). If an organisation receives more than two such notices within one year, it can be dissolved by court decision upon request of the competent authority (Article 31.4 LNGO). These provisions cover part of § 17 of GPR No. 7, as they allow for the dissolution of organisations that have committed racist offenses; however, racist organisations not in breach of criminal law, cannot be dissolved.

16. ECRI again recommends that the Azerbaijani authorities reinforce the civil and administrative law provisions on the protection of victims of discrimination by adopting comprehensive legislation to combat racism and discrimination in all key fields of life. In this connection, it refers to §§ 4 to 17 of its General Policy Recommendation No. 7.

- **Specialised national bodies**<sup>15</sup>

17. To date, there is no institution specifically responsible for combating racism and discrimination in Azerbaijan. In its third report, ECRI recommended that the authorities either clearly designate the Ombudsperson as the specialised body for combating racism and discrimination, or set up a separate specialised body.
18. ECRI notes that the Ombudsperson is responsible for preventing and combating violations of human rights and freedoms in the public sector (Article 1.1 CLO) and has wide powers in this field. In line with Principle 3 of ECRI's GPR No. 2, they include the right to receive complaints from individuals, to carry out investigations *proprio motu*, to request information from the authorities, to hear any person who may provide relevant information, to have access to public facilities, to require public authorities to remedy violations, to refer cases to the prosecution services, to submit a proposal to take disciplinary measures and to apply to a court, including the Constitutional Court (Articles 8 to 13 CLO). The Ombudsperson shall also submit motions to Parliament with regard to the passing or review of laws and, in his or her annual report, express general views and recommendations concerning the protection of human rights (Articles 1.4 and 14 CLO). This framework could be fine-tuned by introducing explicitly in the law the additional power to aid and assist victims, including with legal aid, in order to secure their rights (Principle 3d of GPR No. 2).
19. ECRI remains however concerned about the Ombudsperson's independence and mandate. In May 2011, the International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) had

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<sup>13</sup> The Labour Code only mentions sexual harassment for example in its Article 12.1.i.

<sup>14</sup> Also, the 2011 regulation on the public financing of political parties does not contain rules to suppress the public financing of racist political parties, CoE, Venice Commission 2011.

<sup>15</sup> Independent authorities expressly entrusted with the fight against racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as ethnic origin, colour, citizenship, religion and language (racial discrimination), at national level.

recommended a downgrading of the Ombudsperson's status from A to B due to concerns over transparency and delays in the appointment procedure. Nevertheless, the ICC considered in March 2012 that Azerbaijan had established compliance with its standards and accredited the Ombudsperson with A-status.<sup>16</sup> However, Article 2.1 CLO, according to which the Ombudsperson is elected from among three candidates nominated by the President, remained unchanged. This presidential pre-selection power, together with the lack of a transparent selection procedure, still affects the Ombudsperson's independence. ECRI therefore encourages the authorities, as the ICC has already done, to reform this procedure and to ensure that the Ombudsperson is selected in an open process reflecting society at large and its diversity. Moreover, in § 74 of this report ECRI expresses doubts as to whether the Ombudsperson uses, in a sufficiently robust manner, the powers she has to protect certain rights. ECRI's major concern is however that the Ombudsperson's mandate is limited to the public sector and that there is still no institution in charge of combating racism and discrimination in the private sector.<sup>17</sup>

20. ECRI strongly recommends that the authorities establish, in line with its General Policy Recommendation No. 2, a separate specialised body to combat racism and discrimination in both the private and public sector. This body should notably have the power to provide general advice and legal assistance to victims of discrimination, including representation in proceedings before courts.

## 2. Hate speech<sup>18</sup>

### - Extent of the phenomenon

21. During ECRI's country visit the authorities underlined, as on many previous occasions, the fact that Azerbaijan is a highly tolerant country with few incidents of hate speech and that they actively run a multiculturalism policy aiming at preventing possible disintegration processes, which could lead to different kinds of separatism, conflict and war.<sup>19</sup> ECRI takes note of this position but regrets that it is becoming increasingly difficult to make an independent assessment of the situation in the country due to a wide-ranging crackdown on independent civil society and media including cases of unjustified criminal prosecution.<sup>20</sup> In 2013 and 2014 restrictive amendments were introduced to the legislation on NGOs.<sup>21</sup> The Venice Commission concluded that its tough rules on foreign funding were likely to have a chilling effect on civil society and recommended fundamental revision. At the time of ECRI's country visit no NGO could receive foreign funding, as secondary legislation had still not been enacted. This has contributed to the collapse of independent civil society.<sup>22</sup> Furthermore, in June 2015, the OSCE was ordered and had to close down its local office within one month<sup>23</sup> and

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<sup>16</sup> ICC 2011: 22 et seq. and 2012: 29 et seq.

<sup>17</sup> According to the information provided by the Ombudsperson's office during ECRI's country visit, the Ombudsperson is however competent for dealing with the directors of private companies.

<sup>18</sup> This section covers racist and homo/transphobic speech. For a definition of "hate speech" see Recommendation No. R (97) 20 of the Committee of Ministers to the member States on "hate speech", adopted on 30 October 1997.

<sup>19</sup> Republic of Azerbaijan 2014b.

<sup>20</sup> CoE CommDH 2014 and 2015; CoE PACE 2015: §§ 10 et seq. The judgment in the case of Ilgar Mammadov, a former opposition leader, is one of the very rare cases in which the European Court of Human Rights (ECtHR) found a violation of Article 18 (in conjunction with Article 5) of the Convention and held that the authorities had imposed criminal proceedings on the applicant in order to silence or punish him for criticising the Government, *Ilgar Mammadov v. Azerbaijan*, No. 15172/13, 22.05.2014.

<sup>21</sup> Venice Commission 2014.

<sup>22</sup> See also paragraph 36.

<sup>23</sup> Yahoo!news 2015.

members of international NGOs were denied entry to the country.<sup>24</sup> In addition, there are no reliable statistics on hate speech: since 2011, Azerbaijan has no longer reported to the OSCE on hate crime and the police have registered only two cases of criminal hate speech during the last five years.<sup>25</sup>

22. On the positive side, ECRI's delegation witnessed, during its meetings at Guba, the regional capital of a north-eastern district inhabited by around 20 ethnic groups<sup>26</sup>, a general attitude of openness, interethnic friendship and tolerance, with many mixed marriages.<sup>27</sup> This general attitude is also illustrated by the fact that, according to local Jewish representatives, members of their community have never experienced antisemitism.<sup>28</sup>
23. Officials present this district as a role model for ethnic diversity<sup>29</sup> and underline that Azerbaijan has repeatedly hosted international forums on intercultural dialogue. Furthermore, the Baku International Multiculturalism Centre was set up in May 2014 and the Ombudsperson contributes to promote tolerance through its awareness-raising campaigns.
24. On the other hand, a study on hate speech in the media in Azerbaijani, Armenian and Georgian in October 2014 concluded that 342 (3.9%) out of the 8 679 Azerbaijani news items examined contained such statements. Hate speech was found in 8.8% of printed news items, 4.9% of electronic items and 2% of television programmes. Almost all of the 196 hate speech items dealing with ethnic conflicts were targeted at Armenians.<sup>30</sup> Politicians and civil servants were the main disseminators of hate speech, followed by journalists. Journalists had often used posts from social networks, in particular Facebook, as their main source and had not systematically checked the information by using a second verified source. In this respect, ECRI recalls its recommendations made in the last report that the authorities avoid addressing issues of relevance to the Armenians in a negative light and that they 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 groups coming within ECRI's terms of reference. With regard to the intensity of hate speech, the authors of the study only put one item into the first category used for hate speech of great intensity such as incitement to violence and discrimination, 337 in the second category on statements that create an atmosphere of intolerance and 25 in the third category for items that contribute to a negative image of a group of persons.<sup>31</sup>

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<sup>24</sup> Amnesty International 2015.

<sup>25</sup> OSCE/ODIHR 2015. See also below at § 32.

<sup>26</sup> For more details see [www.azerbaijans.com](http://www.azerbaijans.com), Population, The ethnic minorities of Azerbaijan.

<sup>27</sup> There is no information on any ethnic background of the protests that took place in areas inhabited by minorities such as the demonstration on 1 March 2012 at Guba, which was triggered by a statement of the regional governor Rauf Habibov who accused citizens of being traitors for having sold land they had previously received for free. The publication of a video of this statement on YouTube led to a gathering of about 10 000 persons, violent riots and heavy criminal sentences not only for the persons accused of having set fire to Mr Habibov's house, but also for the journalists for having disseminated the video of the statement. The latter were held in pre-trial detention for about a year, Eurasianet.org 2012; Indexcensorship.org 2012; contact.az 2013; Kavkaz-uzel.ru 2013.

<sup>28</sup> Time.com 2015. See however also § 26.

<sup>29</sup> There are however reports on hate speech towards Kurds, which are nonetheless difficult to verify. As background, see Minorityrights 2015 and Radio Free Europe Radio Liberty 2011.

<sup>30</sup> Among the items on international conflicts, 32 were directed against Russia and 16 against Armenia.

<sup>31</sup> Deutsche Welle 2014; Contact.az 2014. In Azerbaijan, two television channels, two newspapers and two websites were monitored.



