

# Republic of Azerbaijan

## NGO Report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Replies to the list of issues)

The contribution to this report is given by:

**Institute for Reporters' Freedom and Safety (coordinator)**  
**Association for Protection of Women's Rights after D. Alieva**  
**Democracy and Human Rights Resource Public Union**  
**Legal Education Society**  
**Institute for Peace and Democracy, Women Crisis Centre**

All organizations are members of the South Caucasus Network for Human Rights Defenders and many of them are partners of the Human Rights House Azerbaijan in Baku

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**With the support of:**

**Human Rights Center (HRIDC)** in Tbilisi  
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Secretariat of the international Human Rights House Network  
and international partner of the South Caucasus Network for  
Human Rights Defenders  
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**Human Rights House  
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## **Introduction**

Although the national legislation of Azerbaijan guarantees to a detained person the right to immediate legal and medical assistance and the right to notify his/her relatives about the detention in time, in practice these rights are often violated.

In reality, the provisions of the national legislation to provide urgent legal and medical assistance to the detained persons and to inform their relatives of their detention on time are not implemented. The case of young bloggers is an example – the Youth Organization Alumni Network Coordinator and the head of online television ANTV Emin Milli, and one of youth organization OL leaders Adnan Hajizade. This case illustrates the problem of ill treatment in a country where the rule of law principle is not guaranteed.

On 8 July, at approximately 8:00 p.m., Emin Milli and Adnan Hajizade were sitting at a table in “Lebonese” (Livan) restaurant along with several other young adults, when two people that looked like sportsmen came up to them, and attacked them causing physical injuries. Although they appealed to police as victims, police detained Adnan and Emin as suspected persons for 48 hours and freed the attackers although Adnan Hajizade’s nose was broken and Emin Milli’s foot was injured. They were not given medical assistance in the police department. The detained bloggers demanded that they be provided with a lawyer, but this was also denied (e.g., contrary to article xx of the criminal code). And their lawyers were not able to meet with them for 16 hours. Neither their lawyers nor their relatives were notified of their detention while they were held in the police department.

On 10 July in the Sabail district court in Baku a closed hearing was held and a decision was adopted to sentence Emin Milli and Adnan Hajizade to 2 months pre-trial detention.

On 23 July 2009 the Sabail district court issued a decision not to fulfil the lawsuit of lawyers of Emin Milli and Adnan Hajizade against the Sabail District Police Department in

connection with the brutal treatment of their clients, and violation of their right to protection. On 28 August Baku Appellate Court upheld the decision of the Sabail District Court. In addition, on 18 September the Sabail district court issued a decision not to fulfil the lawsuit of parents Emin Milli and Adnan Hajizade regarding the violation of the right to respect for private and family life.

## **Articles 1 and 4**

### **Questions 1 and 2<sup>1</sup>**

1. According to the State party report (paragraph 143 and 146), article 133 of the Criminal Code entitled “Torture” is in full accordance with the wording of article 1 of the Convention. However the definition of article 133 of the Criminal Code omits the references to the purposes of torture outlined in the Convention, such as “for any reasons of discrimination of any kind”. Please explain the reasons for this omission and whether the State party has taken measures to amend the definition of article 133 to fully address the definition in article 1 of the Convention, including discrimination. Please also provide information on the measures taken by the State Party to ensure that article 133 of the Criminal Code is applied in practice to acts carried out by individuals or groups of persons acting with the consent or acquiescence of state authorities.

2. With reference to paragraphs 143-145 of the State party report, please clarify the criminal provisions concerning offences such as: a) attempted acts of torture, b) order to commit torture by a person in authority, and explain the precise penalties imposed for these offences.

Article 46 of the Constitution of the Republic of Azerbaijan described torture, degrading treatment or punishment and probably inhuman treatment in line with Article 3 of the Convention Against Torture and other international human rights instruments, which Azerbaijan Republic is a party to.

Torture is also described in the Criminal Code of Azerbaijan. Article 113 requires imprisonment for 7 to 10 years for inflicting physical pain or psychological torment to the detained persons or for persons whose liberty were restricted in other ways. The analysis

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<sup>1</sup> During the Universal Periodic Review of the Republic of Azerbaijan by the Human Rights Council, the Government did not give a clear answer on the following recommendation: “Further align its legislation and practice with the provisions of the Convention against Torture.” (UN Doc.: A/HRC/WG.6/4/L.6, § 96, recommendation 1)

of this article shows that the legislation of Azerbaijan provides for the notion of mental torture without the accompaniment of physical pains.

Article 293 of the same Code provides imprisonment for 3 years for coercion of the suspect, accused, victim, or witness for obtaining their testimony. The same provision applies for blackmailing, threatening of and degrading treatment of an expert during the interrogation by the prosecutor, investigator or interrogator. If the same actions are accompanied with torture the sanction requires imprisonment for 5 to 10 years.

Additionally, under Article 61.1.9 of the Criminal Code, the commitment of a crime with special cruelty and torture is considered as an aggravating circumstance.

According to the Article 3.3 of the Code on Execution of Punishments, the execution of punishment should be in conformity with the Constitution and appropriate Laws of the Azerbaijan Republic, and with the principles and norms of the international law.

According to Article 5 of the Law on police, police officers should be prohibited of degrading treatment of any person. It is also prohibited to get confession with torture or other ill treatment.

#### *Liability of officials*

Article 177 of the Criminal Code specified serious liability for coercion of interrogated persons for obtaining their statements. In addition, in accordance with the meaning and implementation practice of Article 68 and other articles of the Code, there are provisions that impose liability for torture, and for inhuman and degrading treatment.

Article 5 of the Law specifies for the recovering of losses caused to the physical persons as a result of illegal acts committed during the pre-trial investigation, and by the prosecution and court authorities. This provision increases the civil liability of persons using tortures and provides additional guarantee to the right not to be subjected to torture, and inhuman and degrading treatment.

In conclusion, contrary to the case law of the European Court of Human Rights, the opinion of an ordinary doctor is not accepted as a proof, and the burden of proof concerning ill treatment (torture and etc.) is on the applicant. Contrary to the practice of the European

Court of Human Rights, the opinion of an ordinary doctor is not accepted as a proof, and the burden of proof concerning ill treatment (torture and etc.) is on the Applicant.

According to Article 40.1 of the Criminal Code of the Republic of Azerbaijan, damages caused from the execution of the appropriately given obligatory orders and commands are not considered criminal offences.

In these cases responsibility lies with the persons who gave such orders. But according to the Article 40.2, persons intentionally implementing such orders are to be charged with a criminal offence. As seen from the articles it is directly connected with subjective criteria (intentional/accidental). But there could be some exceptions in application of article 40.1 in connection with the degrading treatment.

## **Article 2**

### **Question 4<sup>2</sup>**

Please provide information whether the members of the civil society and human rights defenders carry out monitoring of penitentiary institutions and detention facilities in the country.

According to the Law on public participation in the correction of prisoners and the implementation of public control over the activities of corrective institutions, public supervision over the prisons is provided by a Public Committee formed and approved by the Ministry of Justice. The composition of the committee is formed by the Electoral commission, located at the Office of the Ministry of Justice. In practice, permission to enter the prisons is given only to a few NGOs, which are the members of the Public Committee.

