



INTERNATIONAL LEAGUE
FOR HUMAN RIGHTS

ALTERNATIVE REPORT

ON THE COMPLIANCE OF THE AZERBAIJAN REPUBLIC WITH
THE CONVENTION ON ELIMINATION OF ALL FORMS
OF RACIAL DISCRIMINATION



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**This report was prepared
by the Human Rights Center of Azerbaijan (AIHMM)
with assistance from the International League for Human Rights (ILHR)**

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INTRODUCTION

This Alternative Report, submitted to the UN Committee on the Elimination of Racial Discrimination, is prepared by the Human Rights Center of Azerbaijan (AIHMM) with assistance from the International League for Human Rights (ILHR).

The AIHMM is a non-governmental human rights organization established in April 1993, registered in 1999 and engaged in monitoring of human rights situation in Azerbaijan. It has submitted NGO alternative reports to several UN Treaty Bodies in the past: to CEDAW (1998), to CAT (1999, 2003), to CCPR (2001) and to CESCRC (2004).

The ILHR is an international human rights NGO in consultative status with ECOSOC and ILO.

This report comprises article-by-article information on the observance by the Azerbaijan Republic of the requirements of the Convention on Elimination of All Forms of Racial Discrimination (CERD). It addresses the period from 1999 up to December 2004. It covers both positive and negative aspects of the situation of national minorities in Azerbaijan Republic from the point of view of the non-governmental sector and the protection of human rights.

We believe that it is extremely important to emphasize that while many international instruments include declarations stressing the territorial integrity and sovereignty of Azerbaijan, critical statements in support of improved protection of members of national minorities must not be construed to imply support for separatism, nor as a threat to territorial integrity of the country.¹

In this report we also suggest a number of recommendations to the Government of the Azerbaijan Republic with the purpose of improving the human rights situation. During the preparation of this report we used all publicly available materials as well as private sources of information.

Additional information is available from the AIHMM and at the ILHR.

¹ ACFC/INF/OP/I(2004)001, Advisory Committee on the FCNM. Opinion on Azerbaijan, 22 May 2003, par.124.

General information on Azerbaijan in 2005



Area: 86.6 thousand sq. Km (33,774 square miles), about 20% under foreign occupation

Population: 8.266 Mln (Jan 1, 2004), 51% reside in urban areas, 49% in rural areas. About 13% are refugees and IDPs

Birth rate: 19.81 births/1,000 population (2004 est.)²

Death rate: 9.76 deaths/1,000 population (2004 est.)

Median age: 27.3 years (2004)

Life expectancy at Birth: 71.6 years (in 2003)

Labor force: 4.99 million (2004 est.), agriculture and forestry 41%, industry 7%, services 52% (2001)

Economic indicators: Per capita GDP: \$509 (in 2000)

Population below poverty line: 49% (2002 est.)

Military manpower: *males age 15-49*: 2,187,847 (2004 est.), fit for service: 1,748,567 (2004 est.)

Ethnic groups: Azeri 90%, Dagestani 3.2%, Russian 2.5%, Armenian 2%, other 2.3% (1998 est.)

Religion: Majority of population (96%) is Muslim, of them approximately 70% Shi'a and 30% Sunni

Conflict situations: undeclared war with Armenia since 1988 over Nagorno-Karabakh region; unresolved division of Caspian Sea with Turkmenistan and Iran; incomplete delimitation of borders with Russia and Georgia.

² Majority of statistics is from CIA Factbook 2004. Source: <http://www.cia.gov/>

Part I
GENERAL INFORMATION

Main changes in the period following submission of the preliminary report

1. After the submission by the government of the Republic of Azerbaijan of the initial and second periodic reports (as one document) to the CERD in November of 1997, a number of significant changes took place, which had a positive impact on the observance of economic, social and cultural rights.

2. In particular, the national legislation was reviewed and improved. The accession of Azerbaijan to the Council of Europe in January 2001 served as an especially strong incentive for this improvement. It was conditioned on the ratification by Azerbaijan of a number of European Conventions and adoption of corresponding national laws.

3. However, even now the legislation of Azerbaijan contains no definition of the term “national minority.” Some of Azerbaijan’s obligations to the Council of Europe have not been fulfilled yet, in particular an obligation «to adopt, within three years of its accession, a law on minorities which completes the provisions on non-discrimination contained in the constitution and the penal code and replaces the presidential decree on national minorities». The Permanent Representative of Azerbaijan in the Council of Europe signed the European Charter for Regional or Minority Languages on December 21, 2001. But this treaty is still not ratified.

4. In 2001-2002, the Azerbaijan Government accepted the optional individual complaints procedures to CCPR, CAT, CERD and CEDAW, allowing citizens to access these after exhausting domestic remedies. In January 2004 Azerbaijani citizens were given access to the Constitutional Court, which received over 1,700 individual complaints for the first half of the year.

5. Parliamentary elections took place in 2000; presidential elections in 1998 and 2003; municipal elections in 2004. During the last presidential election the leader of the country was changed for the first time in 10 years.

6. Generally, during the reporting period, no significant improvement in the situation of minorities was observed.

The status of Nagorno-Karabakh conflict

7. The conflict over the Nagorno-Karabakh region of Azerbaijan and its consequences have considerably hampered efforts to implement the International Convention on the Elimination of All Forms of Racial Discrimination. It is a main source of the xenophobic statements and negative trends in Azerbaijan’s ethnic policy.

8. The United Nations Security Council in its resolutions 822, 853, 874 and 884 of 1993, while reaffirming the sovereignty and territorial integrity of the Republic of Azerbaijan, demanded the immediate, complete and unconditional withdrawal of the Armenian armed forces from the occupied territories of Azerbaijan. In 1993, the UN General Assembly considered the humanitarian situation in Azerbaijan, which was seriously aggravated by the emergence of almost one million refugees and displaced persons.

9. In 1996, however, the UN referred the peace concerns to the OSCE Minsk Group on Nagorno Karabakh. After the unsuccessful attempts to facilitate Azerbaijan-Armenian dialogues, the Council of Europe did the same in June 2000.

10. In May 1994, both sides to the conflict reached a cease-fire agreement under the umbrella of the Minsk Group. Since then, the cease-fire is respected along the frontline, except for the rare light weapon cross-shooting and hostage-taking. Despite the militarist statements and media campaigns by the both conflict sides, the Nagorno Karabakh conflict is the only unresolved armed conflict in the former USSR where a cease-fire is possible without foreign peacekeepers.

11. The OSCE Minsk Group is led now by Russia, which has a military agreement with Armenia and military bases at its territory, United States, which are involved in oil business in Azerbaijan and promote the idea of its integration into NATO, and France, which is considered as pro-Armenian country by both Azerbaijan and Armenia.

12. The formal negotiating process is stagnating. While Azerbaijani and Armenian officials meet from time to time, there is still no mutual understanding even on the type of peace agreement acceptable for both sides (“package”, “step-by-step”, “common state”). At the same time, any grass-root initiative on the reconciliation faces aggressive opposition of the Government.