25. Other sources confirm recurrent hate speech towards Armenians<sup>32</sup>, which is connected with the conflict over Nagorno-Karabakh, the frequent ceasefire violations at the contact line and the resulting deaths and injuries.<sup>33</sup> The Advisory Committee of the Framework Convention for the Protection of National Minorities (ACFC) for example noted “a persistent public narrative surrounding the conflict over Nagorno-Karabakh identifying [in]variably Armenia or Armenians as ‘the enemy’ and openly promulgating hate messages”.<sup>34</sup> According to other sources, there is a conflict-ridden domestic political discourse<sup>35</sup> and Azerbaijan’s leadership, education system and media are very prolific in their denigration of Armenians.<sup>36</sup> Political opponents are accused of having Armenian roots or of receiving funds from Armenian sources.<sup>37</sup> An entire generation of Azerbaijanis has now grown up listening to constant rhetoric of Armenian aggression.<sup>38</sup> According to a 2012 survey, 91% perceived Armenia as Azerbaijan’s greatest enemy.<sup>39</sup> As a result, the Armenians living in the country need to hide their ethnic affiliation and there is no organisation of the Armenian minority in the country with which ECRI’s delegation could have met. The human rights activists Leyla and Arif Yunus, who worked inter alia towards reconciliation with Armenia, have been arrested and sentenced under controversial accusations to heavy prison terms.<sup>40</sup> Both were conditionally released at the end of 2015.
26. Regarding antisemitism, Azerbaijan was, according to a recent study, among the Muslim countries with the lowest scores and thus the best results and ranked 37<sup>th</sup>. Nevertheless, 37% of adult respondents answered “probably true” to a majority of the antisemitic stereotypes tested and 28% of the respondents had an unfavourable opinion on Jews. While 40% agreed that Jews are just like everyone else, 41% disagreed.<sup>41</sup> Concerning other religions, the same study revealed that 33% of the respondents had an unfavourable opinion on Christians. Still in the field of religious intolerance, ECRI takes note that, in January 2011, the leader of the Islamic Party of Azerbaijan, Movsum Samadov, quoted the Prophet Muhammad stating that “for the sake of religion’s salvation, lives should be given” and asserted that Azerbaijan “will face even bigger tragedies so long as the government is fully under the control of the Zionists.”<sup>42</sup>
27. Public hate speech is also directed at lesbian, gay, bisexual and transgender persons (LGBT). While there are no official data on hate speech towards LGBT, in a 2012 survey, 34% of respondents reported insults, humiliation and mockery by family members, landlords and the police.<sup>43</sup> The case of an Azerbaijani gay artist can serve as an example: after his homosexuality was revealed to the public, his brother vowed to kill him and his sister screamed at him on the phone

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<sup>32</sup> Abbasov 2013: 36 et seq.; Civilrightsdefenders.org 2015; Yerevan Press Club et al. 2013.

<sup>33</sup> Meydan.tv 2014; Institute for War & Peace Reporting 2014b.

<sup>34</sup> ACFC 2012: § 50.

<sup>35</sup> Abbasov 2013: 57. Hate speech against Armenians comes also from the opposition.

<sup>36</sup> Meydan.tv 2014; Institute for War & Peace Reporting 2012 a and b. Geybullayeva 2011 considers that this leads, in particular on the Internet, to a process of “dehumanisation of the enemy”. For an example see The Daily Dot 2012.

<sup>37</sup> See for example the comments on the occasion of the dismissal of the person who used to be responsible for the “Azerbaijani flag square” in May 2015, Aze.az 2015; and Abbasov 2013: 36.

<sup>38</sup> Meydan.tv 2015c.

<sup>39</sup> Caucasus Research Resource Centre et al. 2013: 21.

<sup>40</sup> Both were convicted for large-scale fraud, illegal entrepreneurship, tax evasion, and falsifying official documents. The couple also faces separate charges of treason, which could carry a life sentence, Meydan.tv 2015b; CommDH 2015; BBC.com 2015; Institute for War & Peace Reporting 2014a.

<sup>41</sup> Anti-Defamation League 2015. See also PEW Research Centre 2013.

<sup>42</sup> Eurasianet.org 2011. The Islamic Party of Azerbaijan was banned in 1995.

<sup>43</sup> Gender and Development 2013: 25; ILGA Europe 2014: 41.

to stay out of Azerbaijan.<sup>44</sup> Politicians and public figures in Azerbaijan also regularly make degrading and discriminatory statements about homosexuality. News items relating to LGBT persons often contain humiliating language. Allegations of LGBT sexual orientation have also been used to discredit political opponents and journalists.<sup>45</sup> For example, another leader of the Islamic Party, Elchin Manafov, stated in spring 2012 during the run-up to the Eurovision Song Contest and the Pride Parade usually held on that occasion: “If this evil [the Pride Parade] happens in our country, our blood will be shed to defend Islam and we will do anything to prevent this from happening. They should know that they will have to walk over our bodies to have the Eurovision [...] They should know that if [the Pride Parade] happens nothing else will matter to us. We will turn Azerbaijan into a burning hell and are not afraid of a possible civil war in the country.”<sup>46</sup> In August 2014, the website of an LGBT organisation was subject to a cyber-attack. Their homepage was replaced with a jihadist flag and the statement: “Azerbaijan does not have a place for you! We will destroy you all!”<sup>47</sup>

- **Responses to hate speech**

28. ECRI has noted positive attitudes of tolerance among the population and civil servants in particular in the district of Guba. At the same time, it considers that clear action is needed to combat the harmful hate speech targeted at Armenians, LGBT persons and some religious communities. To this end, it is essential to identify the root causes for this hate speech and to develop strategies to tackle them (§ 3 of ECRI’s new GPR No. 15 on hate speech). Concerning the many instances of hate speech directed at Armenians it is obvious that they are part of a policy of hardening confrontation with regard to the conflict over Nagorno-Karabakh.<sup>48</sup> While it is not for ECRI to comment on this conflict, it is highly concerned about the resulting hate speech that affects the Armenians living in Azerbaijan. Given its harmful effects, ECRI considers, just like the OSCE Minsk Group<sup>49</sup>, that the authorities should put an end to this constant, mediatised use of hate speech and rather promote mutual understanding and confidence.<sup>50</sup> At the same time, this would give more credibility to the authorities’ policy to promote Azerbaijan as an example of tolerance and multiculturalism.

29. ECRI reiterates its recommendation that the Azerbaijani authorities ensure that public officials at all levels refrain from hate speech towards Armenians.

30. With regard to hate speech in the media, ECRI takes positive note of Article 3.1 of the Azerbaijani Press Council’s Code of Ethics, according to which a journalist shall not criticise persons for their citizenship, race, gender, religion, profession, language, place of birth or residence, and that journalists shall not highlight such data. The Press Council is also competent for electronic media. As it has not received any complaint for hate speech in recent years, ECRI considers that the authorities should take measures to raise the general public’s awareness of the Press Council, its competence to ensure compliance with its Code of Ethics and the possibility to lodge complaints with the Press Council on hate speech in the media. The authorities should also, without encroaching on the media’s editorial independence, raise journalists’ awareness of the Code of Ethics and the need to check their sources more carefully in order to avoid spreading prejudice and

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<sup>44</sup> BBC.com 2011.

<sup>45</sup> Civil Rights Defenders 2015; U.S. Department of State 2014: 35.

<sup>46</sup> ILGA Europe 2013: 55.

<sup>47</sup> Caucasus Equality News Network 2014c.

<sup>48</sup> Shaffer B. 2014.

<sup>49</sup> This body is tasked with finding a peaceful solution to the conflict over Nagorno-Karabakh.

<sup>50</sup> OSCE 2012b, 2013b and 2014a and b. The authorities informed ECRI about activities in the field of “people’s diplomacy”, which were however discontinued.

hatred. The Press Council could also be a valuable partner to carry out necessary training for journalists in this field.

31. Concerning hate speech on the Internet, ECRI considers that Azerbaijan should ratify the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, which Azerbaijan signed on 15 March 2010. This would give the Azerbaijani cyber security centre valuable additional tools and full access to international co-operation in combating online hate speech. In the field of prevention ECRI encourages the authorities to include measures to maintain the positive attitudes towards Jews into their awareness-raising activities<sup>51</sup>, as the study cited in § 26 shows that there is still room for improvement. Significant progress is required with regard to attitudes towards LGBT persons: openness, understanding and tolerance towards them should also be included in the policy and measures aimed at increasing tolerance and preventing conflict.<sup>52</sup>
32. Concerning the criminal response to hate speech, ECRI notes inconsistencies in the statistical information provided. During the country visit the authorities informed ECRI's delegation that during the last five years there had been only one conviction under Article 283 CC.<sup>53</sup> These data do not, however, contain for example the sentence of Hilal Mammadov under Article 283 CC (cf. below § 34). Furthermore, according to the information document provided by the authorities to ECRI on 23 April 2015, the Supreme Court has in recent years considered eight criminal cases on 11 persons convicted under Article 283 of the CC. ECRI is therefore of the opinion that the authorities should review these statistics. In addition, not only the Ombudsperson, but also the police should establish regular round tables with all vulnerable groups falling under ECRI's terms of reference in order to ensure that any instance of hate speech is reported.<sup>54</sup>
33. ECRI recommends that the authorities build up regular dialogue with vulnerable groups in order to ensure that any instance of hate speech is reported and that they ensure that their statistics contain all instances of racist, homo- and transphobic criminal offences.
34. ECRI notes with great concern reports on the misuse of hate speech legislation and in particular on the conviction under Article 283 CC of Hilal Mammadov, the former editor-in-chief of the only newspaper in the Talysh language. After his arrest on charges of drug possession, the police reportedly beat and racially insulted him. A few days later, additional charges of treason and incitement to hatred were brought. The arrest took place shortly after Hilal Mammadov had posted a video clip on the Internet, which received over 20 million hits, drawing attention to the Talysh culture.<sup>55</sup> Leyla Yunus (cf. § 25) described his arrest as an example of pressure on minority groups.<sup>56</sup> Mr Mammadov's complaint of torture and ill-treatment during his pre-trial detention was rejected and in September 2013 he was sentenced to five years' imprisonment. Observers state that the key prosecution witness was the same as in the trial against Novruzali Mammadov, a former editor-in-chief of the same Talysh newspaper who had died in a prison hospital on 17 August 2009.<sup>57</sup> According to the authorities, the investigation under Article 283 CC was based on "speeches harming the trust and respect for the

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<sup>51</sup> See in this respect Chapter 4 of the National Human Rights Action Plan, Republic of Azerbaijan 2011.

<sup>52</sup> For more details see the section on policies to combat discrimination and intolerance against LGBT.