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<sup>2</sup> In its conclusions and recommendations of the last review of the Republic of Azerbaijan (2003), the Committee Against Torture mentioned the following subject of concern: “The fact that no independent body with a mandate to visit and/or supervise places of detention has been established, and that access by non-governmental organizations to penitentiary facilities is impeded.” (UN Doc.: CAT/C/CR/30/1, § 6, letter i)

The Institute for Reporters' Freedom and Safety sent several appeals in the last two years to the Ministry of Justice, requesting permission to visit the prisons where the journalists serve their prison term, and to get acquainted with their living conditions. Institute for Reporters' Freedom and Safety has applied to become a member of the Public Committee. However, all requests remain unanswered. Thus, there is practically no guarantee that human rights organizations will be allowed into the prisons without prior notice.

### **Question 5<sup>3</sup>**

Please provide information on the mandate of Ombudsperson and its compliance with the "Paris Principles" adopted on 20 December 1993. Please also indicate how many investigations into allegations of torture have been initiated by the Ombudsperson and what are the outcomes of such investigations? How are the recommendations of the Ombudsperson implemented? Please also provide data on the number of complaints on allegations of torture received by the office of Ombudsperson as well as on the number of visits to detention and remand centers carried out by the Ombudsman.

The Ombudsperson annually publishes reports on the situation of provisions of human rights and freedoms in Azerbaijan.

In general, these reports include cases of mistreatment in prisons and detention centers. However, none of these reports point out to a single case of torture and the measures taken by the Ombudsperson. In her numerous speeches in the press and other media, and during different events, the Ombudsman stated that, they did not find evidence for treatment of torture.

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<sup>3</sup> In its conclusions and recommendations of the last review of the Republic of Azerbaijan (2003), the Committee Against Torture made the following recommendation: "Ensure the full independence of the Ombudsman." (UN Doc.: CAT/C/CR/30/1, § 7, letter i)

## **Question 6**<sup>4</sup>

With reference to paragraphs 150-160 of the State party report, please elaborate how the provisions of the national legislation to provide detainees with immediate legal and medical assistance and to inform their relatives of their detention on time is applied in practice? Please give examples. How does the State party ensure the right of a detainee to request a medical doctor, whose independence is ensured? Is the right of a detainee to request and receive medical examination ensured in the absence of a request by authorities? Please provide information how such a right is guaranteed in practice. Please update the Committee on the functioning and independence of the medical service, which has been transferred from the Central Department for the Enforcement of Judicial Decisions to the Ministry of Justice.

An example regarding failure of government bodies to carry out their duties to provide prisoners urgent legal and medical assistance is the case of Mahir Mustafayev, who served his sentence in the Gobustan prison. Early in the morning of December 3, 2006 he was found with burns of 2nd and 3rd degree in his cell. Only after 6 hours he was taken to the medical facility. The car, in which he was taken to the hospital, was broken and he was again delayed. The patient was delivered to the hospital after about 11-12 hours after he got burns and he died 1-2 hours later from his injuries.

On 18 August 2009 at the age of 68, the scientist-linguist and editor-in-chief of the Talysh language newspaper, Novruzali Mammadov died in custody. On July 28, 2009 Novruzali Mammadov was transferred to the central hospital of the Ministry of Justice Penitentiary Services in critical condition. Prior to 17 August, during the 21 day, he did not receive the necessary treatment despite for numerous calls from local and international organizations to transfer Mammadov to a civilian hospital<sup>5</sup>. Mammadov was sentenced to ten years in prison in February 2007 for high treason and for stirring up national, racial or religious hostility, but was considered a political prisoner by the Feder-

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<sup>4</sup> In its conclusions and recommendations of the last review of the Republic of Azerbaijan (2003), the Committee Against Torture made the following recommendation: "Clearly instruct police officers, investigative authorities and remand centre personnel that they must respect the right of detained persons to obtain access to a lawyer immediately following detention and a medical doctor on the request of the detainee, and not only after the written consent of detaining authorities has been obtained. The State party should ensure the full independence of medical experts." (UN Doc.: CAT/C/CR/30/1, § 7, letter c)

In its concluding observations of the last review of the Republic of Azerbaijan (2009), the Human Rights Committee made the following observation: "The Committee is also concerned about reports of deaths in police detention centres, remand centres, or prison facilities." (UN Doc.: CCPR/C/AZE/CO/3, § 11)

<sup>5</sup> See: <http://humanrightshouse.org/noop/page.php?p=Articles/11680.html&d=1>

ation of Human Rights Organizations of Azerbaijan. Also PACE of Council of Europe had strong doubts about the fairness of his trial, and had made numerous calls for his release, including on humanitarian grounds, given his age and state of health<sup>6</sup>.

Novruzali Mammadov's health reportedly began to deteriorate after he was put in solitary confinement in Prison No. 15 in January 2009. Although a Baku court granted Mammadov's appeal to be transferred to a medical facility in March 2009, the transfer took place five months later. On 28 July 2009 Mammadov was placed in the Central Hospital of the Justice Ministry's penitentiary system. The editor-in-chief did not receive treatment at a high level. It is known that Mammadov suffered a number of diseases including high blood pressure, bronchitis, neuritis, and cancerous prostate.

Recall that the press office of the Ministry of Justice of Azerbaijan made a statement about the death of Mammadov. It argued that Mammadov was not seriously ill and was hospitalized with a diagnosis of osteochondrosis, as well as plexus of the right shoulder. According to the version of the Justice Ministry, his state of health deteriorated suddenly on August 17, and the initial findings of a forensic medical examination showed that the cause of death was thrombosis of the veins and the cerebral blood circulation.

On November 18 2007, Faina Kungurova died from starvation in the hospital of Shuvelan prison in pre-trial isolation on (inmate's death was recorded on November 17 in Shuvelan jail, and she was buried on November 21). She had been detained several weeks earlier, when she was stopped close to the highway along which the president's cortege passed. Police found a photograph of ex-parliament speaker and leader of the Democratic Party, Rasul Guliyev, in her bag. She was charged for alleged possession of narcotics. Faina Kungurova was a former political prisoner arrested for hooliganism in 2002 after a rally time and pardoned in 2004, after the appearance of her name in the list of political prisoners submitted to the PACE in Azerbaijan.

Officials waited to inform the public about under what circumstances Faina Kungurova died, and did not allow independent experts to examine the body. Azerbaijan's Justice

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<sup>6</sup> See: <http://www.coe.az/Latest-News/163.html>

Ministry waited 10 days to comment on Kungurova's death. In a November 28 statement, the ministry said Kungurova had died on the 18th, despite efforts by detention hospital officials to treat her for symptoms of "depression" and severe malnutrition.<sup>7</sup> By unofficial estimates, the cause of death in custody was exhaustion. However, her relatives say they constantly passed her food in prison. According to the statement of the Department of Public Relations of the Ministry of Justice Penitentiary Services, the diagnosis of F. Kungurova means: as a result of extreme stress in humans the nervous system and brain has disorder, and the person falls into a deep depression. Then the person ceases to adequately perceive the events happening around, refuses to eat, and becomes completely exhausted. According to experts, in these circumstances, doctors are required to take necessary actions to treat the patient because the patient is not able to adequately react or seek medical intervention.