Manipulations with demographical statistics

13. While the peace agreement is not even sketched out so far, Armenians continue to settle the territories ethnically cleansed from Azeris, mainly the regions of Shusha and Lachin. The obvious goal is to use at the negotiations the fact of the Armenian compact population in the so-called “Lachin corridor” separating Armenia and former Armenian autonomy (“NKAO”). The majority of such new settlers are not from Nagorno Karabakh, but refugees from Baku, Ganja, even persons resettled from Central Asia.

14. After the ethnic cleansing of Azeris, the authorities of Nagorno Karabakh stimulate a further change of demographic situation. E.g., if in January – June 2003 natural growth of population was 375 people, the “mechanic” growth (resettlement) was practically the same – 367 people or 92 families of Armenian immigrants from CIS countries.³

15. According to the official data of Armenian authorities, there were 54,000 refugees from Karabakh in Armenia⁴. Together with Armenian human loss in war, 40,688 expelled Azeris and uncertain number of Armenians emigrated from Nagorno Karabakh to Russia, Ukraine, Western Europe, they constitute a majority of the 189,085-strong population of the former Nagorno-Karabakh Autonomous region. That deprives the speculations about referenda and elections in the self-proclaimed “Nagorno Karabakh Republic” any sense. The statements of Armenian authorities about the current 145,600 residents of Nagorno Karabakh also sound unreal.⁵

16. For comparison, during one decade (1989-1999), the population of Azerbaijan grew by 13.3%, and during 12 years (1989-2001) the population of Armenia increased by 4.8%. Against this background, Armenian population of Nagorno Karabakh during 12 years (1992-2004) reportedly increased by 1.5-2 times – from 80 to 145 thousand. The first census of remaining population of Nagorno Karabakh is planned for October 2005.

17. If this is a result of mechanical growth (resettlement of Armenian refugees from Baku, Ganja, etc.) that would mean that up to half the population of the region are Armenian refugees.

³ Source: <http://www.kavkazweb.net/>

⁴ See e.g. official reports of the Armenian delegation to the UN-sponsored CIS Conference on forced migration (CISCONF) in 1995-2000.

⁵ Information of the “national Statistical Service of Nagorno Karabakh Republic”, 01.07.2003; source: <http://www.kavkazweb.net/>; the same institution reported about 146,592 inhabitants in 1.10.2004

Together with ethnic cleansing of Azeris, mass settlement of Armenians in Nagorno Karabakh means an artificial dramatic change of demographic situation in Nagorno Karabakh.

18. However, a comparison of the number of Armenians who emigrated from regions outside Nagorno Karabakh with the number of Armenian refugees in Armenia and Russia makes us doubt that Armenian migration to Nagorno Karabakh was so massive. E.g., while the entire Armenian population of Azerbaijan in 1989 was 390,500, a Prime-Minister of Armenia Andranik Markaryan mentioned during the meeting with a head of UNHCR Ruud Lubbers in November 2004 that only in Armenia lives about 311,000 Armenian refugees from Azerbaijan.⁶ Even if from the rest of Azerbaijan and from Armenia, which are in better economical situation, emigrated millions of people, it is doubtful that Armenian refugees, who are mainly from urban population, would prefer to settle in the conflict region with mainly rural population.

Religious situation

19. In Nagorno Karabakh region and occupied territories around it, the martial law acts since 1992. The “presidential” decree imposing martial law - renewed annually by the parliament in Stepanakert – imposes restrictions on civil liberties, including banning the activity of “religious sects and unregistered organizations”, banning demonstrations and imposing media censorship.⁷

20. In the Nagorno Karabakh region under the Armenian control, religious situation was worse than that in the rest of Azerbaijan or in neighboring Armenia. To day, 17 Armenian Apostolic churches were reopened since 1989 and 10 priests of this Church work.⁸ Only the Armenian Apostolic Church is allowed to function, and it is the only registered religious community. Under the martial law that has operated since 1992, only registered organizations can exist and others cannot hold services.⁹

21. The Armenian Apostolic Church is considered an ethnic one. Attempts of ethnic Armenians to create other Christian communities are rejected. For example, the Baptist congregation in Khankendi (Stepanakert) has faced problems in recent years. In February 2002 police raided meetings, confiscated books and deported 24-year-old Arsen Teimurov, who had returned to his native Karabakh after becoming a Baptist while in prison in Ukraine.¹⁰ Church member Tigran Nazaretyan was beaten up and threatened in September 2003 for running a street library, and police confiscated books from the church.¹¹ Six police officers and one man in civilian clothes raided the Baptist prayer house in the evening of 20 September 2004. The police were “especially interested” in the literature published by the Baptist Council of Churches, seizing 32 copies of the Russian-language Herald of Truth, including a supplement in Armenian, 100 tracts and other publications. Police seized a passport of Church worker Feliks Mamiev and banned him from traveling anywhere.¹²

22. The appeals of rest of Russians to open another ethnic congregation, the Russian Orthodox Church were not respected.

23. Any confessions propagating a right for alternative service like *Hare Krishna* or *Jehovah Witnesses* are treated as nation’s enemies and expelled from Nagorno Karabakh.

⁶ RIA Novosti News Agency (Russia), source: <http://searchpro.com.ua/news28.html>

⁷ Forum 18 News Service, 27.09.2004.

⁸ Source: <http://nkr.am/eng/facts/religion.htm>

⁹ Forum 18 News Service, 27.09.2004

¹⁰ Keston News Service, 7 March 2002.

¹¹ Forum 18 News Service, 03.11.2003

¹² Forum 18 News Service, 27.09.2004

24. For comparison, in October 2004, in Azerbaijan were registered 290 religious communities of about 40 confessions. In 2000, in Armenia were registered 14 religious communities, 2 more acts without registration.¹³

25. In August 2003, the government of self-proclaimed Nagorno Karabakh Republic decided to give the Azerbaijani “Small Mosque” in Shusha city to a French non-governmental organization to create there a Cultural Centre.¹⁴

Other Convention-related issues

26. In the territory of Nagorno Karabakh region and in Armenia 4,852 Azeris are reported disappeared. Azerbaijan claims that up to 783 of them can be in the captivity.¹⁵ However, the search of persons missed in operations is difficult because of diplomatic reasons, in particular the self-proclaimed status by Nagorno Karabakh authorities.

27. The destiny of Azerbaijani (Muslim) cemeteries in Nagorno Karabakh and in the occupied territories causes concerns because the majority of them have not been visited by the relatives since 1988-1993. While in Shusha city which is relatively often visited by foreigners, the Muslim cemetery reportedly is in the relative order the fate of Azeri cemeteries in other former Azeri towns and villages of Nagorno Karabakh and occupied territories which are closed for visitors needs clarification.

28. The FCNM Advisory Committee expressed in May 2003 its regret that “the damage caused by the Nagorno-Karabakh conflict to religious sites and other cultural heritage and considers that all concerned should pay particular attention to preventing any further damage to the cultural heritage of persons concerned in Nagorno-Karabakh and in other parts of Azerbaijan”.¹⁶

29. In January-February 2005, the OSCE plans its first own fact-finding mission to Nagorno Karabakh. At the moment of finalizing of alternative report, the mission did not come in the conflict region, and its results were unknown¹⁷.

¹³ 4th periodic report of Armenia. CERD/C/372/Add.3, 13 May 2002.

¹⁴ *Azat Artsakh* newspaper, 28.08.2003

¹⁵ *Turan* News Agency, 01.12.2004.