<sup>53</sup> According to ODIHR 2015, this conviction was reported in 2011 and according to UN CERD 2015: § 47 it was handed down against Suleymanov Abgoul Neimat Oglu.

<sup>54</sup> See the recommendation made below in § 44 and §§ 18 and 82 to 86 of ECRI's GPR No. 11.

<sup>55</sup> For details cf. CoE CommDH 2015: §§ 13 et seq.; Human Rights Council 2013: § 11; UNPO 2013: 26.

<sup>56</sup> Yunus L. 2012.

<sup>57</sup> See § 105 of ECRI's third report on Azerbaijan.

lifestyle, culture, traditions and history of the population groups residing on Azerbaijani territory and leading to incitement of hostility among the said groups”; Hilal Mammadov had also allegedly incited national-religious conflict in order to undermine the constitutional structure of the country and given “biased and untrue interviews about the difficult life of the Talysh people”. Like the UN’s Working Group on Arbitrary Detention<sup>58</sup>, ECRI considers that this explanation gives rise to the fear that the sentence under Article 283 CC violates Mr Mammadov’s legitimate exercise of freedom of expression (Article 10 ECHR).<sup>59</sup> It therefore welcomes the fact that this case has been brought before the ECtHR.

35. ECRI strongly recommends that the authorities ensure, for example by intensive training of prosecutors and criminal judges, that due consideration be given to the freedoms of expression, religion and association when applying Article 283 of the Azerbaijani Criminal Code on incitement to national, racial or religious hostility.

36. Finally, ECRI is highly concerned about the situation of civil society in Azerbaijan. Due to the crackdown on independent NGOs, members of vulnerable groups can no longer turn to such organisations in order to receive aid and assistance in cases of hate speech and other instances of racism and discrimination. ECRI reiterates the importance, in democratic societies, of leaving room for the development of an independent civil society and independent media, which also have the role to voice critical opinions. In addition, they make an important contribution to fighting hate speech and pushing forward activities to protect and assist vulnerable groups in the other fields dealt with in this report.<sup>60</sup> Stepping up state funding for NGOs, as Azerbaijan has done in recent years<sup>61</sup>, and reducing other sources of funding (Article 2.5 of the Law on Grants), entails the danger of compromising the independence of NGOs and with this their ability to promote critical views, change and continuous improvement. ECRI therefore considers that the authorities should restore the conditions for a diverse and independent civil society in particular by implementing the detailed recommendations already made by other Council of Europe bodies in this field.<sup>62</sup> ECRI notes that the Council for State Support to NGOs has set up a “Law and Monitoring Commission” to deal with these issues. ECRI will evaluate this commission’s activities when monitoring the implementation of the following recommendation.

37. ECRI strongly recommends that the authorities create conditions under which a diverse and independent civil society can develop by implementing the detailed recommendations of the Council of Europe’s Parliamentary Assembly’s (§§ 11.1, 11.2 and 11.6 to 11.8 of Resolution 2062(2015)) and of the Venice Commission (§ 94 of Opinion No. 787/2014).

### **3. Racist and homo/transphobic violence**

38. ECRI has not received any official information about violent hate crime based on ethnic affiliation committed in Azerbaijan in the last five years<sup>63</sup>, but, given the on-going conflict over Nagorno-Karabakh, ECRI is concerned that the on-going waves of hate speech create a risk of violence. In this connection ECRI expressed, in a press release of 4 September 2012, its consternation at the pardoning and release of Ramil Safarov, shortly after he had been transferred

<sup>58</sup> UN, Human Rights Council 2014.

<sup>59</sup> *Incal v. Turkey*, No. 41/1997/825/1031, 09.06.1998, §§ 46 et seq.; *Gündüz v. Turkey*, No. 35071/97, 04.12.2003, §§ 42 et seq.; *Temel v. Turkey*, No. 16853/05, 01.02.2011; ECtHR 2015; *Weber A.* 2009.

<sup>60</sup> Cf. in this respect ECRI’s GPRs Nos. 3, 9, 12 and 14.

<sup>61</sup> The authorities have informed ECRI that, in 2012, 65% of the financial support to NGOs was provided by the government and local donors and that this percentage is increasing.

<sup>62</sup> CoE Venice Commission 2014 : § 94; CoE PACE 2015, in particular §§ 11.1, 11.2, and 11.6 to 11.8.

<sup>63</sup> See however the allegations of violence towards political prisoners cited in the previous paragraphs, which are connected with ethnic conflicts.

from Hungary to Azerbaijan in order to serve there a sentence of life imprisonment imposed by a Budapest court for the murder of an Armenian army officer in 2004. Moreover, Ramil Safarov was promoted to the rank of major, given a flat and the pay he had lost since his arrest in Hungary. In its press release, ECRI pointed out the risk that such action could cultivate a sense of impunity for the perpetrators of racist crimes of the most serious nature.<sup>64</sup>

39. Among the cases of violence relating to religion are several cases of supposedly radical Sunni Muslims being forced to have their beards shaved. In 2012, police officers allegedly beat and forcibly shaved a 51-year-old man who refused to shave his beard before being photographed for his identity card.<sup>65</sup> A video of another case on 4 July 2014 shows the victim being punched on the market place and his beard being forcibly cut off in public. A police investigation was opened not only in this case,<sup>66</sup> but also following an arson attack with a Molotov cocktail thrown into the Sunni Qaracuxur mosque in the suburbs of Baku on 26 November 2014. Observers also consider that the attack and subsequent death of the journalist Rafiq Tagi on 23 November 2011 could be linked to religious reasons. In an interview given after the attack and before his death in a hospital, Mr Tagi said that Iranian clerics had issued a fatwa against him following the publication of an article in which he had criticised the Iranian authorities for their religion-based policies and suppression of human rights. On 8 January 2014 the Prosecutor General's Office informed Tagi's relatives that the investigation into the killing had ended; no further explanation was given.<sup>67</sup>
40. ECRI is also highly concerned about many reports of violent attacks at LGBT persons.<sup>68</sup> A considerable number are committed by family members of the victims. For 2011, an NGO reported to OSCE five homo/transphobic physical assaults. For 2013, another NGO reported one physical assault.<sup>69</sup> In 2014, a 17-year-old young man was brutally raped. As a video of the rape was delivered to his family, he was beaten by his parents. In August 2014, a homosexual teenager was set ablaze by his parents.<sup>70</sup> Also, a 22-year-old transsexual Azerbaijani reported that his family sometimes kept him locked up, hid his clothes and threatened him with death if he did not dress "like a woman".<sup>71</sup> A 20-year-old lesbian woman was reportedly killed by her sister after her sexual orientation was revealed.<sup>72</sup> Another young man was beaten and whipped by his parents, and his mother poured petrol over him in an attempt to burn him alive after he had attended an LGBT conference.<sup>73</sup> In September 2014, a photo of his engagement party was leaked and he and his gay partner received numerous death threats. LGBT representatives consider that the suicide of Isa Shahmarli, a well-known gay rights defender, is also the result of the hate and discrimination

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<sup>64</sup> ECRI takes note that the Defence Minister responsible has since been dismissed, but there is no information that the dismissal was linked to these unacceptable events.

<sup>65</sup> US Department of State 2012: 7.

<sup>66</sup> UNHCR 2014; Institute for War & Peace Reporting 2014c.

<sup>67</sup> For the complete background including Mr Tagi's imprisonment and amnesty after a 2007 conviction under Article 283 CC in connection with an article asserting that Islam was hampering Azerbaijan's economic and political progress cf. Committee to Protect Journalists 2011; Theguardian.com 2011; Radio Free Europe 2014.

<sup>68</sup> For the time period until 2010 cf. Danish Institute for Human Rights 2010b: §§ 57 et seq.

<sup>69</sup> OSCE/ODIHR 2012: 81 and OSCE/ODIHR 2015; LGBTAZ.org 2014.

<sup>70</sup> International Business Times 2014.

<sup>71</sup> Eurasianet.org 2014a.

<sup>72</sup> It is believed that her sister attempted to decapitate her, Caucasus Equality News Network 2014a. On 12 November 2015 the Baku Grave Crime Court decided to place the perpetrator in a psychiatric hospital, AZNews.az 2015.

<sup>73</sup> Caucasus Equality News Network 2014b and d. Activists state that the police does not listen to LGBT persons' demands for safety, Theguardian.com 2014.

he had experienced.<sup>74</sup> In a 2012 survey, 27% of the respondent LGBT persons stated having faced physical harassment. In 15 cases, the violence came from the police, in 14 cases from family members.<sup>75</sup>

41. ECRI considers that decisive action is needed to protect the victims from such violent hate crime. It is for the police, and also for the Ombudsperson to take the necessary measures to prevent such hate crime, to protect victims and to thoroughly investigate all cases of hate crime (§ 11 of GPR No. 11) including those committed against LGBT persons. In this connection, ECRI is alarmed about reports from civil society about humiliating attitudes among the police and even instances of police brutality towards LGBT persons. As a result, LGBT persons often do not report hate crime to the police<sup>76</sup> or the Ombudsperson. Reports about the treatment of persons such as Hilal Mammadov and Leyla and Arif Yunus will also prevent members of vulnerable groups from reporting hate crime to the authorities.
42. To remedy this situation, the police should abandon hostile action against vulnerable groups and build up frameworks for regular dialogue and co-operation with the different communities and NGOs promoting their interests (§ 18 of GPR No. 11). This can, for example, be done by establishing regular round table meetings between the police, the Ombudsperson and the representatives from the different communities including the LGBT community with a view to establishing trust. Police should also be trained in policing a diverse society, which includes LGBT persons and their human rights (§ 16 of GPR No. 11). A positive example for such a change of attitude is the protection measures taken by the authorities after bomb and other threats against LGBT persons during the 2012 Eurovision Song Contest.
43. With regard to domestic violence against LGBT persons, ECRI welcomes the fact that Azerbaijan has included in its Law on the Prevention of Domestic Violence of 22 June 2010, a broad definition of this term, which includes such violence against LGBT persons (Article 1.0.1). Noting that the number of protection measures issued under this law is still very small and that the stakeholders involved appear to place precedence on family unity over victim protection<sup>77</sup>, ECRI encourages the police and other competent authorities to remedy these shortcomings and to use the law's instruments to also protect LGBT persons.
44. ECRI recommends that the police and prosecution services thoroughly investigate all cases of alleged hate crime, that they establish dialogue and co-operation with groups at risk of hate crime and that they use the Law on the Prevention of Domestic Violence to protect LGBT persons.

