



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



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Observations on the human rights situation in Azerbaijan Freedom of expression, freedom of association, freedom of peaceful assembly

The Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, visited Azerbaijan in March 2010, focusing his attention on a number of human rights issues, including the rights to freedom of expression and freedom of association. A report on that visit was published on 29 June 2010. The present document contains the Commissioner's observations on the current situation in Azerbaijan in regards to freedoms of expression, association and assembly.

Freedom of expression

The Commissioner stressed in his report that an essential step for the protection of freedom of expression is to decriminalise defamation. He has since been informed of the conference organised last May by the OSCE Office in Baku and the Azerbaijani Press Council, with a view to discussing a new initiative of the Azerbaijani authorities to decriminalise defamation. He understands that a draft law on defamation is expected to be discussed by Parliament this September and adopted by the end of this year.

The Council of Europe Committee of Ministers is still supervising the adoption of general measures for the full execution of the judgments adopted by the European Court of Human Rights in the cases of *Mahmudov and Agazade v. Azerbaijan* and *Fatullayev v. Azerbaijan*. In its last decision adopted on 8 June 2011, the Committee of Ministers invited the authorities to provide detailed information in this respect, including how the requirements of the European Convention on Human Rights and the case-law of the Court have been taken into account in the process of decriminalising defamation. The Commissioner hopes that the draft law under discussion will indeed be adopted this year and that its content will be fully consistent with Council of Europe standards.

In the *Fatullayev* judgment, the European Court also considered that the sentencing for threat of terrorism and incitement to ethnic hostility of the applicant was not justified and that both the applicant's conviction and the particularly severe sanction imposed were capable of producing a chilling effect on the exercise of journalistic freedom of expression in Azerbaijan and dissuading the press from openly discussing matters of public concern. It is therefore of particular importance that clear signals are sent against such dissuasive practices with a view to providing an environment conducive to journalistic freedom of expression.

Since the publication of his 2010 report, the Commissioner continued to receive reports of threats, harassment, and violence against journalists or youth activists. One of the Commissioner's recommendations to the Azerbaijani authorities was to end practices of unjustified or selective criminal prosecution of journalists or others who may express critical opinions. However, resort to such methods has apparently not abated, as illustrated by the trial against Bakhtiyar Hajiyev, a youth activist and candidate in the 2010 parliamentary elections who was using social networking sites to organise a protest. The Ganja City Court sentenced him to two years in prison on 18 May 2011 for evading military service. The timing of his arrest and the charges against him appear to be indicative of an attempt to stop his activities, which were critical

of the Government. Moreover, the conviction of Bakhtiyar Hajiyev relates to the provision of an alternative to military service, a commitment that Azerbaijan has undertaken vis-à-vis the Council of Europe upon its accession in 2001 and which has yet to be fulfilled. Mr Hajiyev had requested alternative military service as provided for in Article 76 of the Constitution of Azerbaijan. However, the corresponding legislative framework has not yet been adopted.

A further case concerns Jabbar Savalan, a member of the youth group of the Azerbaijan Popular Front Party, who was sentenced on 4 May 2011 to two and a half years imprisonment by the Sumgait City Court on drug possession charges, after marijuana was said to be found in his possession. This happened soon after he had posted several critical comments against the authorities and called for protests via social networks. Several international governmental and non-governmental organisations have voiced their concerns about what they consider to be fabricated charges.

More recently, Vidadi Iskenderov - another candidate in the 2010 parliamentary elections - was sentenced on 27 August 2011 to three years imprisonment on charges of interference with parliamentary elections by the Goychay District Court. Mr Iskenderov had earlier spoken out about fraud during those elections.

The Commissioner has also received reports that journalists were reportedly prevented from carrying out their work while investigating the recent death of a man in custody in the Autonomous Republic of Nakhchivan.

The Commissioner considers that steps should be urgently taken to protect journalists and activists from intimidation. He reiterates his call to the authorities to release immediately all persons imprisoned because of views or opinions expressed.

Freedom of association

Another issue addressed in the Commissioner's report on his March 2010 visit was freedom of association, in particular as regards the registration of non-governmental organisations (NGOs). In this respect, the Commissioner called upon the authorities not to create obstacles for NGOs wishing to operate in Azerbaijan. He is concerned by information indicating that in the past months several national and international NGOs have faced difficulties in carrying out their activities freely, and that some of them have even been obliged to cease their activities in Azerbaijan.

The Commissioner had the opportunity to discuss this problem, and in particular the closure of the branch of the Human Rights House Foundation in Azerbaijan, with Minister of Justice Fikrat Mammadov. He understands that the Human Rights House in Baku was closed pursuant to a notification received from the Registration and Notary Department of the Ministry of Justice on 10 March 2011, ordering that all activities be stopped. The notification referred to the fact that the Human Rights House had not concluded any agreement with that Ministry, as required by the amendments to the Law on Non-Governmental Organisations adopted on 30 June 2009. It may be noted that the Commissioner has previously expressed concerns regarding certain restrictive provisions in those amendments, such as the provision barring foreign NGOs from operating unless their activities are based on a formal international agreement.