¹⁶ ACFC/INF/OP/I(2004)001, Advisory Committee on the FCNM. Opinion on Azerbaijan, 22 May 2003, par.36

¹⁷ *Turan* and *ArmInfo* News Agencies, 19.01.2005

Part II
INFORMATION CONCERNING ARTICLES 2-7 OF THE CONVENTION

Article 2

Obligations and practice

Unreliable statistics

30. Public statements of both governmental officials and officially registered ethnic communities deny any discrimination against ethnic minorities. However, the practice and simple statistics demonstrated that while in general the Azeri society is tolerant to the ethnic and religious minorities, some minorities experiences various problems related to the unresolved conflict over Nagorno Karabakh, attempts of ethnic separatism as well as denationalization of property.

31. According to the official statistical data in 1989 there were 392,300 ethnic Russians living in Azerbaijan, or 5.3 percent of the republic's population. The latest census in 1999 shows that over the past 10 years the number of Russians in Azerbaijan has fallen to 141,700, or 1.8 percent of the population.¹⁸ So, without any armed conflicts with Russia or pogroms the Russian population sharply decreased - by 2.8 times.

32. According to the census of 1999 only 657 people of Armenian nationality were officially registered as living in Azerbaijan outside of Nagorno Karabakh region. Nevertheless, according to the chairman of the State Statistical Committee Arif Veliyev, there were in reality approximately 20,000 Armenians living in Azerbaijan¹⁹. In accordance with UN recommendations, during the census people were not requested to provide documents identifying their nationality. That means that 96,7% of Armenians in Azerbaijan preferred to hide their origins even during the anonymous formal survey out of fear to draw unnecessary attention.

33. While the entire Azeri population increased by 13.3%, the number of Lezgins remained almost constant – 171.4 thousand in 1989 and 178.0 thousand in 1999 (growth of only 3.85%). From the other hand, official number of Talyshes increased from 21.2 to 76.8 thousand, i.e. now 3.6 times more. Such fluctuation of figures seriously doubts a reliability of official statistics and raised questions about the difference between passport identification and self-identification.

34. For example, Alakram Hummatov, who was sentenced as Talysh separatist in February 1996, was mentioned in his court sentence as ethnic Azeri. Only in the court decision of 2003, he 'became' a Talysh. About 20 supporters of Hummatov were also mentioned in the court sentence of 1994 as ethnic Azeris.

35. Some researchers claim that number of such false 'by passport only' Azeris is tens times more then official number of minority population. Regardless, the fact that not only Armenians but other minorities prefers not to manifest their real ethnic affiliation is very significant and is the best evidence against official denials of practice of soft ethnic discrimination and semi-official Pan-Turkism.

Situation of immigrants

36. Article 69 of Constitution provides that "foreign citizens and persons without citizenship in the Azerbaijan Republic can enjoy all rights and freedoms and shall fulfill all the obligations

¹⁸ The figures were taken from the governmental report.

¹⁹ Newspaper "the Right of Choice", 14/08/2004

together with the citizens of the Azerbaijan Republic, if this does not contradict the Law or International Agreement to which the Azerbaijan Republic is a party. Rights and freedoms of foreign citizens and people without citizenship residing permanently or temporarily in the territory of Azerbaijan can be restricted only in accordance with the international legal norms or laws of the Azerbaijan Republic.”

37. In practice, there is a visible difference between a status of wealthy foreigners like businessmen, employees of foreign oil companies, etc. and poor immigrants, e.g. Chechens or Afghans.

38. The UN Committee on Social, Economical and Cultural Rights in its Concluding Observations (2004) was “concerned about the persistent *de facto* discrimination against foreign citizens, ethnic minorities and stateless persons in the fields of housing, employment and education. The Committee is also concerned about the legal status of a significant number of long-term residents in the State party who remain stateless... The Committee recommends the State party to take all measures to ensure that all persons under its jurisdiction enjoy economic, social and cultural rights enshrined in the Covenant without discrimination, and to facilitate regularization of legal status of foreigners residing in Azerbaijan whenever possible.”²⁰

39. One of the problems is discrimination of some groups of foreigners who came from the conflict regions like Chechnya or Afghanistan.

40. While more than 230,000 refugees enjoy refugee status even after receiving Azerbaijani citizenship in 1998, the 10,000-strong Chechen community of asylum seekers faces constant problems with registration of their status. The Azerbaijan State Committee on Work with Refugees and IDPs still refuses to deal with this group of asylum seekers and re-addressed this issue to the UNHCR office in Baku. The Chechens are generally provided with a standard letter confirming that UNHCR is examining their cases, which helps them to avoid forced eviction from the country. But even after 3-4 years of such “examination”, they have no official refugee status. Many Chechen opposition journalists, religious activists, former officials of Chechen administration, their relatives, even the widow of the first Chechen President, Djohar Dudayev failed to receive this status.

Impact of Nagorno Karabakh conflict on political life

41. Unresolved conflict with neighbouring state of Armenia is often used for the justification of discrimination Armenians and their descendants, living in Azerbaijan, as possible spies, saboteurs, etc. The search of “Armenian roots” is used in campaigns against some officials, opposition activists and human rights defenders. The governmental and pro-governmental media sometimes spread the open misinformation about alleged Armenian father of ex-Speaker, alleged Armenian mother of a human rights activist, etc.

42. Very typical is a public statement of the Permanent Representative of Azerbaijan to the UNOG Isfandiyar Vahabzade sent to the Chairman of Parliament in 2001: “I can firmly state that our diplomats whose mothers are Armenians, Russian or Jewish (I even do not talk about smaller minorities populated the Republic) cannot adequately serve abroad Azerbaijan”.²¹ In May 2002, the Member of Parliament Iqbal Agazade stated in Parliament that he intended to send to the Ministry of National Security a list of state officials who has the Armenian roots or Armenian relatives. He

²⁰ E/C.12/1/Add.104, 26 November 2004. Concluding Observations of the Committee on Economic, Social and Cultural Rights. AZERBAIJAN, par.15,41.

²¹ *Echo* newspaper, June 5, 2001

claimed that such persons can serve to Armenia, providing it with [secret] information from Azerbaijan.²²

43. The official propaganda used the Armenian theme in various situations, even not related to the Nagorno Karabakh war itself. For example, on 24 February 2003 Ilham Aliyev (now President of Azerbaijan) during his appearance on the national TV channel threatened with reprisals all those who criticised the construction of the Baku-Ceyhan pipeline. One of his arguments was that while Armenia is the only country of Southern Caucasus, which is not involved in this project, then Armenians inspired the critics of the project.

44. The anti-Armenian campaign also indirectly supports discrimination of other minorities. For example, the illegal occupation of apartments, belonging to ethnic Russians, by Azeri refugees in 1990s was justified by the military cooperation between Russia and Armenia. Many ethnic Russians were dismissed from their jobs. However, when the Government needed political support of Russia, various public events were organized to promote the Russian culture in Azerbaijan.

45. The Udins have been baptized in the Armenian Church, have Armenian names and Armenian relatives and therefore were treated as “Armenians”. The Udins were practically fully removed from Oguz region (only 30 of 300 families still remain there) by refugees supported by the local police chief, who is also a refugee from Karabakh. However, when a decade later the government decided to use the Udins against the Armenians, they were permitted to have their own religious community and to promote the idea to restore their separate congregation, which they have had until 19th Century.