#### **4. Integration policies**

45. In Azerbaijan, two groups of persons can be identified as being in need of integration policies: on the one hand, refugees and other migrants and, on the other ethnic, linguistic and religious minorities historically present in the country.

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<sup>74</sup> NEFES LGBT 2014b.

<sup>75</sup> Gender and Development 2013: 10.

<sup>76</sup> Eurasianet 2014a; Gender and Development 2013: 11; COWI 2010b: § 58.

<sup>77</sup> Cf. OSCE 2013a: 20.

- **Refugees and other migrants**<sup>78</sup>

46. As a result of positive economic development, since 2008 the number of persons moving to Azerbaijan has been higher than the number of persons leaving the country. According to the authorities, about 9 600 persons are living in the country with a permanent residence permit<sup>79</sup> and about 42 000 with a temporary residence permit.<sup>80</sup> The annual labour migration quota was increased to 12 000 people in 2014 (10 700 in 2010). The majority of registered labour migrants work in the sectors of construction and oil and gas production. A sample survey of their living conditions was last conducted in 2009. According to the authorities, in 2014 6 022 Turkish and 1 852 British citizens were legally employed in the country. Other countries from which significant numbers arrive are China, India, Georgia, Iran and the Russian Federation.<sup>81</sup> According to diverging figures from the Turkish embassy for 2012, over 43 846 Turkish citizens lived and worked in Azerbaijan, of whom 30 971 were not officially registered; 12 875 were legally employed.<sup>82</sup>
47. ECRI regrets that no comprehensive current data are available in Azerbaijan on migrants' living conditions and countries of origin.<sup>83</sup> At the same time, ECRI welcomes and endorses the authorities' statement that appropriate migration statistics are needed in order to implement an effective migration policy.<sup>84</sup> It encourages the authorities to develop a set of indicators and regularly collect current statistical data on these indicators in order to evaluate and improve the integration and the living conditions of migrants and their families in core areas such as educational outcome, labour market access, health and housing. International standards in this area can be a valuable guideline in this regard.<sup>85</sup>
48. ECRI takes positive note of the steps Azerbaijan has already taken for the integration of migrants and the implementation of the UN Convention on the Rights of All Migrant Workers and Members of Their Families (ICMRW). In 2007, the State Migration Service was established to implement the state policy in the field of migration, to develop a migration management system, to forecast and regulate migration processes and to coordinate the activities of state agencies in these fields.<sup>86</sup> ECRI also notes with satisfaction that its priority recommendation from the previous report to adopt a Migration Code (MC) has been implemented; Article 77 MC on the "adaptation" of foreigners lays the ground for integration policies including measures such as language and integration courses. According to the authorities, most migrants do not have problems passing the obligatory test when applying for a permanent residence permit (Article 54.5 MC), as they come

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<sup>78</sup> As a result of the conflict over Nagorno-Karabakh, about 250 000 persons of Azerbaijani origin were expelled from Armenia and more than 700 000 other persons have been internally displaced (MFA 2013). The vast majority of these persons is ethnic Azerbaijani and has Azerbaijani citizenship. As ECRI has not received any information about intolerance vis-à-vis this part of the population, it will not further explore their situation but refer to the recommendations of the international institutions specialising in this issue, in particular of UN Special Rapporteur on the human rights of internally displaced persons 2015.

<sup>79</sup> According to State Statistical Committee 2015: 94, this figure increased in 2014 by 1 100 persons.

<sup>80</sup> The number of temporary residence permits rose from 30 230 in 2010 to 53 953 in 2015. The number of permanent residence permits increased from 693 in 2010 to 2 641 in 2015.

<sup>81</sup> State Statistical Committee the Republic of Azerbaijan 2014: §§ 6 et seq.

<sup>82</sup> Migration Policy Centre 2013: 1. See also ILO 2012: 33.

<sup>83</sup> IOM 2013b: 58. While the general unemployment rate fell between 2000 and 2013 from about 12% to 4.9% (World Bank Group 2014: 7), there are for example no data available about the unemployment rate of foreigners. According to the authorities there are almost no unemployed foreigners as the residence permit is linked to employment.

<sup>84</sup> State Statistical Committee of the Republic of Azerbaijan 2014: § 3.

<sup>85</sup> Cf. in particular EC 2013 and OSCE 2012a.

<sup>86</sup> Presidential decree No. 560 of 19 March 2007.

from neighbouring countries and have a similar linguistic and cultural background.

49. ECRI however regrets that the authorities have not developed an action plan or overall integration strategy addressing the integration needs of migrants in core areas such as housing, health, employment, education, equality and protection from discrimination.<sup>87</sup> Moreover, the Migration Code contains some harsh restrictions for migrants: Article 71.2 MC stipulates that migrant workers have to leave the country automatically within 10 working days if their employment contract is terminated and they have no other valid legal basis to stay. The Migration Code does not grant them a time period in which to seek alternative employment (see however Article 51 ICMRW) nor does it require that their individual, family and social situation be taken into account when deciding on expulsion (Articles 8.1 ECHR and 56 ICMRW). Appeals against expulsion orders do not have suspensive effect (Article 79.8 MC). As a result, foreign employees are highly dependent on their employers. ECRI also considers that the blanket prohibition for foreign nationals and stateless persons “to issue religious propaganda” (Article 76.6 MC)<sup>88</sup> and the official statement that they are not allowed to be members of a political party<sup>89</sup> cannot be justified, and that these discriminatory provisions should be removed. Under the new legal framework, the right to education of many foreigners is limited by quotas and agreements concluded by the educational institutions (Article 44.1 of the Law on Education). This restriction appears to conflict with the prohibition of discrimination in respect of the right to education (Articles 30, 43 and 45 ICMRW).<sup>90</sup>
50. Recalling that Azerbaijan is being transformed into a country of immigration, ECRI considers that all the above point to the need for a coherent integration policy based on clear indicators and reliable statistical data.
51. ECRI recommends that the authorities draw up a comprehensive integration strategy for persons with migration backgrounds; they should also develop, while respecting the principles of confidentiality and voluntary self-identification, statistical data and a set of indicators in order to evaluate and improve the integration and living conditions of migrants in core areas such as education, employment, health and housing.
52. Informal employment is widespread in Azerbaijan. In 2014, the authorities identified about 37 420 migrants in an irregular situation.<sup>91</sup> There is good reason to suppose that there is a link between the relatively high number of migrants in an irregular situation and the fact that employers are looking for cheap labour and do not want to pay the annual fee of AZN 1 000 (about 850 Euros) per employee for a temporary residence permit.<sup>92</sup> Migrants hired without payment of this fee do not have access to services and cannot even assign power of attorney in proceedings before the authorities, as notaries issue power of attorney only to persons who hold a temporary residence permit. Given the employers’ responsibility for this situation, ECRI welcomes the fact that the State Migration Service carries out inspections to uncover such practices. At the same time it considers that the authorities should work towards removing obstacles to the

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<sup>87</sup> International standards in this field are laid down in OSCE 2012a.

<sup>88</sup> For more details see below in § 68 and Venice Commission and OSCE/ODIHR 2012, §§ 12 et seq.

<sup>89</sup> [http://www.azerbaijans.com/content\\_1777\\_en.html](http://www.azerbaijans.com/content_1777_en.html), accessed on 9 September 2015.

<sup>90</sup> Article 14 ECHR read in conjunction with Article 2 of Protocol No. 1 to the ECHR and in Articles 30 and 45 ICMRW. For the whole paragraph see IOM 2013b: 66 et seq.

<sup>91</sup> Informal employment is in general widespread, in particular outside the capital. Only 33% of people have a formal labour contract, in Baku 60%, World Bank Group 2014: 7.

<sup>92</sup> For more details see Articles 14.8 and 18.58 of the Law on State fees and Articles 64.0.15 and 74 MC.



registration of migrant workers, for example by lowering the high fee for residence permits (Articles 68 and 69 ICMRW).<sup>93</sup>

53. ECRI recommends that the authorities step up their efforts to ensure that employers declare all migrant workers and to remove the obstacles to registration of migrant workers.

54. Among the refugees and asylum seekers in the country (about 1 500 at the end of 2015) the largest groups are Afghans followed by Chechens and Pakistanis. The number of recognised refugees (about 4%) is low. Chechens are denied access to the asylum procedure and there are no provisions on subsidiary protection.<sup>94</sup> Persons under UNHCR protection have difficulties in accessing the labour market and the authorities are reluctant to allow local integration as stipulated in Articles 17 et seq. of the UN Convention on the Status of Refugees.<sup>95</sup> ECRI therefore encourages the authorities to cover all persons under UNHCR protection when developing an integration strategy as recommended in § 51 and to ensure compliance of this strategy with the above-cited UN Convention and the case law of the ECtHR in the field of subsidiary protection.<sup>96</sup> At the same time, it takes positive note of the preparation of an amendment to the MC on subsidiary protection.

- **Historical ethnic, religious and linguistic minorities**

55. Issues relating to the preservation of the identity of historical ethnic, religious and linguistic minorities<sup>97</sup> are dealt by the specialised Council of Europe monitoring mechanism established under the Framework Convention for the Protection of National Minorities. ECRI will therefore focus on the need for a policy for their social integration.