From 1995 to 2006, 52 political prisoners died while in detention, from 1996 to 2005, 9 political prisoners died during the first months after their release

### **Question 7<sup>8</sup>**

Please elaborate on the implementation in practice of the article 85 of the Criminal Procedure Code, which guarantees access to a counsel from the moment of arrest. Please also provide information on measures of cooperation between the new bar association and the Ministry of Justice and Ministry of Internal Affairs to ensure that there is a sufficient number of qualified

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<sup>7</sup> See: <http://www.rferl.org/content/article/1079210.html>

<sup>8</sup> See footnote 4.

In its concluding observations of the last review of the Republic of Azerbaijan (2009), the Human Rights Committee made the following observation: "The Committee is concerned that, although the Constitution entitles every suspect or accused person to legal assistance immediately after his/her apprehension, this is not systematically respected in practice. It is also concerned that, as acknowledged by the delegation, an apparent shortage of lawyers exists especially outside the capital. In addition, the Committee notes that under the State party's law, a suspect of criminal offence may be kept in police facilities for forty eight hours before being brought before a judge, and that if the detention is confirmed, the police has a further twenty four hours to bring the individual concerned to a remand detention centre. The Committee notes with concern that such situations can result in detention of individuals by the police for up to seventy two hours, without being represented by a lawyer (art. 9, 14, 26).

The State party should take urgent measures to ensure that all individuals concerned are systematically provided with legal aid, as required by the State party's Constitution, without discrimination. The State party should envisage the immediate transfer to remand centres of all individuals placed in pre-trial detention by a court." (UN Doc.: CCPR/C/AZE/CO/3, § 8)

and independent attorneys to serve detainees, that detainees know and act upon their rights to obtain access to counsel, and that attorneys have unimpeded contact with their clients. Please provide specific information concerning the stage at which the counsel has been provided for detainees, and whether attorneys have access to persons during the phase of preliminary investigation. Please also update on the status of the new Law on the Bar.

In practice, article 85 of the Criminal Procedure Code, which guarantees access to a lawyer right after detention, is often violated. Gaps in the law allow police officers to neglect the requirements of the law. The law oversees legal assistance to officially detained or arrested persons. In practice, the detention of people during operational search activities is widespread. At this time, the person is held in police stations. This can last from several hours to several days. The legislation does not oversee the provision of legal aid during operational search activities. It should be noted that the provision of legal assistance free of charge causes the service to be of poor quality. For example, for one hour of legal aid the State pays only 99 gepiks. This does not include time spent by the lawyer on the road, the investigative actions, waiting for the trial and the financial costs. On the other hand, for the payment of this money it is necessary to obtain permission from the investigator and the court. And that makes the lawyer dependent on these bodies.

Azerbaijan is a country where the quality of the legal aid is among the lowest: There were just 358 lawyers in a country that consists of more than 8 million people, in November 2004 (1 lawyer for every 25,000 people). No admission was made to the Lawyer's Board for more than 5 years -- it was stopped illegally. After the strong pressure from the society and international organizations, the admission was restored in 2005. But the admission rules to the advocacy are still difficult.

Only 71 candidates from 471 passed the exam for the admission to the bar recently. It was considered that ten lawyers pass the examination to be a judge, but they could not collect even the half of the demanded score after some days of exams. There are about 741 lawyers in Azerbaijan Lawyer's Board now (about 1 advocate for every 10000 people). These figures are much lower in comparison with neighbouring countries, which have less territory and people than Azerbaijan.

For many years an official of the Central Election Commission in the country runs the Lawyer's Board of Azerbaijan.

The problem of the access to legal counsel is also seen in the case of the bloggers. Police have not provided any official information about the detention of Emin Milli and Adnan Hajizade, and for 17 hours the youth were deprived of the opportunity to meet with their lawyers. Although the incident occurred at 8 p.m. on 8 July, the lawyers only finally met with Emin Milli and Adnan Hajizade at 3 p.m. on 9 July.

### **Question 12**

Please provide information on measures taken to ensure that judges are able to establish when evidence or confessions are obtained by means of torture. Please clarify whether judges may order medical examinations. If so, how often has this happened and what are the results?

Courts demonstrate no actions to gather necessary evidence (mainly conduction of medical expertise and other necessary procedural measures are implied) and victims usually have limited opportunities to gather such evidence (both investigator and the prosecutor leading the preliminary investigation are not interested in gathering evidences against themselves and usually do not review the objections of the victim). In addition, usually, the medical expert does not properly indicate valid facts about the real health condition of the victim.

According to the Code of Criminal Procedure (Article 140), the gravity and nature of an injury can only be defined if the evidence is obtained and investigated beforehand by a medical expert. The relevant article reads as follows:

Article 140. Facts determined on the basis of particular evidence

140.0. In the course of criminal proceedings, the following facts may be determined only if the following evidence is obtained and investigated beforehand:

140.0.1. cause of death, degree and nature of an injury: the opinion of a medical expert.

In conclusion, contrary to the practice of the European Court of Human Rights, the opinion of an ordinary doctor is not accepted as a proof, and the burden of proof concerning ill treatment (torture and etc.) is on the Applicant.

### **Question 13<sup>9</sup>**

Please provide information about the State party's efforts to prevent violence against women? What is status of the draft law on domestic violence, and how will it be implemented? Please provide data on the number of complaints on domestic violence and the results. What measures are taken to prevent domestic violence? Have there been any awareness raising campaigns?

Various legislative acts were developed and adopted in Azerbaijan to prevent violence against women. Thus, in 2006 a law was adopted on equality of men and women, which had a declarative character. For example, this law reflects the article, which provides penalties for sexual harassment, but in fact the mechanism for putting it into practice does not exist. It creates a situation where no one is prosecuted and punished for this action.

Victims of domestic violence often do not have real access to the legal system. The reason behind this situation is the imperfection of the legislation and its application in practice. In this context, it is necessary to adopt the Law "On Domestic Violence" of the Azerbaijan Republic. Despite the fact that the Draft Law "On Domestic Violence" was sent for revision and is now included in the agenda of the Milli Majlis (Parliament), its wide-range discussion, and educational work regarding this issue have not yet been conducted.

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<sup>9</sup> During the Universal Periodic Review of the Republic of Azerbaijan by the Human Rights Council, the Government did accept numerous recommendations on actions it should take on this issue. See: UN Doc.: A/HRC/WG.6/4/L.6, § 96, recommendations 6, 7, 8, 9 and 10.

In its concluding observations of the last review of the Republic of Azerbaijan (2009), the Human Rights Committee made the following recommendation: "The State party should intensify its efforts towards the elimination of violence against women, inter alia, through effective implementation of the action plan on family and women issues 2009-2012. The State party should undertake focused information campaigns aiming at raising awareness of women regarding their rights. It should also continue providing specific training in this regard to law enforcement authorities, as well as to medical and social workers. The State party should also consider strengthening its legislation and its application to deal effectively with domestic violence. Finally, it should increase the number of shelters equipped to receive women and children victims of domestic violence." (UN Doc.: CCPR/C/AZE/CO/3, § 5)

It is impossible not to notice the fact that the law was returned for revision by male Member of Parliament, given their dominance in the Parliament of 125 deputies only 14 are women. Member of Parliament publicly stated that there is no problem related to domestic violence and that this law is contrary to the culture and customs of Azerbaijan and that its adoption will increase the number of divorces.