(e) Encouraging means of eliminating barriers between races

46. In situation of stagnation of official negotiation process on Nagorno-Karabakh conflict, the civil societies of the both conflict sides actively developed the mutual cooperation, directly or indirectly aimed to reconciliation. The exchange of visits of journalists, politicians, women’s and human rights activists reached its climax in 2000-2001.

47. It is obvious that the Azeri authorities still underestimate the role of civil society in the peaceful settlement of the conflict. The frequent statements by high-ranked officials promoting military resolution of the conflict as well as accusations and threats addressed to representatives of civil society, who maintain the contacts with Armenians, definitely increase a pressure against the «second track diplomacy.” Since autumn 2001, the government began the most massive and aggressive campaign against the non-governmental peacemakers. One of the numerous visits of Armenian non-governmental groups to Baku in September 2001 faced an unusually aggressive reaction of Azerbaijan pro-governmental media. During this visit one Armenian civil society activist was physically abused. The active propagandist campaign against the “people’s diplomacy” followed.

48. As a result, in November 2001 the mutual visits of journalists, which had been organized by the press clubs in Baku, Yerevan and Khankendi (Stepanakert), were suspended because “in conditions of artificial worsening of situation in Azerbaijan exchange of journalist visits instead of reconciliation heats atmosphere even more”.²³

49. The gradually worsening situation led to cessation of visits of Armenians to Azerbaijan, while Azeris continued to visit Armenia. Then, in April 2003 the three-days long pogroms of the

²² *Yeni Musavat* newspaper, 7.05.2002

²³ Press release of Yerevan Press Club, 13.11.2001

activists of “second track diplomacy” NGOs (AIHMM and SDI) were organized. The activists of the ruling party YAP directly participated in these attacks. The UN Special Rapporteur on Human Rights Defenders and the UN Committee on Torture²⁴ negatively reacted to these events. Police investigation of pogroms started due to international pressure, but later was shut “because of lack of witnesses”.

50. The FCNM Advisory Committee noted “in this connection with particular concern the recent manifestations of intolerance towards representatives of certain non-governmental organizations, notably representatives of the Human Rights Center of Azerbaijan, with activities in this sphere. The Advisory Committee believes that the authorities’ attitudes, statements and measures can be instrumental in preventing and countering such incidents and that they have a particular responsibility for building trust and dialogue and promoting a measured approach to the questions at issue”.²⁵

51. In May 2003, some activists of pro-governmental non-governmental organizations accused the International Committee of Red Cross of being “pro-Armenian” and demanded to close the ICRC office in Baku. A member of the State Commission on Prisoners of War, Missed in Operations and Hostages took part in the press conference, which started this campaign.

52. Contrary to the attacks on the “people’s diplomacy” in 1990s, the main actors of new wave of hostility were not state officials but representatives of “non-governmental organizations”. This convinced international organizations about the “spontaneous” and “public” character of the events. However, there are numerous signs that authorities supported them. For example, we can refer to the pro-governmental orientation of participating NGOs, active support in governmental and pro-governmental media, public comments in support of this campaign made by the middle-rank officials, etc.

53. Finally, the Azerbaijani Prime Minister and future President Ilham Aliyev during the election campaign in 2003 had disclosed Government’s position on unofficial links with Armenia: “I would like to address NGOs, in particular - put an end to your contacts with Armenia, do not establish any relations with the occupying state. We do not need this. This is fraught with great dangers for us. Let them first withdraw from our lands and after that one can speak about talks and ties”.²⁶

54. The pro-governmental NGOs, which had participated in pogroms of 2003, were encouraged by this direct instruction to break the ties with Armenians. In 2004, they continued a campaign, this time against OSCE and some diplomatic representations in Baku, accusing them of being pro-Armenian. On June 10, 2004, Avaz Hasanov, the Azerbaijani co-ordinator of the International Working Group on Search for the Missing People, Captives and Hostages, was exposed to abuses and threats of death by unknown people because of his trips to Karabakh and Armenia.²⁷

55. On 22 June 2004, the mobsters of Organization of Liberation of Karabakh (QAT) physically attacked the hotel hall where the NATO program “Partnership for the Sake of Peace” held an official meeting with participation of Armenian military officers. After that, the next NATO training in Baku was cancelled. The mobsters were arrested and sentenced.

²⁴ <http://www.UNg.ch/news2/documents/newsen/cat0322e.htm>

²⁵ ACFC/INF/OP/I(2004)001, Advisory Committee on the FCNM. Opinion on Azerbaijan, 22 May 2003, par.38

²⁶ Azerbaijani TV Channel One, 10.09.2003

²⁷ Information Agency “Turan”, 10/06/2004

56. The actions of mobsters got a wide support of state officials, up to the Ombudsman. On 2 September 2004, the President commented the sentence and noted: “As a President, I cannot and would not like to intervene into judgment. But as a citizen I consider that punishment by [this] judgment is inadequate to what sentenced persons had done. That is too severe punishment. As a citizen, I cannot support this decision.”²⁸ After that, the Court of Appeal liberated the QAT members.

57. It is worth noting that in January 2005 the Parliamentary Assembly of Council of Europe (PACE) called on Armenia and Azerbaijan “to foster reconciliation, confidence-building and mutual understanding among their peoples through schools, universities and the media. Without such reconciliation, hatred and mistrust will prevent stability in the region and may lead to new violence. Any sustainable settlement must be preceded by and embedded in such reconciliation processes”.²⁹

58. The PACE recommended that the Committee of Ministers of Council of Europe “allocate resources for an action plan of specific confidence-building measures for Armenia and Azerbaijan; ... for specific training programmes for teachers and journalists from both countries aimed at better mutual understanding, tolerance and reconciliation”.³⁰

Article 4

59. In December 2004, the Ministry of National Security started a criminal case on Article 283.1 of Criminal Code in connection to the publication of Adolph Hitler’s book “Mein Kampf” in Azeri. The Ministry reacted to an appeal from Jewish community. Part of the printed copies of this book was confiscated by customs. However, it was published also in the newspaper “Xural”, whose editor Avaz Zeynalli was interrogated.

Article 5

(a) The right to equal treatment before the tribunals

60. In August 1999 the Committee on the Elimination of Racial Discrimination in its Concluding Observations on initial and second periodical report of Azerbaijan recommended that ethnic minorities be granted equal access to courts and be financially compensated for moral and material damage caused by discrimination against them.³¹

61. In general, the treatment of the Azeri citizens of any ethnic origin before the tribunals is equal, except some politically sensitive cases. Such cases include, for example, any lawsuits of representatives of residual Armenian population against the ethnic Azeris, though the situation dramatically improved since early 1990s. All trials, where defendants are accused of the ethnic separatism, are especially sensitive even when compared with other political trials. In such cases, the judges demonstrate high sensitivity for the political climate and for opinion of political leadership.

62. For example, a case of the armed gang of 23 Avar separatists was tried in April 2003 for

²⁸ *Turan* Information Agency, 02.09.04

²⁹ PACE Res.1416 (2004). The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference

³⁰ PACE Rec.1690(2005). The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference.