56. ECRI welcomes the fact that the authorities have undertaken considerable efforts to improve the historical minorities' access to public services and to the labour market. However, many minorities inhabiting rural and mountainous areas still suffer from higher degrees of poverty and below-average health and education services.<sup>98</sup> Furthermore, reports indicate that members of minorities are subject to discrimination and that officials perceive some minorities as a threat to the country.<sup>99</sup> Enrolment in preschool education is, in general, low. Often, this is detrimental to children belonging to minorities, who should acquire, in addition to their mother tongue, sound knowledge of the official language before attending primary school.<sup>100</sup> On the positive side, reference can be made, for example, to the construction of schools and roads to remote villages in the Caucasus; to the

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<sup>93</sup> For the whole paragraph see IOM 2013b: 52 et seq. See in this connection also draw on ECRI's forthcoming GPR on irregular migrants.

<sup>94</sup> US Department of State 2014: 23. The authorities have informed ECRI that Chechens are not expelled from the country.

<sup>95</sup> The authorities have informed ECRI that persons under UNHCR protection are allowed to work without a work permit and that asylum seekers have access to health care and language courses.

<sup>96</sup> ECtHR 2013.

<sup>97</sup> According to the most recent census of 2009, out of the total population of 8 922 million, 8 172 800 are Azerbaijanis (91.6%), 180 300 are Lezghis (2%), 120 300 Armenians (1.3%), 119 300 Russians (1.3%), 112 000 Talysh (1.3%), 49 800 Avars (0.6%), 38 000 Turks (0.4%), 25 900 Tatars (0.3%), 25 200 Tats (0.3%), 21 500 Ukrainians (0.3%) and 12 300 Sakhurs, 9 900 Georgians, 9 100 Jews and 6 100 Kurds (0.1% each), CERD 2015: 15. According to alternative sources, there are 600 000 to 800 000 Lezghis and up to 500 000 Talysh, UNPO 2013: 20 et seq. The Roma population is estimated at between 2 000 and 10 000.

<sup>98</sup> World Bank Group 2015: 5; UN, International Fund for Agricultural Development 2014 and 2015.

<sup>99</sup> For examples see Institute for War & Peace Reporting 2012a; UNPO 2013: 23. ECRI was also informed that a celebration for the anniversary of a Talysh poet was cancelled by the Ministry of National Security.

<sup>100</sup> OSCE 2012a: § 42.

Ombudsperson's campaign on removing discrimination in education<sup>101</sup>; and the decentralisation and establishment of institutions such as courts, legal clinics and local offices of the Ombudsperson in areas densely inhabited by historical minorities. At Guba, a medical school was opened to remedy a shortage of doctors and nurses.

57. During its contacts with minority representatives, ECRI's delegation was informed that these development programmes would have a positive impact on the employment of persons belonging to minorities. However, there are no statistical data available to evaluate the impact of such measures and no authority has clear mandate to coordinate them. In this regard, many had high expectations of the new Baku International Multiculturalism Centre, which has, according to its charter, the tasks to "preserve tolerance and diversity in the country, explore and promote models of multiculturalism and present Azerbaijan to the world as a centre of multiculturalism". ECRI encourages the Centre not only to focus on the last, but also the first two of these tasks.<sup>102</sup>
58. In the fields of access to citizenship and identity documents for members of some historical minorities there is conflicting information. According to the authorities, uncertainty with regard to the citizenship of about 18 000 persons was eliminated between 2008 and 2014. The Ombudsperson informed ECRI that she has received no further complaints on this issue since 2010. Other sources indicate that not all Meskhetian Turks have had access to citizenship and that several thousand ethnic Azerbaijanis originating from Georgia and other former Soviet republics are still stateless. There are also reports of Roma communities living in remote areas lacking basic legal documentation, which results in an extremely vulnerable socio-economic situation without access to the social, health and education system. Reportedly, the number of home-births without official registration is high.
59. ECRI observes that it is difficult to monitor progress in the field of integration, the creation of equal living conditions and access of historical minorities to their rights. It considers that a single institution should be designated to lead and co-ordinate the framing of comprehensive integration policies for historical ethnic, religious and linguistic minorities, which should notably include activities to reduce the number of stateless persons. At the same time, the authorities should establish a system of integration indicators in order to monitor the impact of the different activities under the strategy and of the achievement of the strategy's goals.
60. ECRI recommends that the authorities designate a single authority to lead and co-ordinate the development of comprehensive integration policies for historical ethnic, religious and linguistic minorities, based on integration indicators.
61. Additional religious minorities' issues are dealt with in the next section of this report.

## **II. Topics specific to Azerbaijan**

### **1. Interim follow-up recommendations of the fourth cycle**

62. The first interim follow-up recommendation in ECRI's 2011 report on Azerbaijan was that the authorities swiftly complete the procedure for the registration of religious communities and that they clarify the legal situation of communities still awaiting a registration decision, particularly by clearly specifying that those already registered must be able to continue to function normally during the transitional period.

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<sup>101</sup> See Chapter 4 of the National Human Rights Action Plan, Republic of Azerbaijan 2011.

<sup>102</sup> Azernews.az 2014.

63. During the country visit, the authorities informed ECRI's delegation that, by June 2015, 615 religious communities had been registered. 594 of these were Muslim communities, 12 Christian, six Jewish, two Baha'i and one Krishna.<sup>103</sup> Eight applications were pending;<sup>104</sup> most concerned religious communities wishing to obtain a second or third registration in different parts of the country. According to the authorities, all applicants had been informed about the shortcomings in their application. Religious communities, which were not re-registered or did not receive registration, report that their members live in constant fear of police intervention, arrest and heavy penalties. According to the authorities the registration of communities that have received registration only under the previous legal regime remains valid. However, they are not included in the religious communities section of the website of the State Committee for Work with Religious Organisations (SCWRO). Persons consulting this register can be misled and conclude that such communities have no valid registration.
64. In May 2013 at Shamkir, in September 2013 in Aliabad, in January 2014 in Ganja, in March 2014 at Lankaran and in June and October 2014 at Ganja and Mingachavir, police raided private homes where small numbers of worshippers had gathered without being part of a registered community. Subsequently, several dozen worshippers were held for hours at police stations. At Shamkir, the deputy chief of police threatened to rape one worshipper, to shave his head and to put him in prison for fifteen days. Worshippers were also insulted at other police stations. In several cases the courts imposed fines of AZN 1 500 to 2000 (1 300 to 1 500 Euros); in one case, the decision was, however, quashed by the Court of Appeal, in another case the district court acquitted an accused person. Other worshippers were detained and heavily fined for having shared their belief in public spaces or private homes. In February 2015, three months of pre-trial detention were imposed to two worshippers for alleged unauthorised distribution of religious literature; the pre-trial detention was subsequently prolonged for a further seven months.<sup>105</sup>
65. ECRI points out that the Venice Commission and ODIHR concluded, in a joint opinion of 2012, that the relevant Law on Freedom of Religious Belief (LFRB) sets out a legal framework which in several aspects is contrary to international standards.<sup>106</sup> In addition, ECRI again refers, as it did in its 2014 conclusions on the implementation of this recommendation, to the case law of the ECtHR according to which it is not compatible with the ECHR to sanction individual members of an unregistered religious denomination for praying or otherwise manifesting their religious beliefs.<sup>107</sup> It considers that the above-mentioned police raids, detentions and convictions clearly violate the victims' right to religious freedom and discriminate against them on the ground of religion. ECRI also considers that the cases of alleged racially-motivated misconduct by the police should be investigated by the competent authorities including the Ombudsperson (§ 9 of ECRI's GPR No. 11).
66. ECRI strongly recommends that the authorities, in particular the State Committee for Work with Religious Organisations and the Ministry of Interior, swiftly complete the procedure for the registration of religious communities and ensure that there are no further instances of discrimination against and violations of the right to religious freedom of members of religious communities, which are in the

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<sup>103</sup> According to additional information provided by the authorities, about 200 formerly registered religious communities did not apply for re-registration.

<sup>104</sup> According to the authorities they were made by Baptists, Jehovah's Witnesses and Islamic communities.

<sup>105</sup> Forum18.org 2015b.

<sup>106</sup> For details see Venice Commission and OSCE/ODIHR 2012, §§ 12 et seq.

<sup>107</sup> *Masaev v. Moldova*, No. 6303/05, 12 May 2009, § 26.

process of registration, such as police misconduct and unlawful police raids, detention and convictions.

67. In its 2014 conclusions, ECRI considered that the authorities had not implemented a second interim follow-up recommendation; this concerned the establishment of a system for collecting judicial system data so as to detect any cases of direct or indirect discrimination against persons belonging to groups coming within ECRI's terms of reference in their dealings with the judicial system. Apart from the criminal-law cases directed at members of vulnerable groups already dealt with in this report, ECRI has not received any fresh information about systematic discrimination of vulnerable groups by the courts. Therefore, it will not pursue the issue in this report.

## **2. Discrimination on the ground of religion**

68. ECRI is particularly concerned about various additional reports of discrimination on the ground of religion. As already pointed out in § 65, the Venice Commission and ODIHR hold the opinion that several aspects of the legislative framework on religious freedom are contrary to international standards. Core recommendations made in their report are to include in the definition of "freedom of religion" the right to manifest a religion in private or public and in worship; to allow missionary work, teaching, practice and observance; to reform the system of state registration by allowing individuals and religious communities to practise religion without state registration; and to remove undue restrictions on the right to freely disseminate religious literature. At present, unjustified restrictions in these fields often affect minority Muslim communities and non-traditional religious groups, thereby leading to discrimination against them.