Although the Draft Law of the Republic of Azerbaijan looks perfect at first glance, it contains a number of flaws. For example, in Chapter 1 of Article 1, the revelation of the expression "domestic violence" does not define the object of violence and on what grounds it is committed. The project holds no chapter on objectives and tasks of the Law. Article 8 and 9 express that executive authorities are obliged to take criminal measures and to conduct investigations on "crimes committed on the grounds of domestic violence," but the Draft Law does not specify the particular executive authority, which is under these obligations.

During the 9 months of 2009 more that 2000 women - victims of domestic violence turned to the Women's Crisis Center and the Society for Women's Rights in Azerbaijan named after D. Aliyeva. Most of these women asked for legal and psychological assistance. A large percentage of women victim of domestic violence complain against police. Victims of domestic violence turning to police for help often face rude attitude. Victims of violence claim that the police did not accept their statements and complaints. Lack of skills in working with victims of domestic violence, stereotypes and customs lead to incorrect and unprofessional behaviour by the police during interrogations. Often, after interrogation, the victims are pressured to take their statement of complaint back. Most of the time the victims complain about bribery in the police stations, and as a result the criminal case was either not launched or simply closed.

If the case of the use of violence reached the court, the perpetrator is mostly punished according to the "minor damages" article of the Criminal Code of Azerbaijan Republic, instead of a punishment for ill treatment. More severe penalties apply in the case, if a woman becomes handicapped.

The media very often receives information about the murders of women by her husband or relatives. This indicates a serious increase in domestic violence. It should also be noted that the number of women using violence against members of their family is growing in corrective institutions. This is a consequence of violence against these women who don't find any other way out of this situation. Shortage of shelters and legal mechanism for victims of domestic violence often lead to the fact that those who commit domestic violence find out that the victim appealed to law enforcement organs or is seeking protection from the police or higher-ranking officials. In such cases the violator often becomes even more brutal towards their victims. Also, the lack of legal protection and lack of shelters led to an increase in suicides among women who are victim of domestic violence.

Cases related to violence against women, in relation to question 13:

- On 6 November 2005, a resident of Ganja Khoshgadam Hamidova was in a horrible situation during the interrogation while her son Eshkin Hamidov was present and the head of the Criminal Investigation Police Office of the Nizami district of Ganja Major Koroglu Gasimov raped her. The case received wide publicity because of interference of human rights defenders and Azerbaijan's Ombudsman Elmira Suleymanova. However, consequently Khoshgadam Gamidova declined from her initial testimony due to pressure. Koroglu Gasimov was subsequently dismissed from the police under a different term.
- In November 2006, Sayyara Heydarova was arrested on trumped-up charges for beating four men. The case was repeatedly discussed in various courts. Several court decisions were adopted against S. Heydarova. According to the verdict of the Surakhani district court judge Latifa Nabieva, on 9 November 2007 she was sentenced to 12 days detention. She had to spend these 12 days not in prison, but in the hospital for the mentally ill in the Mashtagha village. On 21 November 2007 another judge of the Surakhani District Court Natavan Tagiyeva issued a sentence against S. Heydarova to arrest her. The judge had forgotten to indicate the term of the sentence against S. Heydarova.

- S. Heydarova was placed in jail N3, where she declared a hunger strike and was taken to the prison hospital. Only after Heydarova's mother Sona Hajiyeva managed to get into the building of the Presidential Administration and prepared an act of attempted self-immolation, Judge N. Tagiyeva changed the form of the sentence on the verge of complete exhaustion of S. Heydarova. She was sentenced by the Surakhani district court to two years and seven months suspended sentence.
- The death of the political activist Faina Kungurova in custody the 18 November 2007, is a clear evidence of abuse and violence prevailing in the penitentiary system of Azerbaijan.

## **Articles 5, 6 and 7**

### **Question 18**

Please provide information on domestic legislation establishing universal jurisdiction over the offence of torture and explain if such legislation complies with the requirements of the Convention.

Legislation of the Azerbaijan Republic does not make distinctions among the notions of "torture," "inhuman treatment," and "degrading treatment or punishment" in the legislation of Azerbaijan. As a result, when ill-treatment do not reach the threshold of torture, in practice state officials refuse to assess such treatment within the norm considering liability for torture. Furthermore, the definition given in Article 1 of the UN Convention against torture and other cruel, inhuman or degrading treatment and punishment that was dated 10 December 1984 is not reflected in Azerbaijani legislation.

It's possible to settle these problems by making amendments to the legislation or by commentary of the Constitutional Court. Since such definitions or explanations are not provided in the legislation, definitions given in international treaties should be used. Legal base for the implementation of international treaties is in the Constitution of the Azerbaijan Republic; Article 12 of the Constitution states that human rights and freedoms

are implemented according to the international treaties, of which Azerbaijan Republic is a party to. However, courts refrain from acting in accordance with these treaties.

## **Article 11**

### **Question 26**

Please provide information on the existence of non custodial measures? Are they applied in practice?

Pre-trial detention has become a rule in Azerbaijan. Most of the suspects are given pre-trial detention, especially if they are accused of serious crimes. The refusal by the prosecutors to choose pre-trial detention is extremely rare.

## **Article 12**

### **Question 27**

Please provide detailed information on the procedures of investigation into complaints of torture and other ill-treatment. Please give examples of such cases. Please also provide detailed information on the status, mandate and responsibilities of the Inspectorate established within the Ministry of Justice to monitor the enforcement of sentences in penitentiary institutions and detention facilities.

The answer to question 6 has already mentioned the case of Mustafayev Mahir, who died in prison. Before his death he appealed to various government bodies and family members about torture by prison staff. He repeatedly stated that his life was in danger. Holding him alone in the cell at the night of a fire, late delivery to the hospital, the hasty burial of his body without notifying his relatives, not conducting technical examination of the fire, holding the investigation into this case by the prosecutor's office for only 2 days, the refusal to institute criminal proceedings and the failure to submit the outcomes of the in-

investigation to his relatives are very questionable facts. An appeal was prepared and sent to the European Court of Human Rights by the representatives of the legitimate heir of the deceased Asabali Mustafayev. This is an example of a refusal to institute criminal proceedings.

The practice of Azerbaijan courts in dealing with the complaints on torture is limited. The Courts do mostly not allow the complainer to stand in front of Court and to be present at the trial. Arrested persons are not even allowed to participate in the hearings of their complaints -- to get acquainted with the hearing protocol is very problematic issue. Usually they are not provided with a copy of the protocols.

Regarding evidence obtained during the criminal proceeding relating to torture, inhuman or degrading treatment:

Article 15.2 of the Criminal Procedure Code forbids torture, use of psychological and physical violence, including use of medical tools, exposing to hunger or hypnosis, depriving from medical care, using other inhuman or degrading treatment and punishment during the criminal proceeding. In accordance with this, Article 125.2 declares that evidence, proof and documents gained through violence, threats, deceit, torture, and inhuman or degrading treatment is unacceptable.

But the problem is, this is the Procurator's proof. However, the practice of previous years shows that, a person is found guilty not only on the basis of this evidence. As a rule this type of "proof" is complicated with other proof and distrustfully gathered.

The prosecutor can initiate a criminal proceeding without any permission in all cases excluding those against the president of the Azerbaijan Republic, the Members of Parliament of Milli Majlis of the Azerbaijan Republic, the prime minister of the Azerbaijan Republic, the ombudsman of the Azerbaijan Republic, and the judges of the Azerbaijan Republic.