³¹ Concluding observations of the Committee on the Elimination of Racial Discrimination: Azerbaijan. 25/08/99. A/54/18, paras.482-503.

only 10 days. During this short period, the judge examined 3 episodes of armed clashes of the gang with police, attempts of ethnic separatism, and alleged links of this group with Armenian separatists in Nagorno Karabakh, etc. and issued 3 life sentences. The defendant's allegations of torture during the pre-trial investigation were ignored. For comparison, it took 5 months in 2004 to complete a case of seven opposition activists, who were accused of the organization of public clashes with police during several hours and got sentences of 2.5 to 5 years.

63. In other case related to the ethnic separatism, Alakram Hummatov in October 2001 was designated political prisoner by experts of the Secretary General of Council of Europe.³² He was granted a new trial in January 2002, which ended in July 2003 with the same life sentence. This trial had been repeatedly interrupted for weeks, and the hearings sometimes took only several minutes, while the government discussed the political prisoners' issue with the Council of Europe and progovernmental media dealt with defamation of defendant.

64. According to the Article 21 of Constitution (State Language), "The Azerbaijan Republic shall guarantee the free use and development of other languages spoken by the population." Article 45 (Right to Use Native Language) is more specific: "Every person shall have the right to use Native Language. Everyone shall have the right to be raised and get an education, be engaged in creative activities in Native Language. No one can be deprived of the right to use Native Language." That reflects the general approach to the minority languages as something exotic and related to the poetry and other creative activities, but never to the local or regional administration, judiciary, etc.

65. According to the criminal procedure and civil procedure codes, the participants of the trials can use "state language of Azerbaijan Republic or language of majority population of respective place".³³ Besides a few regions, the minorities nowhere form the majority of population even in the regions of their compact residence. So, Russians do not consider a majority in Absheron peninsula, Talyshes - in Bilasuvar region, Lezgins - in Khachmaz region, Georgians - in Qah region, etc. It is a legal gap, and if the judge would decide to use the state language in such regions, it would be used even if both sides would represent minority. In practice, the oral Russian language is often used in trials in Baku, oral Lezgin language - in the courts of Northern regions. Moreover, the lawsuits and complaints written in Russian are usually accepted by the courts. The court also provides the trial participants, who are not fluent in Azeri, with the translation into the language they understand better (not obligatory native).

66. Only Constitutional Court (CC), which permits to use native non-state language during its hearings, simultaneously does not permit to submit the complaints written in non-state language without their translation into Azeri.³⁴ That creates the problems for those representatives of ethnic or language minorities³⁵ and foreigners who have no opportunity to translate their documents into Azeri, e.g. prisoners, poor people, homeless, beggars, etc. De facto, their access to the Constitutional Court is limited.

67. Much worse is situation of minorities during the investigation period, when a person is isolated from society. Sometimes, the minority detainees are forced to sign a statement that they refuse to use translator services because they understand state language properly.

68. One of the first Azeri cases considered by the European Court of Human Rights, was that of Gulnare Kazimova, a speaker of Russian born in Baku. During the arrest, she was asked to sign a

³² SG/Inf(2001)34 / 24 October 2001. Cases of alleged political prisoners in Armenia and Azerbaijan.

³³ Article 26 of Criminal Procedure Code.

³⁴ Articles 29.2 and 35.1.4 of the Law "About Constitutional Court" respectively.

³⁵ A part of ethnic Azeris still are not fluent in Azeri being educated in Soviet time in Russian.

document, which she was unable to read and understand properly. Throughout the period of detention, she was not provided with a lawyer of her choice and received communications solely in Azeri, a language of which she allegedly understands only 10%. She was also refused the assistance of an interpreter. She invoked Article 6 of the Convention on these issues. The application was rejected without examination of its substance because of technical reasons (*ratione temporis*).³⁶ However, Kazimova's situation is typical.

(c) Political rights

Right to participate in elections

69. While representatives of minorities have the full right to participate in elections, in reality they can use only a right to vote. As to a right to stand for election, outside the regions of compact living they have a little chance to receive majority votes especially if they are not members of ruling party.

70. Very typical is a situation of Mountainous Jews, who make up less than 0.1% of total population and are minority even in Qirmizi Qesebe village, Quba region where they compactly live. They wanted to have their own member in Parliament. As a head of this community Semyon Ihiilov told the media, the registration of a candidate would not be a problem. However, the Jews preliminarily informed the President when he had visited Qirmizi Qesebe on 27 July 2004, and "he agreed with them, telling that it is really timely". Simultaneously, the President told the Jews the name of the future candidate who is a "known enough person in the country."³⁷

71. Only few members of Parliament are representatives of minorities. The majority of them were elected from the lists of the ruling Party,³⁸ those, who are independent, had been supported by authorities during the elections in 2000. The situation can be even worse after forthcoming Parliamentary elections of 2005, because the mixed electoral system was abolished and minority representatives now cannot be elected to the Parliament on the Party lists.

72. It is necessary to note that current structure of the Parliament bodies does not include the Standing Commission on Minority Issues. Instead, some minority representatives were included into the Standing Commission on Human Rights.

d. Other civil rights

(ii) The right to leave any country and return to one's country

Political emigrants

73. Hundreds of participants of political events in 1993-2004 are forced to hide outside of Azerbaijan to avoid the arrest. Among them are some persons who participated in the attempt to establish so named "Talysh Mugan Autonomous Republic" (Azeri acronym TMMR), e.g. a "Chairman of Parliament (*Mejlis*) of TMMR" Fakhraddin Abbasov, a leader of the Party of Equality of Peoples of Azerbaijan (which initiated "TMMR") Hilal Mammedov, etc.

74. The former head of so named "TMMR" Alakram Hummatov, who was first sentenced for

³⁶ Application no. 40368/02, Gulnare Kazimova v. Azerbaijan.

³⁷ *Echo* newspaper, 07.09.2004

³⁸ Mikhail Zabelin (Russian minority), Rabiyyat Aslanova (Avar), Asya Manafova (Lezgin)

death and spent 10 years on a death row and then was retried and sentenced to life imprisonment, was pardoned in September 2004 under the condition that he would reject his Azeri citizenship. Immediately after his release from prison, he was deported to the Netherlands. His distant relative Tahir Agayev who was searched by police since 1995 (in connection to Hummatov) and returned to Azerbaijan from emigration was arrested in June 2004 and consequently sentenced to 4-years imprisonment.

Chechens and Meskhetian Turks

75. The forced migration flows of 1988-2004 created the problems of treatment of some ethnic non-Azeri groups which are *de jure* or *de facto* refugees and seek not only asylum but repatriation to Georgia or Russia. The solution of such problems practically does not depend on the efforts of the Government of Azerbaijan.

76. For example, there are 43,400 Meskhetian Turks who were deported from Georgia in 1944 and settled in Azerbaijan since late 1950s, awaiting repatriation. In the Saatli region of Azerbaijan, they constitute about 60% of population and became a minority comparable with e.g. Avars. Before the accession to Council of Europe, Georgia assumed a specific obligation to facilitate their repatriation, which is still not implemented. Meanwhile, all the Meskhetian Turks in Azerbaijan adopted the citizenship of Azerbaijan. In the circumstances, the Russian Federation, for example, prefers not to grant Russian citizenship to Meskhetian Turks in the Krasnodar Kray. As the UNHCR head Ruud Lubbers told during his visit in Baku in November 2004, "Otherwise these people would remain stateless".³⁹ However, adoption of the Azeri citizenship does not mean the entire integration of Meskhetian Turks, because many of them would like to repatriate in Georgia. In February 2004, the 5th Congress of Meskhetian Turks' Society *Vatan* once again appealed to the new leadership of Georgia to facilitate their return to the country.