69. Such interference in religious freedom and potentially discriminatory practice can be seen from a number of reports on the detention mainly of Sunni Muslims. While 65% of Muslims in Azerbaijan are Shia, the minority of 35% are Sunni, and a considerable number of Sunni Muslims belong to the historical ethnic minority of the Lezghi.<sup>108</sup> These reports refer, among others, to the detention of a considerable number of participants of the "Freedom for hijab" protest on 5 October 2012, the arrest of about 200 Muslims in Nakhchivan in mid-November 2014, the pre-trial detention, since February 2015, of five Sunni Muslims who were later convicted under Article 167.2.1 CC for having distributed religious literature without authorisation and the arrest of about 85 followers of Said Nursi in Baku on 22 September 2015. Other reports concern the closing of Sunni mosques, the ban on praying outside mosques (Article 12.1 LFRB), an obligation for imams to wear a uniform, and police actively preventing worshippers from entering mosques. The head of the SCWRO announced new restrictive amendments to the LFRB on the activities of clergy having studied abroad and on the use of religious flags and religious ceremonies in the streets.<sup>109</sup>

70. Furthermore, Azerbaijan has not passed a law on alternative service, as promised on accession to the Council of Europe in 2001. Even though the constitution allows for alternative service (Article 76.2 AC), a conscientious objector from a minority religious group was sentenced, in April 2014 and in August 2015, for evasion of military service.

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<sup>108</sup> UNPO 2013: 21.

<sup>109</sup> For this and the following paragraph see Norwegian Helsinki Committee 2015: 43 et seq.; Yunus, L. and Jafarov, R. 2014: 47 et seq.; Forum18.org 2015a and b; Human Rights Without Frontiers 2015; Azernews.az 2015; Institute for War & Peace Reporting 2015a; meydan.tv 2015a. In November 2015, the Shiite Movement of Muslim Unity was denied registration. During the following weeks, at least 32 of its members were arrested. Five members and two police agents were killed during the police action leading to the arrest of the group's head Taleh Baghirov. While the authorities state that the group aimed to overthrow the constitutional order and establish a religious state under Sharia law, others claim that various violations of freedom of religion were committed during the relevant police operations.

71. ECRI also received reports on censorship of religious literature including works by Said Nursi.<sup>110</sup> Furthermore, the related regulation is interpreted and applied in an extremely bureaucratic way: Article 22.2 LFRB requires prior approval before importing or producing literature and other material with religious content, which would, according to the Venice Commission and ODIHR, appear to be in direct breach of Article 10.1 ECHR.<sup>111</sup> According to the authorities, an additional decision is required to approve its distribution. Furthermore, religious communities were informed that every distributed publication must be stamped, but that the SCWRO did not have the necessary stamps. Members of religious communities face criminal punishment under Articles 167 CC and under Article 300 of the Code on Administrative Violations (CAV), including pre-trial detention, if they do not comply with these rules. Persons “carrying out religious propaganda” and persons violating other provisions of the legislation on religion risk punishment under Articles 299 and 300 CAV.
72. The SCWRO informed ECRI’s delegation that 160 cases of administrative offences under Article 299 CAV had been registered within the last five years, and that 300 out of 5 600 imported titles of religious literature had been banned. Furthermore, the SCWRO stated that they had read the reports cited in the previous paragraphs, that they deny these allegations and that they had no information about the detention of two worshippers since February 2015 described in § 64. The authorities have also pointed out that such restrictions should be seen in the context of the danger of the spread of Islamism. They finally claim that the issue of conscientious objection poses a threat to the security of the country.
73. ECRI considers that the authorities need to change their general attitude towards religious freedom. It is of high importance that they bring their legislation into line with the joint recommendations of the Venice Commission and ODIHR, give up their plans further to restrict religious freedom and put an end to discrimination and restrictions to religious freedom which are not justified under the ECHR.<sup>112</sup> Until the entering into force of the necessary legal amendments the authorities should interpret and apply the current legislation in conformity with the binding standards of Articles 9 and 14 ECHR in particular and the case law of the ECtHR and refrain from police raids, arrests and criminal sentences, where there is no clear indication that such limitations to the freedom of religion are necessary in a democratic society (Article 9.2 ECHR).
74. In addition, ECRI strongly encourages the Ombudsperson to use, not only in the area of religious freedom but also in other critical fields such as hate speech, political prisoners and violence against LGBT persons, her powers and independent position to contribute to and promote the upholding of the human rights of vulnerable groups.
75. ECRI strongly recommends that the authorities implement the recommendations made by the Venice Commission and OSCE/ODIHR in their Joint Opinion on the Law on Freedom of Religious Belief. Until the entering into force of the necessary legal amendments, the authorities should ensure, in particular by training of the police and members of the judiciary, that the current legislation is applied in strict compliance with Articles 9 and 14 of the European Convention on Human Rights.

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<sup>110</sup> Concerning a case pending before the ECtHR and the controversy over whether Said Nursi’s writings foster hostility and hatred for non-believers see *Yedinoe Dukhovnoye Upravleniye Musulman Krasnoyarskogo Kraya v. Russia*, No. 28621/11, lodged on 4 April 2011.

<sup>111</sup> Venice Commission and OSCE/ODIHR 2012, §§ 101 et seq.

<sup>112</sup> Concerning the justification of limitations see §§ 3 to 16 of this report on combating racism and the international standards for combating terrorism such as the Council of Europe Convention on the Prevention of Terrorism.

76. Finally, ECRI strongly encourages Azerbaijan to fulfil its commitment to enact legislation on alternative service and refers in this respect to good practices from the region.

77. ECRI strongly recommends that the authorities fulfil the undertaking given upon accession to the Council of Europe to enact legislation on alternatives to military service.

### 3. Policies to combat discrimination and intolerance against LGBT persons<sup>113</sup>

#### - Data

78. There are no official data on LGBT persons and their living conditions in Azerbaijan and the Government has not replied to the questionnaire on the implementation of the Committee of Minister's Recommendation CM/Rec(2010)5 to combat discrimination on grounds of sexual orientation or gender identity. The Ombudsperson informed ECRI that over the last few years she has received no complaints but two LGBT-related requests over her telephone hotline. According to a survey conducted in 2009, 73% of the Azerbaijani population have negative attitudes towards LGBT people.<sup>114</sup> According to another survey from 2014, 60% of the respondents had such negative attitudes and 52% were of the opinion that homosexuality is an innate disease. 64% said they would not like to work with an LGBT person, and 60% responded that, if they were an employer, they would prefer not to hire an LGBT person.<sup>115</sup> On a 2015 civil society index on the human rights situation of LGBT people in Europe, Azerbaijan ranked last.<sup>116</sup>

#### - Policies

79. ECRI has received little information about activities of the authorities in the field of LGBT issues. The Ombudsperson informed ECRI that she explains to the public, in the framework of her awareness-raising programmes, that there should be no discrimination and hate speech against LGBT persons. The authorities also stated that no discrimination of LGBT persons had been reported in prisons and that a study yet to be published contained some LGBT-related questions. Finally ECRI welcomes the fact that the police protected LGBT persons during the 2012 Eurovision Contest in Baku.

80. ECRI notes that the vast majority of LGBT persons in Azerbaijan prefer not to reveal their sexual orientation and gender identity and to keep a low profile in order to avoid social stigma, hate speech and violence. Only some people in the show business can afford to openly show that they are LGBT. The situation is worse in the regions than in Baku. If LGBT persons are open about their sexual orientation and gender identity, they face rejection not only in society, but even from their closest family and friends; parents do not want to admit that their children are LGBT. Police officers reportedly not only detained LGBT, but also threatened, blackmailed or extorted money from them.<sup>117</sup> With regard to the high degree of violence that many LGBT persons encounter when coming out, ECRI refers back to §§ 40 to 44 of this report.

81. In Azerbaijan, there is little public awareness about LGBT issues<sup>118</sup>, since homosexuality, bisexuality and being transgender are considered taboo issues. LGBT matters are rarely part of the public debate and the media barely report on

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<sup>113</sup> For terminology, see the definitions set out in CoE Commissioner for Human Rights 2011.

<sup>114</sup> USAid 2014: 43; NEFES LGBT 2014a; 3view.az (2010).

<sup>115</sup> NEFES 2014.

<sup>116</sup> ILGA\_Europe 2015.

<sup>117</sup> Gender and Development 2013: 24.

<sup>118</sup> According to NEFES 2014, 40 % of the respondents of this study declared having no information about homo- and bisexuality.

LGBT persons and their particular situation. In this environment, LGBT persons are generally unwilling to report cases of discrimination, hate speech and violence to the police or the Ombudsperson. LGBT civil society organisations, which have started developing during recent years, have had to reduce and sometimes give up their activities due to pressure from various sides. One prominent LGBT activist has committed suicide and others have left the country.

82. Under these precarious conditions LGBT persons cannot live on an equal footing with the rest of the population in Azerbaijan (Article 25 of the Azerbaijani Constitution (AC) and Articles 8 and 14 ECHR). ECRI therefore considers that the authorities should take a systematic approach and publicly address LGBT issues in a positive manner. To this end, they should carry out an awareness-raising campaign on LGBT persons, their living conditions and their right to equal treatment. The goal should be to improve the general attitude towards this vulnerable group. At the same time, the authorities should commission a study on the living conditions of LGBT persons in order to fully understand the issues to be tackled for making their right to equal treatment a reality. LGBT representatives and experts from abroad should be involved. Civil servants in contact with LGBT persons should receive training. The police and the Ombudsperson should build up regular and friendly contact with the LGBT community and effectively protect LGBT persons against domestic and other forms of violence. An authority should be charged with co-ordinating these actions and developing an action plan for LGBT persons, which should also encompass initiatives for the necessary legislative amendments discussed in the concluding paragraphs.

- **Legislation**

83. Article 25 AC on the right to equality does not mention discrimination on the grounds of sexual orientation or gender identity. No other legal text explicitly mentions these grounds or includes specific provisions on the implementation of the right to equality for LGBT persons.<sup>119</sup> Since 2000 homosexual acts are no longer punishable and the age of consent for homosexual and heterosexual acts is the same.<sup>120</sup>
84. ECRI considers that Azerbaijan should enact basic legislation to protect LGBT persons and to regulate a number of specific LGBT issues. The first step is to extend the criminal law provisions to combat racism and intolerance and the civil and administrative law provisions on equality and anti-discrimination so that they protect LGBT persons. The authorities should also explore ways to provide same-sex couples with legal or other means to address the practical problems relating to the social reality in which they live.<sup>121</sup> This should pave the way for discussing the recent ECtHR case law on registered same-sex partnership.<sup>122</sup> Concerning transgender persons, there should be a regulation on their access to gender reassignment treatment, change of first names and legal gender recognition.
85. ECRI recommends that the Azerbaijani authorities adopt and implement an action plan for LGBT persons, which should include the objectives of raising awareness about LGBT persons and their living conditions, promoting understanding of LGBT persons and making their right to equal treatment a reality.