It is significant that a presumable victim can present his complaint to the prosecutor in charge of the pre-trial investigation, but in many cases because of the ineffective result of such complaints, it's much typical to apply to the local courts. Special rules about the burden of proof in these kinds of cases were not determined in the CPC, except the ones

that are considered in the criminal cases. Consequently, in practice, the burden of proof falls on the victim.

The victim has the right to get a copy of the court decision and get acquainted with the court protocol. The plaintiff can apply to the investigation bodies to attain the notes from the registration book of the arrested person and other analogical documents. But it is not the case of satisfaction of the application.

In 2007, the head of the state made a speech in front of the Interior Affairs Ministry's officers refusing that tough the demands of international organizations police who prevented the opposition's meeting after parliament elections in 2005 will be not be made to answer. After this speech in fact judges did not follow the lawsuits and complaints related with the facing physical force and other illegal acts by law enforcement organs.

All the complaints on the rude behaviour were rejected without any reason.

Court cases regarding torture treatment:

- Elchin Hasanov's case regarding the arrest under the administrative means

Elchin Hasanov is a journalist. He was arrested and subjected to torture treatment by police when he participated in protest action as journalist against the taking editorial office from the building which « Azadlig » newspaper's editorial office was located on 23 November 2006.

He received an official reprimand for 10 days by the decision of Sabail District Court. E. Hasanov appealed to Sabail District Court with lawsuit application regarding torture treatment and illegal arrest against Sabail District Police Department #9 on 5 February 2007 including giving complaint against decision of arrest officially.

Elchin Hasanov's official complaints and civil lawsuit were not fulfilled by Court.

Courts said that the case took place, as the result of Elchin Hasanov did not obey the police legal demands. E. Hasanov who exhausted the defence filed an appeal to the European Court of Human Rights regarding for being subjected to degrading treatment, violation of the rights of freedom and inviolability, the rights of fair court investigation, freedom of speech and of assembly.

- Sumgait case of Elchin Hasanov and Elchin Mammad

Elchin Hasanov is a correspondent of “Yukselish namine” newspaper. “Yukselish namine” newspaper editorial office was included letter by post regarding corruption, arbitrariness of leadership in Sumgait State University on 21 June 2007. It was written in the letter that the leadership of University offended a group of students.

Elchin Hasanov was sent on an official journey to Sumgait State University at the Procurator’s 10:15 a.m. 2007 to investigate letter which sent to editorial office and to find out opinion of sides. Elchin Hasanov was taken to the study of the Assistant Dean under the educational works Mammad Ahmadov by the employee of protection service and he was taken hostage by “prorector” people.

Then, Mammad Ahmadov took Elchin Hasanov to Sumgait State University Rector Nadir Gahramanov’s study to the accompaniment of security employee and they forced him physically.

Newspaper editor-in-chief Elchin Mammad arrived in University and he wanted to investigate the issue, as he knew about it. The employees of Sumgait City Police Department#1 arrived in University and took them to Police Department by force. They were detained in Police Department for 5 hours without any legal basis. Sumgait City Court Examination affirmed that E. Hasanov was injured.

Journalists appealed to Sumgait City Procurator’s office to begin a criminal case against Sumgait State University rector, Nadir Gahramanov, and Assistant Dean under the Educational works Mammad Ahmadov. Sumgait City Procurator’s office refused to begin criminal case on 17 July 2007. Although journalists appealed to Sumgait City Procurator’s office to get copy of decision repeatedly, they didn’t give it.

For this reason, journalists made appeal Sumgait City Court regarding illegal treatment of organ, which implemented criminal case on 17 December 2007. Gulnara Tagizade considered the case in the rule of civil consideration on 27 Decem-

ber 2007. Complaint decision against the treatment of organ, which implemented criminal case, was came back journalists.

- Hadji Alesgerov's case

H. Alesgerov is a student, he was forced and arrested illegally by police when took part in the action held by "Azadlig" political block to protest Tarriff Council's decision concerning with the prices increase on 26 January 2007. Besides H. Alesgerov made complaint as a public rule related with the illegal arrest and rude behaviour, he also appealed to Khetai District Court with the lawsuit application to be paid substitution for the moral damage touched to him in the result of illegal arrest. Khetai District Court's judge R. Ahmedov did not fulfil the lawsuit 08 May, 2007. Courts substantiated that the arrests were legal. There is not a final decision on H. Alesgerov's cassation complaint.

- Khalid Garayev's case

K. Garayev is a student, he was faced with the forceful movements and arrested by police illegally when took part in the protest action held by "Azadlig" political block on 26 January, 2007, against Tariff Council's decision related with the price increase. Besides K. Garayev made complaint as a public rule related with the illegal arrest, he also appealed to Khetai District Court with the lawsuit application to be paid substitution for the moral damage touched to him in the result of illegal arrest.

19 March 2007, Khetai District Court did not fulfil the lawsuit. K. Garayev's complaints by administrative means were also not fulfilled. Courts substantiated that the arrest was legal. K. Garayev appealed to European Court for the violation of not to face the behaviour like humiliation of dignity exhausting the means of defence inside the country, freedom and inviolability right, fair court investigation right, freedom of expressing once opinion and the freedom of gathering, in 2007.

- Emin Milli and Adnan Hajzade -- the blogger's case

On July 23, 2009 the Sabail district court issued a decision not to fulfil the lawsuit of lawyers of Emin Milli and Adnan Hajzade against the Sabail District Police Department in connection with the brutal treatment of their clients, and violation of their right to protection. On 28 August in the Baku Appellate Court the decision of the Sabail District Court was upheld. In addition, on 18 September the Sabail district court issued a decision not to fulfil the lawsuit of parents Emin Milli and Adnan Hajzade regarding the violation of the right to respect for private and family life.

## **Article 14**

### **Question 34**<sup>10</sup>

Please provide information on cases of compensation ordered by the courts and provided to victims of torture or cruel, in human, degrading treatment. What rehabilitation services are in place for such victims?

Despite the national law overseeing compensating victims of torture and ill treatment, the government refuses to recognize the facts of torture and to pay compensation. Citizens of the country are forced to turn to the international institutions with facts of torture. The two following cases brought recently to the European Court of Human Rights are a proof of this situation: the leader of the opposition party, Sardar Mammadov faced torture in the detention center after the presidential elections in 2003, and Mahira Muradova lost one eye as a result of police beatings when the police wanted to disperse a peaceful demonstration. National courts refused to recognize them as victims of torture in both cases.

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<sup>10</sup> In its conclusions and recommendations of the last review of the Republic of Azerbaijan (2003), the Committee Against Torture made the following recommendation: "Ensure that in practice, redress, compensation and rehabilitation are guaranteed to victims of torture" (UN Doc.: CAT/C/CR/30/1, § 7, letter o)

The European Court of Human Rights they were confirmed to be victims of torture and then they were paid compensations (Case “Mammadov v. Azerbaijan”, 11 January 2007; Case “Muradova v. Azerbaijan”, 2 April 2009).