77. In 2001, the Council of Europe urged Georgia "to accelerate the work undertaken with the Council of Europe and the UNHCR on the question of the repatriation of the deported Meskhetian population" and "granting them the same status of rehabilitation as that has already given to deportees of other ethnicities who were repatriated to Georgia under the Soviet regime".⁴⁰

78. Concerning non-Azeri refugees, the problem of former inhabitants of Chechnya deserves special attention. By May 2004 the number of officially registered refugees from Chechnya amounted to 8,204 people. Contrary to other categories seeking asylum, almost no Chechens were given official refugee status. For example, in 2003, the official status received 124 Chechens, and 48 more during the first 5 months of 2004. Some Chechens cannot obtain official status even after living in the country for 3-4 years.

Extraditions of alleged terrorists

79. After the events of 11 September 2001, entire ethnic groups like Arabs, Afghans, Chechens, Daghestanians and especially alleged members of the various Islamic organizations became an object of harassment by the law-enforcement agencies. The Government extradited and deported people, suspected of association with various terrorist organizations, even to the countries with practice of torture, remaining capital punishment and even summary executions. The arrests and extraditions were done in a secret manner and there were no trials or examinations of accusations from the country, requesting extradition. Such practice violated the national and international standards because of absence of any transparent and competitive procedures, which can guarantee that no

³⁹ *Echo* newspaper, 27.12. 2004

⁴⁰ Council of Europe Parliamentary Assembly Resolution 1257 (2001), "Honouring of Obligations and commitments by Georgia"

person would be extradited to the country using torture and death penalty.

80. In 2001-2002, the secret services of Azerbaijan arrested more than 30 foreigners and extradited them to various countries. For example, eight Egyptians, who were active members of such international terrorist organizations as Al Qaeda, Al-Djamaat-ul-Islamiya and Djihad, were arrested and extradited to Egypt.⁴¹

81. Such extraditions continued to happen in 2003-2004. The typical case was an extradition of Jordan⁴² citizen Adnan Muhamed Said on September 25 2003, which was announced post *factum*. The procedure of his extradition took only 13 days and was decided by the order of the Prosecutor's Office on request of Jordanian secret services, without trial and opportunity to appeal the decision. On February 19, 2004 Azerbaijan extradited Uzbekistan citizen Rustam Balbatayev, a member of an Islamic organization and suspect of the terrorist act in Tashkent in 1999. That happened soon after Amnesty International began a campaign against death penalty in Uzbekistan.

82. On some occasions, the authorities used disinformation. In April 2004, one of Daghestani Wahhabis, Mahomed Tagayev, was arrested by Russian authorities and accused of public appeals to change the Constitutional order and inspiration of ethnic, racial or religious hostility in connection to the publication of two books in 1998 and 1999, which called for *jihad*. The Russian media initially claimed that Tagayev was arrested in Daghestan, however, later Vice-Prosecutor General of Russian Federation, Sergey Fridinsky, confirmed that "law-enforcement agencies of Azerbaijan on request of Russian side arrested Tagayev and extradited him to Russian authorities".⁴³

83. On April 16, 2004, Azerbaijani authorities tried to deport a Syrian citizen Imad Jadom Masri whose case for asylum was being considered at that time by the UNHCR Office in Baku. That happened after his arrest by police and detention in the special prison for persons without documents. When he refused to be repatriated in the airport, the police returned him to prison⁴⁴. A few days after this, a director of this prison, Djabir Kazimov, was dismissed. According to unofficial sources, it was revealed that two foreigners without proper documents were detained there and released for a bribe.

Visits of Armenians

84. Since the very beginning of a still unresolved armed conflict with Armenia over the Nagorno-Karabakh region of Azerbaijan, ethnic Armenians of any citizenship are under suspicion as possible spies or terrorists. The situation was aggravated by the real acts of Armenian terror in 1986-1994. Quite understandably, the information about the arrests and deportations rarely became known.

85. On several occasions, the legal status of Armenians, entering Azerbaijan, was uncertain. For example, the following issues need additional clarification by international bodies:

- citizenship of the Armenian refugees from Azerbaijan of Soviet period,
- settlement of the Armenian voluntary returnees,
- freedom of movement of ethnic Armenians with foreign citizenship,
- access of foreigners to the Azerbaijani territories, controlled by Armenians,
- free movement of foreigners between Armenia and Azerbaijan, etc.

86. For example, the Bulgarian journalist Eduard Papazyan was not permitted to enter Azerbaijan on November 2004 allegedly because of his Armenian origin. Being an editor of the

⁴¹ Azer-Press News Agency, 22 October 2002.

⁴² Country with remaining capital punishment.

⁴³ *Gazeta.Ru*. Source: <http://www.gazeta.ru/cgi-bin/newsarc.cgi?lenta=lenta&day=10&month=04&year=2004>

⁴⁴ *Turan* News Agency, 22.04.2004

sport news of popular Bulgarian daily “24 Hours”, he was going to cover the football match between Azerbaijan and Bulgaria. In the Baku airport he had been the only journalist who was expelled without any diplomatic procedures.⁴⁵ While the Bulgarian authorities and football association considered the journalist as Bulgarian (by his citizenship), the border guards treated him as Armenian (by his ethnic affiliation).

87. In April 2004, two ethnic Armenians, Arthur Apresyan and Roman Teryan, who had emigrated in 1990, returned to Azerbaijan with obvious assistance from the Azeri authorities. They asked the UNHCR office in Baku for asylum in a third safe country. The UNHCR office was in the focus of speculations in media and asked advice from Geneva. The problem was that Armenians returned to their country of origin and were *de facto* Azerbaijani citizens. Therefore, some observers believed that it was a deliberate provocation of Azerbaijani authorities to punish the UNHCR for independent behaviour. Very soon the head of the UNHCR office in Baku was changed under pressure from Azerbaijani authorities. The fate of Armenians, who were widely advertised by media at the beginning of the story, is uncertain. According to some information, even in November 2004 they were still were detained in the prison of Ministry of National Security.

88. In August 2004, the police detained Japanese (ethnic Japanese) who photographed a non-secret Baku city landscape. The main reason, as it appeared, was that Japanese was a first-year student of Yerevan State University's and arrived from Yerevan via Tbilisi. Despite the fact, that he was released after the standard check of documents, the pro-governmental media during several days described his activity as “an act of sabotage by Armenia” and misinformed public that “the investigation is continuing”.⁴⁶

89. In several cases, visits of ethnic Armenians to Azerbaijan started wide campaigns for prohibition of any visits of any Armenians until the end of the conflict with Armenia. The responses of the state officials in such cases were confused and controversial. It can be partly explained by the absence of any unified and clear approach to such situation from the international organizations.