The modalities for conducting agreements between NGOs and the Ministry of Justice for the purpose of ensuring compliance with the amended law were first specified in a regulation promulgated by the Government of Azerbaijan only on 16 March 2011. However, the procedure for concluding such agreements remains unclear, nor is it clear for the time being which body within the Ministry of Justice is responsible for those matters. The Commissioner is concerned that the requirements defined in the regulation, according to which international organisations must respect "national and moral values" and not be involved in "political or religious propaganda", will effectively hinder the possibility for these organisations to register. The

Commissioner would like to emphasise that NGOs should not be required to conform to criteria which are expressed in vague and imprecise terms liable to misinterpretation. As underlined by the European Court of Human Rights, “States have a right to satisfy themselves that an association’s aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions” (see *Sidiropoulos and Others v. Greece*, judgment of 10 July 1998, § 40).

In this regard, the Commissioner welcomes the decision of the Council of Europe Parliamentary Assembly to request an opinion from the Venice Commission on the compatibility of Azerbaijani legislation on NGOs in Azerbaijan with human rights standards. He trusts that such an Opinion will help the Azerbaijani authorities in improving the legislative framework relating to NGOs.

Attempts to control the activities of NGOs are all the more worrying against the backdrop of other recent reports referring to threats and harassment against members of civil society, including human rights defenders and their families.

The Commissioner is particularly concerned to hear that a building where several human rights organisations were located, including the Office of the Institute for Peace and Democracy, was demolished on 11 August 2011 in the framework of a reconstruction programme being implemented in Baku. The Commissioner had called upon the authorities to halt these forced evictions. In this specific case, the demolition was carried out despite a court decision prohibiting the destruction of the building pending a hearing scheduled for September, and in the absence of any prior notification or compensation offer to the owners. The building’s occupants were unable to retrieve any of their belongings, and their working materials - such as computers, documents, and books - were destroyed. The circumstances of the demolition, which occurred in the evening, give reason to believe that it was carried out in retaliation against the activities of Leyla Yunus, the director of the Institute and owner of the house, who was an outspoken critic of corruption and forced evictions in Azerbaijan. The Commissioner urges the authorities to investigate the responsibility for the building’s demolition in such a manner and in contravention of the above-mentioned court decision. The persons affected should at the very least obtain adequate compensation for the loss of their property.

As for issues relating to religious communities, the European Commission against Racism and Intolerance (ECRI) noted in its last report on Azerbaijan of March 2011 that restrictive provisions and practices have been tightened, and that a certain number of the religious communities formerly registered have not yet been able to re-register. The concern about the obligation to re-register introduced by the amendments to the Law on Freedom of Religion was also raised in the Commissioner’s report. Religious communities whose applications for re-registration are still pending remain in a state of uncertainty as to whether they are truly free to pursue their religious activities without encountering judicial problems. ECRI recommended that the authorities swiftly complete the procedure for the registration of religious communities currently under way, taking into account the case-law of the European Court of Human Rights.

Freedom of peaceful assembly

The right to freedom of peaceful assembly is closely connected to the right to freedom of association. In this respect, the Commissioner’s attention was drawn to the wave of arrests of activists and political opponents in connection with protests held in Baku in March and April 2011. According to the information received, these protests were sometimes dispersed with excessive force, and the work of journalists was hindered. The organisers were denied permission to demonstrate in a central square and other places in the city centre in Baku, and were instead authorised to hold a demonstration in the outskirts of the city. Several persons were detained on grounds of violating public order. Six opposition activists were sentenced on 25 August 2011 for participating in “actions causing disturbance of public order”, following trials whose conformity with human rights standards has been called into question.

The Commissioner has on various occasions criticised the method of curbing the impact of a demonstration by allowing it to take place only at another time and at a less central location, thereby diminishing significantly the visibility of the rally and its message to the general public. According to the European Court of Human Rights, freedom of assembly as enshrined in Article 11 of the Convention also protects a demonstration that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The Court has noted that “sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it. In a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means” (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, judgment of 2 October 2001, § 86 and § 97). The Commissioner therefore urges the Azerbaijani authorities to ensure that the right to freedom of peaceful assembly is fully guaranteed in Azerbaijan, in accordance with the Court’s case-law.

The OSCE Office for Democratic Institutions and Human Rights, ODIHR, together with the Council of Europe’s Venice Commission, has published a set of Guidelines on Freedom of Peaceful Assembly which could serve as a useful tool for legislators and practitioners responsible for implementing laws in this area.

Freedom of expression, freedom of association and freedom of peaceful assembly are among the paramount values of a democratic society. The Commissioner therefore hopes that decisive measures will be taken to address the shortcomings highlighted in his 2010 report as well as in this document.