## **Article 16**

### **Question 38<sup>11</sup>**

Please comment on the allegations that there are consistent acts of violence against human rights defenders, journalists and other media workers by law enforcement officials or by unknown persons. Investigations allegedly are not conducted in a comprehensive manner. What measures have been taken to investigate such cases and prevent future occurrences? Has the State party conducted prompt and impartial investigations into such allegations and what are the results? In Azerbaijan, physical violence is used against human rights defenders and journalists regularly, including by law enforcement officers who have so far not been punished as it is considered under the law of the country.

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<sup>11</sup> During the Universal Periodic Review of the Republic of Azerbaijan by the Human Rights Council, the Government refused all the following recommendations on this issue: “Effectively investigate and prosecute crimes and violations against journalists and human rights defenders, and that those responsible are punished; That complaints of harassment of journalists and human rights defenders receive prompt response and that adequate measures for their safety are taken; Discourage State officials from continuing the current practice of instituting lawsuit against journalists and human rights defenders that publish criticism; that all journalists remaining in detention on the basis of misuse of criminal libel or defamation trials be released; Ensure that cases of alleged violence against, and wrongful imprisonment of members of the media are fully investigated; Bring rules on broadcasting in compliance with relevant provisions of ICCPR, releasing persons held in prisons for their political views and adopt safeguards against arbitrary or politically motivated detention and trials including through ensuring full independence and transparency of judiciary.” (UN Doc.: A/HRC/WG.6/4/L.6, § 96, recommendations 16)

In its conclusions and recommendations of the last review of the Republic of Azerbaijan (2003), the Committee Against Torture made the following recommendation: “Ensure the full protection of non-governmental human rights defenders and organizations.” (UN Doc.: CAT/C/CR/30/1, § 7, letter h)

In its concluding observations of the last review of the Republic of Azerbaijan (2009), the Human Rights Committee made the following recommendation: “[The Human Rights Committee] remains concerned at reports of a pattern of harassment and criminal libel suits or hooliganism charges against journalists. Furthermore, the Committee is concerned at reports of killings or beatings of journalists which have not been elucidated. Finally, the Committee is concerned at the recent arrest and detention on remand of individuals who had expressed opinions in non-conventional media especially since no explanation was provided as to why the arrest took place after the individuals had reported to the police attacks on themselves and why the judicial proceedings for hooliganism against them were not held in public (art. 19). [...] The State party is also urged to effectively protect media workers against attempts on their integrity and life, and to pay special attention and react vigorously if such acts occur.” (UN Doc.: CCPR/C/AZE/CO/3, § 15)

Numerous cases of violence against journalists and human rights defenders are illustrating the violation of article 16:

- “Yeni Musavat” newspaper correspondent Alim Kazimli died on June 19, 2005 as a result of beatings in the Narimanov district police department of Baku. Official investigations into the cause of death of the journalist conducted by the leadership of the Ministry of Internal Affairs concluded with strict reprimand of the Narimanov district passport department chief Abil Mammadov, who rudely insulted the journalist outraged by the fact that was going on in the passport department, and then hit him with a telephone receiver on the head and kicked him out of the office. As a result of the incident, the journalist suffered a stroke and died after 6 months.
- On November 9, 2005 “Turan” information agency photographer Sarvan Rizvanov was severely beaten by the Deputy Chief of the Yasamal district Police of Baku Chingiz Mammadov while Rizvanov was covering a rally at the eve of the parliamentary elections. As a result of the beating, the journalist received an injury in his head (brain). Also several other journalists were severely beaten by the police during the rallies -- Farid Teymurkhanli (“Zerkalo” newspaper), Idrak Abbasov (newspaper “Ayna”), Ramiz Najafli (newspaper “Boz gourd”).
- “Azadlig” newspaper journalist Ramiz Najafli was kidnapped and stabbed by unknown persons on the night of 5-6 March 2006.
- On the night of 18 to 19 May in 2006 opposition “Bizim Yol” newspaper editor-in-chief Baheddin Haziyeu was abducted by unknown people. He was subjected to torture as a result of which he had a broken leg. Despite numerous appeals to the Ministry of Interior, the Prosecutor's Office of the Republic, the National Security Ministry, and the investigation has yielded no results yet.
- On the 25 December 2006 “Azadlig” newspaper employee four unidentified persons near his home beat Nijat Daglar.
- On the 20 April 2007 near the editorial office of “Gundalik Azerbaijan” newspaper Uzeir Jafarov, the newspaper’s editor was attacked. He suffered several

blows on the head with a blunt object. A criminal case under Article 132 (beatings) of the Criminal Code of Azerbaijan Republic was opened into the attack. However, the victim himself said that they tried to not just beat him, but wanted to murder him. Subsequently, the journalist identified one of the attackers MIA Captain Nabi Najafov -- an officer on working with the juvenile in the Yasamal District Police Department, and another - a senior officer of the Air Forces of Azerbaijan. However, despite this, the criminals were not punished, and Interior Minister Ramil Usubov accused the journalist that he injured himself.

- On 23 September 2007 in the village Jalikend of Sharur district in the Nakhchivan Autonomous Republic of Azerbaijan, "Yeni Musavat" regional correspondent Hakimeldostu Mehtiyev detained by the employees of the Ministry of Internal Affairs and National Security Ministry. He was taken to court, where charges of disobeying the authorities were rendered to detain the journalist for 15 days. According to the journalist himself, he was subjected to various kinds of insults and beatings while his stay in prison during which his ribs were broken. In addition, on January 16, 2009 Regional Correspondents of the Institute for Reporter' Freedom and Safety Hakimeldostu Mehdiyev, Mehman Mehdiyev, Elman Abbasov, correspondent of Radio Liberty and the "Turan" news agency Malahat Nasibova were attacked by local authorities and sustained different physical damages. Although the names of the attackers were reported to law enforcement authorities, no action against them was taken.
- On 22 February 2008 "Azadlig" correspondent Agil Khalil (Khalil) was beaten while he was fulfilling his professional duty. Two people beat Agil Khalil in "Zeytun Baglari" (Olive Gardens). They asked who he was. Seeing "Azadlig" newspaper card, they insulted the journalist, and then brutally beat him, trying to get the camera from him. As a result, A. Khalil suffered broken fingers. However, the journalist managed to take pictures of the attackers. As it turned out, they were the employees of the Ministry of National Security. They were involved in the investigation, but shortly after the case was opened against them it was closed. On March 13 of that year, the reporter was attacked a second time on his way home. This time, he got stabbed in the heart. According to A. Khalil's testimony, there

were two attackers. Soon the investigation "found" a suspect who confessed to the attempt of murder of the journalist. However, A. Khalil did not recognize him, and strongly stated that a different person stabbed him.

Despite numerous appeals on all of the abovementioned facts to law enforcement bodies and to courts, the perpetrators have not been brought to responsibility.

- In late September in 2008, "Bizim Yol" newspaper correspondent, Mushfig Huseynov, was transferred to the medical facility of the Ministry of Justice's Penitentiary Service due to problems in his health.

According to M. Huseynov, he did not receive any treatment while he stayed in the facility. They said Huseynov was not allegedly "ill" to be treated. The journalist asked to be provided with medicine. However, his request remained unanswered. Then Mushfig Huseynov asked them to give him conditions so he could contact his family to bring him food and medicine. He was denied this time as well. On 4 September, Huseynov's relatives (his wife and two little kids) came to visit the journalist. However, they were subject to search when the Mushfig's little kids (ages - 1,5 and 3) were stripped off all their clothes to be searched. If we consider that Mushfig's older son is second degree invalid, this affected him negatively a great deal.