(iii) The right to nationality

90. There is some uncertainty as to a legal status of the persons, born in Azerbaijan who became the refugees as a result of ethnic clashes in Nagorno Karabakh and Central Asia. They were granted citizenship but continue to be considered as refugees.

91. Article 52 of Constitution (1995) provides that “a person having political and judicial relation to the Azerbaijan Republic as well as mutual rights and obligations shall be a citizen of the Azerbaijan Republic. A person born at the territory of Azerbaijan Republic or by a citizen of the Azerbaijan Republic shall be a citizen of the Azerbaijan Republic. A person whose one parent is a citizen of the Azerbaijan Republic shall be a citizen of the Azerbaijan Republic.”

92. The Law About Citizenship of Azerbaijan Republic, adopted on September 30, 1998, contains the same provision (Art.1). Simultaneously, Art.5 of the Law defines that citizens are the persons who has had a permanent passport registration (*propiska*) in Azerbaijan at the date, when this Law entered into force; any non-citizens who has had such registration as of 01 January 1992; refugees, who got asylum in Azerbaijan between 1 January 1988 and 1 January 1992. Thus, contrary to Constitution about half million persons born in Azerbaijan, who left the country before 1 January 1992, are not considered to be citizens.

⁴⁵ *Arminfo* Information Agency, 17.11.04; *Zerkalo* newspaper, *Regnum* Information Agency, 19.11.04

⁴⁶ *Azad Azerbaijan* TV, 13.08.2004

93. The Chechen asylum seekers, who lived in Azerbaijan since mid-1990s and had the children here, were not able to register these children as citizens of Azerbaijan despite provision of Art.52 Constitution. According to the information, received from the non-governmental organizations of Chechen refugees, the parents are forced by officials of registration desks to address the Russian Embassy to obtain the Russian birth certificates. Some of Chechen parents succeeded to get Russian documents for their children with the help from the UNHCR office in Baku. The main motivation to receive Russian documents is so that he/she can get medical assistance, enter schools, etc.

94. However, there are episodic refusals to register a newborn child from mixed marriage with Armenians under surname and ethnicity of his/her non-Armenian parent. Some young people who were registered at birth as Armenians and then, when reach his/her 16 years, want to change ethnicity experience, they experienced similar problems. While the officials explain their action as necessity to prevent Armenians from hiding, mainly it looks like blackmail to extort bribe. After the pogroms in 1988-1990, majority of Armenians are afraid to litigate in such cases.

95. Quite different is a problem of converted Inghilos, who want to change their Azeri names to Christian ones. These ethnic Georgians, who were converted to Islam several centuries ago, are considered to be Georgian-speaking Azeris by the Azerbaijani authorities. They face great difficulties trying to change their surnames back to the Georgian form and to register children's births with Georgian names. The motivation for the parents' desire for Georgian first names is national, not religious.⁴⁷

96. In violation of Constitution, the *propiska* (mandatory registration at the place of residence) is still a major basis of citizenship. Until the Constitutional Court's decision of 1999, soldiers, inmates, mental patients and residents, expelled from their apartments by refugees, were deprived *propiska* automatically, if they had not lived in their apartments for more than six months. Such evictions were especially frequent during the period of apartment privatization.

97. Until decision of Constitutional Court in 2003, the same Law "On Citizenship" *de facto* deprived majority of persons, living in Azerbaijan without *propiska*, the right to citizenship. According to the legislation on ID and passports, they could not get national identification documents without *propiska*. Without ID, they cannot get job in governmental sector, register the marriages, operate with real estate, vote, etc.

98. A four-year campaign of Council of Europe for the liberation of political prisoner Alakram Hummatov, sentenced for his attempt to create the Talysh autonomy in 1993, ended with his pardon by the President of Azerbaijan in September 2004. However, simultaneously he was deprived his Azerbaijan citizenship and forcedly exiled to the Netherlands. Since that, he was prevented from visiting Azerbaijan and from participation in political life of Azerbaijan.

(vii) The right to freedom of thought, conscience and religion

99. Although the principle of separation of religion and state exists in Azerbaijan, high level officials emphasize the country's "Islamic identity." This is a serious obstacle to the development of non-Muslim and, particularly, "non-traditional" confessions.

100. There is a difference in the treatment of "traditional" and "non-traditional" confessions in Azerbaijan. The "traditional" ones include not only Islam, the Eastern Orthodox Christian Church and Judaism, but also several confessions, which existed in Azerbaijan during the Soviet period:

⁴⁷ Forum 18 News Service, 10.01.2005

Baptists, Pentecostals, Catholics and some others. The prevailing stereotype relates these “traditional” religious confessions to the certain ethnic groups, e.g. Russian Orthodox Church to Russians, Georgian Orthodox Church to local Georgians (so named Inghilo), Lutheran faith to Germans, Judaism to Jews, etc.

101. Any proselytising is considered taboo. The Forum of Religious Communities of Azerbaijan “For the Sake of Peace and Harmony” was established in October 2004 on initiative of Rafiq Aliyev, the Chairman of State Committee on Work with Religious Entities. Its members are 40 Muslim, Christian and Jewish communities. One of the announced goals of the coalition is to put an end to religious propagation among other congregation’s believers. It is not accidental that members of the Forum are the “traditional” groups, which usually are not accustomed to missionary activity.

102. The historically Christian Georgian population of Qah, Zaqatala, Balakan regions (so named “Inghilo”) is mainly Muslim. The only Church of Virgin Mary here was blown up in 1971. In 1990s, the region was visited by the Orthodox Christian missionaries from Georgia. Missionaries faced the aggressive reaction of authorities, including harassment by police. According to the Georgian sources, the local converts “do not have the possibility to gain back his/her surname or to give a Georgian name to a newly born child”.⁴⁸ Attempts to change Muslim names to Christian ones resulted in refusal. The parents of one child in Qah region were able to receive a birth certificate only in January 2005, 1.5 years after birth of their child.⁴⁹

103. The Christians of Azeri origin are considered to be traitors of the ‘native’ Islamic religion and sometimes experience problems, mainly in provinces where the population is more conservative and human rights are less protected.

104. For example, in 2004 in Nakhichevan, an Azerbaijani exclave between Armenia, Turkey and Iran, the religious activities of non-Muslim groups were especially endangered. The local Adventist community has been “crushed” and the police banned them from meeting. The last resident Adventist pastor of Azeri origin, Khalid Babayev, was forced to flee from Nakhichevan with his family in February after police refused to protect them from repeated threats from unknown local people. One of members of local Baha’i community, T. Aliyev, was jailed for ten days in September on trumped-up charges and warned not to teach his faith to others.⁵⁰ The so called “non-traditional” religious communities experienced problems practicing their faith in other provincial regions of Azerbaijan, e.g. in Zaqatala, Ganja, etc.