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<sup>119</sup> COWI Danish Institute for Human Rights 2010a: §§ 18 to 20.

<sup>120</sup> ILGA 2013: 20 et seq.

<sup>121</sup> Committee of Ministers, Recommendation CM/Rec(2010)5 and its Explanatory Memorandum: § 25. Such practical problems arise in many areas, in which special regulations exist for married couples, for example in the fields of mutual rights and obligations, joint affiliation to social insurance or joint taxation.

<sup>122</sup> See in this respect ECtHR, Oliari et al. v. Italy, nos. 18766/11 and 36030/11, 21.07.2015.





## **INTERIM FOLLOW-UP RECOMMENDATIONS**

The two specific recommendations for which ECRI requests priority implementation from the authorities of Azerbaijan are the following:

- ECRI strongly recommends that the authorities create conditions under which a diverse and independent civil society can develop by implementing the detailed recommendations of the Council of Europe's Parliamentary Assembly's (§§ 11.1, 11.2 and 11.6 to 11.8 of Resolution 2062(2015)) and of the Venice Commission (§ 94 of Opinion No. 787/2014).
- ECRI strongly recommends that the authorities fulfil the promise given when acceding to the Council of Europe to enact legislation on alternatives to military service as already foreseen in Article 76 of the Azerbaijani Constitution.

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



## LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§ 2) ECRI reiterates its recommendation to Azerbaijan to ratify Protocol No. 12 to the European Convention on Human Rights as soon as possible.
2. (§ 9) ECRI recommends that the authorities bring their criminal law, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should (i) include the grounds of colour, language, citizenship and ethnic origin in all criminal law provisions aimed at combating racism and discrimination, (ii) criminalise incitement to violence and incitement to discrimination of foreigners and (iii) criminalise the creation or the leadership of a group which promotes racism; support for such a group; and participation in its activities.
3. (§ 16) ECRI again recommends that the Azerbaijani authorities reinforce the civil and administrative law provisions on the protection of victims of discrimination by adopting comprehensive legislation to combat racism and discrimination in all key fields of life. In this connection, it refers to §§ 4 to 17 of its General Policy Recommendation No. 7.
4. (§ 20) ECRI strongly recommends that the authorities establish, in line with its General Policy Recommendation No. 2, a separate specialised body to combat racism and discrimination in both the private and public sector. This body should notably have the power to provide general advice and legal assistance to victims of discrimination, including representation in proceedings before courts.
5. (§ 29) ECRI reiterates its recommendation that the Azerbaijani authorities ensure that public officials at all levels refrain from hate speech towards Armenians.
6. (§ 33) ECRI recommends that the authorities build up regular dialogue with vulnerable groups in order to ensure that any instance of hate speech is reported and that they ensure that their statistics contain all instances of racist, homo- and transphobic criminal offences.
7. (§ 35) ECRI strongly recommends that the authorities ensure, for example by intensive training of prosecutors and criminal judges, that due consideration be given to the freedoms of expression, religion and association when applying Article 283 of the Azerbaijani Criminal Code on incitement to national, racial or religious hostility.
8. (§ 37) ECRI strongly recommends that the authorities create conditions under which a diverse and independent civil society can develop by implementing the detailed recommendations of the Council of Europe's Parliamentary Assembly's (§§ 11.1, 11.2 and 11.6 to 11.8 of Resolution 2062(2015)) and of the Venice Commission (§ 94 of Opinion No. 787/2014).
9. (§ 44) ECRI recommends that the police and prosecution services thoroughly investigate all cases of alleged hate crime, that they establish dialogue and co-operation with groups at risk of hate crime and that they use the Law on the Prevention of Domestic Violence to protect LGBT persons.
10. (§ 51) ECRI recommends that the authorities draw up a comprehensive integration strategy for persons with migration backgrounds; they should also develop, while respecting the principles of confidentiality and voluntary self-identification, statistical data and a set of indicators in order to evaluate and improve the integration and living conditions of migrants in core areas such as education, employment, health and housing.
11. (§ 53) ECRI recommends that the authorities step up their efforts to ensure that employers declare all migrant workers and to remove the obstacles to registration of migrant workers.

12. (§ 60) ECRI recommends that the authorities designate a single authority to lead and co-ordinate the development of comprehensive integration policies for historical ethnic, religious and linguistic minorities, based on integration indicators.
13. (§ 66) ECRI strongly recommends that the authorities, in particular the State Committee for Work with Religious Organisations and the Ministry of Interior, swiftly complete the procedure for the registration of religious communities and ensure that there are no further instances of discrimination against and violations of the right to religious freedom of members of religious communities, which are in the process of registration, such as police misconduct and unlawful police raids, detention and convictions.
14. (§ 75) ECRI strongly recommends that the authorities implement the recommendations made by the Venice Commission and OSCE/ODIHR in their Joint Opinion on the Law on Freedom of Religious Belief. Until the entering into force of the necessary legal amendments, the authorities should ensure, in particular by training of the police and members of the judiciary, that the current legislation is applied in strict compliance with Articles 9 and 14 of the European Convention on Human Rights.
15. (§ 77) ECRI strongly recommends that the authorities fulfil the undertaking given upon accession to the Council of Europe to enact legislation on alternatives to military service.
16. (§ 85) ECRI recommends that the Azerbaijani authorities adopt and implement an action plan for LGBT persons, which should include the objectives of raising awareness about LGBT persons and their living conditions, promoting understanding of LGBT persons and making their right to equal treatment a reality.

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## **APPENDIX: GOVERNMENT'S VIEWPOINT**

**The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Azerbaijan**

ECRI, in accordance with its country monitoring procedure, engaged in confidential dialogue with the authorities of Azerbaijan on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which only takes into account developments up until 11 December 2015, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.



## COMMENTS BY THE GOVERNMENT OF AZERBAIJAN ON THE ECRI'S FIFTH MONITORING CYCLE REPORT ON AZERBAIJAN

Azerbaijan has always attached utmost importance to the cooperation with the European Commission against Racism and Intolerance (ECRI). During its last visit to Azerbaijan on June 1-5, 2015, Azerbaijan fully cooperated with the ECRI, by facilitating meetings with all the stakeholders requested.

It is regretful that, the report gives way to general false assessments based on few inaccurate sources lacking credibility rather than mirroring real picture of the situation on the ground as it does not duly reflect the views expressed by the authorities with regard to many of the issues raised by the Delegation. It omits numerous achievements and positive developments Azerbaijan possess in this field. The report can be considered as an attempt to distort Azerbaijan's positive record on tolerance and multiculturalism - the sphere where Azerbaijan has a comparative advantage and therefore, it is not possible to regard it as a balanced document.

Authorities of Azerbaijan have asked the ECRI delegation and its secretariat several times to elaborate on the reasons for so-called "the negative attitude towards Armenians" in Azerbaijan but unfortunately, this request was overlooked. Therefore, we feel obliged to draw attention of the readers of the report to the following points:

**The ongoing armed conflict in and around the Nagorno-Karabakh region of the Republic of Azerbaijan** has resulted in the occupation of almost one fifth of the territory of Azerbaijan and has made approximately one out of every nine persons in the country an internally displaced person or a refugee. The Republic of Armenia bears the responsibility for unleashing the war and using force against Azerbaijan, occupying its territories, carrying out ethnic cleansing on a massive scale and committing other serious crimes during the conflict.

The international community has consistently deplored, in the strongest terms, the use of military force against Azerbaijan and the resulting occupation of its territories. In 1993, the United Nations Security Council adopted resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993), condemning the use of force against Azerbaijan and occupation of its territories and reaffirming the sovereignty and territorial integrity of Azerbaijan and the inviolability of its internationally recognized borders. In those resolutions, the Security Council reaffirmed that the Nagorno-Karabakh region is part of Azerbaijan and called for immediate, complete and unconditional withdrawal of the occupying forces from all occupied territories of Azerbaijan. Other international organizations have adopted a similar position. For instance, the Parliamentary Assembly of the Council of Europe also deplored the occupation by Armenia of Nagorno-Karabakh and other adjacent areas of Azerbaijan in its recent resolution 2085 titled "Inhabitants of frontier regions of Azerbaijan are deliberately deprived of water" and requested the immediate withdrawal of Armenian armed forces from Azerbaijani region.

Recently, the European Court of Human Rights (ECHR) considered a case (Chiragov and others v. Armenia) brought up before the Court by a group people from occupied Lachin region of Azerbaijan. In its final judgment the Strasbourg Court ruled in favor of the applicants, recognizing continuing violations by Armenia of number of their rights under Convention for Protection of Human Rights and Fundamental Freedoms namely, those relating to the protection of property (Article 1 of Protocol No. 1), the right to respect for private and family life (Article 8 of the Convention) and the right to an effective remedy (Article 13 of the Convention). Furthermore, the judgment effectively put an end to Armenia's persistent denial of its responsibility for the unlawful occupation of and military presence in the territories of Azerbaijan.

In total disregard of the position of the international community and in flagrant violation of international law, Armenia continues to undertake efforts aimed at further consolidating the current status quo of the occupation, strengthening its military build-up in the seized territories, changing their demographic, cultural and physical character and preventing the hundreds of thousands of Azerbaijani forcibly displaced persons from returning to their homes and properties in those areas.

On April 2, 2016, the armed forces of Armenia increased fighting from their positions in the occupied territories, subjecting the armed forces of Azerbaijan along the line of contact and the adjacent densely populated areas under control of Azerbaijan to intensive fire with heavy artillery and large-caliber weapons. As a result of Armenia's attacks and subsequent hostilities, towns and villages along the line of contact were shelled, a number of Azerbaijani civilians, including children, were killed and wounded. Forensic medical examination registered numerous signs of post-mortem mutilation of the bodies of Azerbaijani servicemen killed during the escalation.