- On 11 October 2008 imprisoned editor-in-chief of "Realniy Azerbaijan" and "Gundelik Azerbaijan" newspapers Eynulla Fatullayev was placed in a solitary confinement (penalty chamber) in the prison # 12. The editor-in-chief received this punishment for an alleged dispute between E. Fatullayev and other prisoners. However, his lawyer said that the prisoner had tried several times to provoke a conflict with Fatullayev. Note that this was the second similar case. The first time E. Fatullayev was placed in the solitary confinement on April 10 for 10 days immediately after the end of the hunger strike held by him.
- On 18 October 2008 "Azadlig" newspaper satirist writer Sakit Zahidov (Mirza Sakit) was beaten in the prison, by the employees of the prison #14. Immediately

after returning from treatment facility of the Penitentiary Services of the Ministry of Justice to prison № 14, Sakit was handcuffed, beaten, and shaved on the head with blade. The majority of human rights defenders agreed that the cause of beating the journalist was a poem written by him during the run up for the presidential elections, in which he harshly criticized the head of the country. Despite the public protest regarding this fact, the only measure undertaken was to transfer the journalist to another institution to serve his sentence.

- Novruzali Mammadov, 68-year-old editor in chief of "Tolishi sado" (Voice of Tallish), deputy head of the Talysh Cultural Center, a scientist linguist, Department Head of the Institute of Linguistics, National Academy of Sciences of Azerbaijan, was arrested on February 3, 2007.

Novruzali Mammadov was placed in the colony #15 in the February of this year, and was immediately sent to prison. Every day at 6 am, they took his warm blanket from him, and the old sick man was forced daily to stand on cold cement floor for 17 hours without warm clothing.

On September 14, 2009 Novruzali's lawyer Ramiz Mammadov appealed to the Nasimi district court in Baku in connection with a violation of the right of his client to life against the Ministry of Justice's Penitentiary Services. Based on the true facts, he stated that the scientist was tortured during his detention on Feb. 3, 2007, his fingers were broken and he was abused during interrogation and tortured in a special isolation ward at the colony 15.

Maryam Mammadova, widow of Novruzali Mammadov, filed a complaint to the Prosecutor General of Azerbaijan Zakir Garalov. As evidence of inhumane treatment of her husband, she mentions the illegal placement of Novruzali Mammadov in the solitary confinement on January 14, 2009. Damp concrete floor, no windows and wet mattress (given only for 7 hours and the prisoner was forced to stand for more than 17 hours) played a significant role in the deterioration of Mammadov's health. On January 21, 2009, after human rights defender Elchin Behbudov's visit, Novruzali Mammadov was freed from the solitary confinement.

Subsequently Mammadov appealed to the Nizami District Court on the fact that he was subjected to violence and torture. According to the decision of the court in 6 March 2009, his appeal was partially granted, and the former head of the prison Y. Allahverdiyev was obliged to conduct an examination and treatment of N. Mammadov. But Y. Allahverdiyeva was never punished for his actions.

- On 8 October 2009 at 7.30 p.m. the Institute Reporters' Freedom and Safety employees - Idrak Abbasov, Gambar Gambarov and Elnur Mammadov were mistreated and subjected to physical assault by men in civilian clothes. IRFS employees Idrak Abbasov and Ganbar Ganbarov were recording the conversation between "Milli Yol" Editor-in-chief Shahin Agabeyli and one of the civil clothed police when the civil clothed persons attacked and detained Shahin Agabeyli. Then they twisted the arms of IRFS employees and forcefully took their recording equipments. Besides, they confiscated the cameras (2 video cameras and a photo camera) from Elnur Mammadov, another employee of IRFS, who was recording outside of the building, and took him away in the same car with S. Agabeyli. Although IRFS employee Elnur Mammadov was freed on the road, the equipment was not returned. Only at 10.00 p.m. S. Agabeyli was released. It should be noted that in the same day, men in civilian clothes detained another employee of the newspaper "Milli Yol", deputy editor of the website [www.pia.az](http://www.pia.az) Ravil Mammadov, who was also released later. Returning to the editorial office, they brought the confiscated equipment of IRFS with them. However, the cameras did not have cassettes that had recording of the arrest of the editor-in-chief. Other new cassettes replaced them. In addition to the journalists, law enforcement officers against human rights defenders use violence. So, on 14 June 2008 members of the Baku Nizami district police station #22 beat the Institute Reporters' Freedom and Safety Chairman Emin Huseynov. As a result of the beating, the human rights activist Huseynov was taken to hospital, where he received inpatient treatment for more than a month.

Despite appeals to law enforcement authorities and court, the culprits have not yet brought to responsibility.

### **Question 39**<sup>12</sup>

Please comment on the findings of the Special Rapporteur on the right to freedom of opinion and expression, Ambeyi Ligabo, regarding use of excessive force by the police in Azerbaijan during public protests. Please elaborate on the rules and procedures for the conduct of police officers in cases of public protests and gatherings.

Specific examples concerning the excessive use of force by police to disperse the mass rallies are cited below, and illustrate the violation of article 16 once again:

- Demonstration after Parliamentary elections 2005

On 26 November 2005, police dispersed a demonstration. This rally was held to protest against the violations committed by the authorities in the parliamentary elections. Police and "persons in civilian clothes" used batons, water cannons and dogs against the protesters. As a result of physical violence by police, hundreds of protesters, including women and children were seriously injured. One of the victims was a resident of Sumgayit Surayya Tagirova. She fell under the feet of running people as a result of blows with batons and kicking of police officers. Although she lay unconscious for a few hours, the police did not provide her with medical assistance. This same woman was elderly and also second group disabled. The police even did not allow a relative that showed up on the site to call an ambulance. Only after a while it was possible to bring her to the hospital. Only through the efforts of the doctors it was possible to save her life. Complaint on the brutal actions of police, filed in the court did not give any outcomes. The representative of the victim Asabali Mustafayev, prepared and appeal and sent it to the European Court of Human Rights. Also, the nine-years old daughter of the editor of TURAN News agency Mehman Aliyev, Leila Aliyeva received severe injuries.

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<sup>12</sup> In its concluding observations of the last review of the Republic of Azerbaijan (2009), the Human Rights Committee made the following recommendation: "The Committee is concerned at persistent reports according to which the State party's authorities unreasonably restrict individuals' right to freedom of peaceful assembly, by refusing to deliver authorisations, or by dispersing peaceful demonstrations with excessive use of force (art. 21) [...] The State party should re-examine its regulations, policy and practice, and ensure that all individuals under its jurisdiction fully enjoy their rights under article 21 of the Covenant, and make sure that the exercise of this right is not subjected to restrictions other than the ones permissible under the Covenant." (UN Doc.: CCPR/C/AZE/CO/3, § 16)

- Freedom of speech rally in 2006

On November 23, 2006 the police had broken up an unauthorized picket PFPA "For freedom of speech" in front of the Baki Soveti Metro station. As a result of violent action, dozens of women participating in the picket were beaten, 11 women were arrested, and beaten with cruelty. They were stuffed into trucks in humiliating condition for them and were sent to the Sabail district police station # 9 where they were held for 13 to 20 in the cold outdoors where the situation was discussed. As a result, some of the detainees were punished to pay fines. And PFPA activists Irada Aliyeva and Sheker Iskenderli received sentences of imprisonment for 3 and 5 days respectively. In the detention center, in which they were placed, there were no conditions for the normal stay, and a separate chamber for women.

- Journalists beaten while protesting arrests of journalists, 2007

Journalists Seymur Haziyeu, Abulfez Gurbanli and others held an action to protest « Azadlig » newspaper's editor-in-chief, Ganimat Zahid's arrest together with the Young Turks Organization and Azerbaijan Popular Front Party on December 14, 2007. The action was conducted peacefully- the participants distributed "Azadlig" newspaper to Baku residences while having their mouths closed with the respirators.

Then Sabail District #39 Police Department's employees came to the event's place. More than 10 participants, and Baku residences that did not take part in the action, were taken to Sabail District #39 Police department forcefully.

The parts of the journalists' bodies as well as throat and faces were bludgeoned with during they were in the police department. Elchin Həsənov's mobile phone was broken and 178 AZN was taken out of his pocket.

The journalists made complaint to Sabail District Court related with their illegal arrest on 22 January 2008. Sabail District Court's decision on 15 July 2008 did not fulfil the complaint. Journalists appealed to Sabail District Prosecutor to open

the criminal case related with the police beat them 22 January 2008. But this appeal was also not fulfilled.

- “Flower Holiday” and student protests 2009

Although a bloody terror incident happened and a dozen of students were murdered at the State Oil Academy of Azerbaijan (SOAA) on 30 April 2009, the official «Flower Holiday» was held by the organization activity of Baku City Executive Administration on May 10. A lot of students attempted to hold a protest action and chanted the following slogans: « No to terror », in Sahil subway and National Park. Youth and journalists were faced psychical pressure by police during the action.

Youth and journalists who were arrested during the protest action were taken to Sabail District Police Department #39 by police. Some of the 36 young people were beaten in Police Department savagely. Police forced employees of « Yeni Musavat » newspaper Leyla Ilgar, and journalists Elchin Hasanov, Natig Adilov, and Afgan Mukhtarli. Although Elchin Hasanov has journalist waistcoat, civil clothed person and 2 police sergeant kicked and struck him. Therefore, E. Hasanov lost his consciousness for several minute after the stroke.

Elchin Hasanov, Natig Adilov, and Afgan Mukhtarli filed appeal to Sabail District Court against illegal treatments of employees of Sabail District Police Department #39 on 30 July 2009. But appeals have not been considered yet.

E. Hasanov appealed to Azerbaijan Republic Chief Procurator’s Office to begin criminal case against police who beat him. It was said in the letter, which sent by Procurator's office that Sabail District Procurator’s Office refused to begin criminal case. E. Hasanov filed appeal against this decision of Sabail District Procurator’s office on 8 September 2009. This appeal has not been considered yet.

### **Question 40**<sup>13</sup>

Please comment on the absence of data on trafficking of persons, especially children and women, as well as on sexual exploitation. Please elaborate on steps taken to prevent trafficking of persons, especially children and women as well as sexual exploitation.

In 2008, the Office to Combat Trafficking in Persons found 78 criminal facts related to the article 144-1 (human trafficking) and 1 fact on article 144.2 (forced labour).

Preliminary investigation of all criminal cases under article 144-1, are maintained in a centralized form of investigative department of the Ministry of Internal Affairs Office for Combating Organized Crimes. Criminal actions brought by the district organs of the Ministry of Internal Affairs, such as "involvement in prostitution" (article 243), "detention of prostitution centers" (article 244), indecent sexual assault (Article 150), forced sexual acts (Article .151), etc. are usually presented to the public as crimes related to trafficking. Introducing the public to the facts not related to trafficking, leads to the fact that an incorrect opinion and a negative attitude to this problem is formed in the society.

Under Article 144-2 (forced labour) one fact was recorded, despite the fact that there are 50 000 migrants without labour contracts in the country, and some of them are subjected to labour exploitation.

The media regularly receives information about the problem of trafficking, but more often the representatives of NGOs collaborate with the journalists in this direction, and from government agencies only the activity of the Ministry of Internal Affairs is visible in the media. The problem of trafficking is mainly addressed in opposition or independent media, as the official newspapers, radio and TV do not address this issue as a rule, although it could have contributed to the educational and preventive activities.

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<sup>13</sup> During the Universal Periodic Review of the Republic of Azerbaijan by the Human Rights Council, the Government accepted the following recommendation: "Ensure the effective implementation of the National Action Plan against Trafficking and to provide the necessary assistance to the victims of trafficking." (UN Doc.: A/HRC/WG.6/4/L.6, § 96, recommendation 13)

The country has only one shelter, created in the Ministry of Internal Affairs of Azerbaijan. Persons found suffered during the routine of the criminal case are placed in the asylum. There is no practice of placement of the victims identified by the NGOs in the shelter. The refuge was established for the accommodation, security for victims of trafficking; provide them with food, medicines, medical, psychological, social and legal assistance. Asylum victims are given the conditions for telephone and translation services. These services are only for those who agreed to cooperate with police and appeal to law enforcement authorities making a statement about the crime committed and recognized by the police, victims of human trafficking, as a result of criminal action.

Given that there's a disagreement between NGOs and the Ministry of Internal Affairs problems are created in cooperation. NGO representatives believe that the number of shelters should be increased and international practice should be applied, where NGOs are also able to place the identified victims who refuse to give information and cooperate with law enforcement agencies.

There is only one hotline on trafficking established by the Ministry of Internal Affairs of the Republic in the country. Government structures do not organize activities to raise awareness of the existence of the hotline.

## **Recommendations**

The following recommendations are made:

### **Recommendations on the implementation of article 2:**

- The legal-medical examination is rejected in Azerbaijan. The legal-medical examination accepted citizens and corpses to Health Ministry only with the reference from police and prosecutor. The references without defendants cannot be examined. It is impossible that everybody believes the results of these medical examination, so the answer of these organs are not always objective. Especially the interference of these organs is much in the “ordered cases”;
- Taking into account the regulating norms in the legislation related with the firing the high rank persons who are responsible for these facts;
- Provide credible explanation for their omission that led to the death of Mammadov;
- Give prisoners access to free independent medical examination after they are released;
- The possibility the giving right to the lawyers to meet his attorney without any official permission from the court or administration in the legislation norms;
- The lawyers have to lead the objective investigation on the facts how the local NGO as well as international organizations which leading the monitoring of the hearing processes;
- The procedures for selection of NGOs to the Public Committee, which is described by the state report on paragraph 220 should be known public and the Public Committee should send a written answer to justify for other NGOs which apply, why they have been rejected to become a member.

**Recommendation on the implementation of articles 5, 6 and 7 (in relation with issue 18):**

- Filing a complaint against torture and degrading treatment on the basis of the legislation of Azerbaijan Republic should be examined. Violations of the right not to be tortured that could be typical for Azerbaijan Republic are primarily connected with the investigation of a crime.

**Recommendation on the implementation of article 16 (in relation with issues 38 and 39):**

- Investigate all cases of attacks and physical pressure on journalists and human rights defenders;
- Punish the perpetrators of these crimes;
- Immediately and unconditionally release all detained journalists and bloggers.