Armenia's direct and deliberate attacks against the Azerbaijani civilian population and civilian objects, as well as inhuman acts against Azerbaijani militaries, constitute a serious violation of international humanitarian and human rights law.

Against this background, we would expect more sincere and correct approach by ECRI being an independent body instituted by the Council of Europe both on the issue of expulsion by Armenian authorities hundreds of thousands ethnic Azerbaijanis and Armenian occupation of the internationally recognized territories of Azerbaijan.

Due to Armenian occupation, ECRI was not able to examine the situation in this part of the country. Regretfully, ECRI tries to disguise Armenian aggression by sufficing to indicate only on the footnote of its 5th cycle report that: *"Nagorno-Karabakh and seven adjacent occupied territories are not under the effective control of the Azerbaijani authorities to whom this report is addressed. Therefore, ECRI will not examine the situation in this area"* while the same sentences had been placed in the main part of the 4th report adopted five years ago. Moreover, the language is very vague, unclear and lacks the name of the aggressor - Armenia, creating the wrong impression as if Azerbaijan neglects or abandons its regions. It raises questions as to why the ECRI going into details in some instances, like highlighting allegations that a convicted person was racially insulted by a police while detained in Azerbaijan, could not name the aggressor country which keeps internationally recognized territories of Azerbaijan under military occupation.

Despite the policy of aggression perpetrated by Armenian authorities, thousands of ethnic Armenians continue to live in Azerbaijan in peace and the laws of Azerbaijan prohibit any discrimination among the citizens, including that of ethnic Armenians.

Regarding the **situation of ethnic and religious minorities** we would like to underline that throughout the centuries, Azerbaijanis have lived together with different national minorities in peace and coexistence. As enshrined in its Constitution the Republic of Azerbaijan protects rights and main freedoms of all Azerbaijani citizens regardless of ethnic origins prohibiting any discrimination among the citizens. The Government of Azerbaijan ensures coexistence of Azerbaijanis and national minorities which have contributed to the formation of the Azerbaijani ethnogenesis and provides equal rights based on law.

Different national minorities are widely represented in state structures of Azerbaijan. In areas of compact living of national minorities, representatives of the local population hold leading positions in local authorities, institutions of local government and other structures. Persons belonging to national minorities work in Executive Office of the President of Azerbaijan, in Parliament, in Cabinet of



Ministers, in Constitutional court, Central Election Commission, law-enforcement bodies, and other state structures.

We totally reject the accusations that “hate speech provisions have been misused against the Talysh minority”. All the citizens of Azerbaijan regardless of their ethnicity are equal before the law. As others, citizens belonging Talysh ethnic minority live in peace and harmony enjoying all rights on equal footing.

Regarding ECRI’s one-sided references to a survey of an NGO distorting reality of **religious tolerance** Azerbaijan has succeeded to sustain throughout history, we would like to underline following facts which speak for themselves:

According to the Constitution (*Article 18. Religion and state*) and the *Law on “Freedom of Religious Belief* all religions are equal before the law. No religion or religious association has advantage or restriction in relation to others. The state provides equal rights to representatives of all religious groups. The state escapes differential attitude towards religious communities. It provides equal support, assistance including financial one to representatives of all religious communities (*In 2015 registered Muslim communities got 3 mln. AZN and non-Muslim religious communities got 400 thousand AZN of support from the State*).

**On allegations that minority Muslims and “non-traditional” religious communities have been subject to restrictions and discrimination facing difficulties in registration process it should be underlined that** religious tolerance is at a high level in the country and any discrimination on the ground of religion is prohibited. There is mutual respect among various people in the community belonging to different religions. Currently, more than 1800 mosques, 5 Orthodox, 1 Catholic, 1 Lutheran, 2 Alban-Udi, 4 Georgian- Orthodox, 6 synagogues and other prayer houses are functioning in the country. And generally alongside up to 700 Islamic religious communities, 34 non-Islamic religious communities are functioning in the country, 22 of them are Christian, 9 are Jewish, 2 are Bahai and 1 is Krishnaite. Azerbaijan as a secular Muslim country could be shown for many countries as a good example for friendly co-existence and mutual understanding between representatives of various religions and confessions.

The report’s provocative claim about presence of alleged discriminatory practice against Sunni Muslims in Azerbaijan has nothing to do with the reality on the ground. Moreover, it is simply not correct to point that “many Sunny Muslims belong to historical ethnic minorities, such as the Lezghi. A few months back, in one of the greatest mosques of Azerbaijan, Shia and Sunni Muslims prayed together. This shows the genuine circumstance in Azerbaijan both inside the Muslim community and all in all inside the entire society.

**Christianity** is the second largest confession in Azerbaijan. There are various trends of Christianity- Orthodox, Catholic, Lutheran and Protestant denominations.

On paragraphs concerning **Jews minority** living in Azerbaijan, we have to underline that there has not been any single act of Anti-Semitism registered in Azerbaijan which has always been considered as a safe haven for Jewish people. Currently, there are 8 synagogues, 2 secondary Jewish schools, and Jewish cultural center. Various Jewish delegations from USA, Israel, and other states visited Azerbaijan. They found Azerbaijan as a safer place for the Jews than even many Western states. Some of them shared their impressions of the country in Time magazine, the Jerusalem Post newspaper, the Huffington Post, and JNS.org Internet portals. Merely the titles of those articles (“Azerbaijan is an Oasis of Tolerance in the Middle East”, by David Wolpe; “Jewish life in Azerbaijan embodies Muslim-majority nation’s culture of tolerance”, by Peter Rothholz; and “How Azerbaijan restored my hope in

Israel”, by Yael Lerman Mazar; “Baku, A Unique Geopolitical Gathering of Dialogue and Peace” by Annette Blum) demonstrate the authors’ perceptions of the truth about Azerbaijan and the ethnic, religious and cultural situation in the country. Links to the above mentioned articles are following:

[http://time.com/4099548/azerbaijan-is-an-oasis-of-tolerance-in-the-middle-east/;](http://time.com/4099548/azerbaijan-is-an-oasis-of-tolerance-in-the-middle-east/)

<http://www.jns.org/latest-articles/2015/11/12/jewish-life-in-azerbaijan-embodies-muslim-majority-nations-culture-of-tolerance;>

<http://www.jpost.com/Opinion/How-Azerbaijan-restored-my-hope-in-Israel-434507;>

[http://www.huffingtonpost.com/annette-blum/baku-a-unique-geopolitica\\_b\\_8936520.html.](http://www.huffingtonpost.com/annette-blum/baku-a-unique-geopolitica_b_8936520.html)

As a member of the Organization of Islamic Cooperation and Council of Europe, Azerbaijan understands how pressing and important the issue of promotion of intercultural dialogue is. With that in mind, recently Azerbaijan hosted the 7<sup>th</sup> Global forum of UN Alliance of Civilizations gathering more than 4000 participants, including heads of states and governments, officials, academicians, experts and representatives of civil society and media from 140 countries. It adopted the Baku Declaration which would serve as guidelines for states and international organizations in the promotion of intercultural dialogue and multiculturalism as a way to counter violence and extremism and sustain peace, security and prosperity for all.

Regarding the issue of **re-registration of religious communities**, it is to be underlined that during the re-registration process equal conditions were created for both Islamic and non-Islamic communities. Receipt of their documents and review of their compliance with the legislation and conduction of the state registration were effectively organized. After its start back in September 2009, documents of more than 800 religious communities were received for re-registration or for the first time registration. Up to now 577 religious communities have passed registration. 372 of these communities were re-registered and 205 religious communities were registered for the first time. The confessional makeup of registered communities is as following: 556 of these registered organizations are Islamic and 21 (12 are Christian, 6 are Jewish, 1 is Krishnaite and 1 is Bahais) are non-Islamic. The religious communities which were denied of the registration have the right to re-appeal to the SCWRA after elimination of shortcomings causing the denial.

The State Committee for the Work with Religious Associations (SCWRA) does not have the right to liquidate the religious communities which did not pass re-registration. Therefore, certificates of the religious communities which did not pass the re-registration remain valid and a vast majority of them continue to function.

As regards to the recommendation on alternative service to military service, it should be underlined that pursuant to Article 76 (II) of the Constitution, “If military service is contrary to a person’s convictions, then, in cases provided by law it may be permissible to replace regular military service with alternative service”. This provision is also laid down in Article 3.3 of the Law “On Military Duty and Military Service” adopted February 10, 2012. However, due to the war with Armenia, Azerbaijan has not been able to enact a separate law on alternative service.

Lastly, it is difficult to understand disproportionate attention of ECRI to general **human rights issues** and cases of some individuals brought to justice for the concrete crimes they have committed. Therefore, it is necessary to underline that the ECRI should have limited itself with the issues, entrusted to it by its Statute, such as combating racism, racial discrimination, xenophobia, anti-Semitism and intolerance.

Notes in the report related to the situation of the civil society in Azerbaijan are unsubstantiated. Wide opportunities for independent work are created for human rights defenders operating in the Republic of Azerbaijan in various spheres and media, the full amount of their rights and freedoms are guaranteed, they are not subject to criminal prosecution in connection with their activity. The imprisoned individuals the report mentions were held accountable for concrete criminal acts, such as tax evasion, large-scale fraud, illegal entrepreneurship etc. However, guided by humanism principles, a number of imprisoned individuals were released and pardoned respectively by court decisions and the Presidential decrees.

Azerbaijan attaches much attention to the development of the fully independent civil society in the country. More than 4000 NGOs are currently operating in Azerbaijan. A special entity named the Council of State Support to NGOs has been set up in order to streamline the Government's assistance to the civil society. Recent legislative amendments on receiving grants by NGOs have been adopted to ensure open government principles, reporting, transparency and openness.