105. The main administrative way to limit proselytism among Azeris is to create artificial obstacles for registration of religious communities. Since the State Committee on Work with Religious Structures initiated in 2001 the process of re-registration of religious establishments, the number of registered religious entities decreased from 410 in October 2001 to 305 in November 2004. Only 26-27 of them are non-Muslim ones. Among 2,000 existing religious establishments are 1,300 mosques, over 500 holy worship places of Muslims, over 40 churches, synagogues and prayers houses.⁵¹ An existence of previous certificates of registration does not guarantee easy re-registration. The previously registered *Love Baptist Church* (Azeri-speaking) was closed by the Baku court decision in April 2002. Some religious communities, which work freely in country’s capital, failed to be registered in provinces. The reason is that they do not have the 10 members necessary for registration⁵²

⁴⁸ The Human Rights Information and Documentation Centre (Georgia). Source: <http://www.humanrights.ge>

⁴⁹ Forum 18 News Service, 10.01.2005

⁵⁰ Forum 18 News Service, 10 December 2004

⁵¹ *Echo* newspaper, 08.10.2004, Turan News Agency, 05.11.04

⁵² Religious Research Center (DAM), July 2002

106. The discriminative terms of the laws “On religious freedom”, “On legal status of foreigners and stateless” and the Code on Administrative Transgression, prohibiting the religious activity of foreigners and stateless persons, are still in force.

107. On 21 June 2001, the President decreed the establishment of the State Committee on the Work with Religious Structures. It replaced the old Directorate for Religious Affairs of the Cabinet of Ministers. Among other duties, the institution collects and forwards to law enforcement bodies the information and materials about religious propaganda conducted by foreigners and stateless persons.⁵³

108. Its head, Mr. Rafiq Aliyev, stated that the number of foreign pastors granted permission to engage in proselytizing in Azerbaijan will be limited, and restrictions will be imposed on the length of time they may stay in the country. He also said that the legal ban on allowing "foreign nationals" to work as teachers in Azerbaijani medreses (Islamic institutes of higher learning) will be strictly enforced.⁵⁴

109. On some occasions, the foreigners were deported from Azerbaijan due to their religious activities. The procedure of deportation of foreigners in this case deprived them of the right to appeal the court’s decision. There is not a single case in Azerbaijan when a deported foreigner appealed to the courts. Many of the deported foreigners were missionaries who either did not have access to the procedure of appeal, or were ill-informed of it. As a rule, deportations are not made public.

110. Even in this situation, “traditional” religious communities have unofficial privileges. For example, while the foreign Protestant Christians are deported for “illegal activities”, the heads of local Roman Catholics and Evangelical Lutheran Church are foreign citizens, Jewish community uses Israeli teachers, etc.

111. While the Shariah court is prohibited in Azerbaijan, there was a representation of the Jewish Rabbinate court in Baku city, which has helped in religious divorces. According to media, it was to be closed at the end of December 2004 by decision of Israeli Minister of Justice.⁵⁵

112. The Nagorno Karabakh conflict affects the perception of “non-traditional” religious groups, especially dealing with missionary work. Some media and non-governmental organizations tend to describe such activities as a kind of Armenian conspiracy to recruit them the “Christian brothers” among ethnic Azeris. Some officials, unfortunately, are quite supportive of such xenophobic statements.

113. For example, on 2 April 2004, the non-governmental Center of Religious Researches (DAM) mentioned several religious communities as “destructive” and “dangerous” for Azerbaijan and baselessly claimed that these “sects” (Jehovah Witnesses, Greater Grace, etc.) are allegedly prohibited in USA. DAM accused the communities of Temple of Love and Greater Grace of cooperation with foreign secret services, in particular, with Armenian ones. Elmir Quliyev, an official of State Committee on Work with Religious Structures, confirmed to media “the existence of such facts in activities of sects”.⁵⁶

114. On 10 January 2005, the notary of the Zaqatala region refused to notarize the signatures

⁵³ Based on "Zerkalo" newspaper, 24 July 2001

⁵⁴ Based on RFE/RL Caucasus Report Vol. 4, No. 30, 16 August 2001

⁵⁵ Echo newspaper, 08.12.2004

⁵⁶ Turan News Agency, 02.04.2004

of the Baptist congregations' registration applications necessary for the applications. "You are asking about such trivial matters when 25 percent of Azerbaijan's territory is occupied by Armenian bandits and the country is flooded with refugees," she declared, refusing to say why this was relevant to the matter.⁵⁷

115. Armenian churches outside of Nagorno Karabakh have not worked since 1988-1989. In Baku the Armenian Church was recently repaired and used for the state library.⁵⁸ The proposals to use its building for other confessions were rejected by the Government.

116. It should be noted that Armenian cemeteries are well kept in a number of towns and regions of Azerbaijan, although they were subject to vandalism in 1990s. As to reports of vandalism in other, even Muslim cemeteries, the vandalism was mainly provoked by the abandoned state of the graves rather than the ethnic origin of those buried.

117. The actual cemetery rules inherited from the Soviet period permit the destruction of the graves if they have not been visited for more than 12 years. In Soviet times that was a justification to eliminate some cemeteries of German prisoners of WWII.

118. Due to the plans of Baku City Administration to set a new street on the part of territory of the old Christian cemetery, it was declared that remains had to be re-buried by 1 April 2003. The majority of relatives of the deceased, currently living in Armenia, Israel or Russia, were not duly notified. Besides, because of the conflict, the Armenians cannot enter the country for re-burial of relatives. After the discussions, which included painful ethnic component in some media, the deadline for re-burial was postponed, but the problem was not entirely solved.

119. According to our information, the same 12-year cemetery rule works in Armenia too. So, a protection is necessary for abandoned cemeteries in Azerbaijan and Armenia as cultural heritage.

(viii) The right for freedom of opinion and expression

120. An idea of specific minority rights was perceived in Azerbaijan with difficulty, mainly due to a memory of aggressive separatist attempts of 1990s.

121. In 1988, the Armenians of Nagorno Karabakh began a secession movement supported by Armenia. That provoked the active military operations since 1991. Until the ceasefire of May 1994, hundreds thousand of non-Armenian Azeri citizens were forcibly expelled, killed, wounded or disappeared.

122. In 1992-1994, the Lezgin National movement "Sadval" actively propagated an idea of unification of territories of Russia and Azerbaijan compactly populated by Lezgins to one state "Lezgistan". On several occasions, there were violent clashes with casualties. The Government also commented "Sadval" to a terrorist act in Baku subway.

123. In June 1993, the group of Talysh nationalists proclaimed a creation of so named "Talysh Mugan Autonomous Republic" in six Southern regions of Azerbaijan. During the next two months a "Parliament", local self-government, etc. were established. All this happened against a background of intense military actions in Nagorno Karabakh against the Armenian separatists, and revival of aggressive separatism in Northern regions. Finally, after condemnation by Azerbaijan Parliament, this attempt of autonomy was suppressed.

⁵⁷ *Forum 18 News*, 8.12.2004 http://www.forum18.org/Archive.php?article_id=471

⁵⁸ *Echo newspaper*, 03.11.2004

124. After that, a distribution of documents of any content in minority languages in these regions is viewed very suspiciously. Discussion about federalism and autonomy of other minorities is still considered to be an open attack on the territorial integrity of Azerbaijan and support of Armenian separatism in Nagorno Karabakh.

125. Besides some government newspapers in the Russian language, no media in minority languages are supported by state despite of special decree of Azerbaijani President of 1992. No expenses are included in the state budget of 2005 to support the minority cultural centers and media. Now, the state supports 6 magazines and 2 newspapers, but only one of them, a magazine *Literaturny Azerbaijan* is published in minority (Russian) language.⁵⁹

126. Because of financial problems, the only local newspaper in Kurdish *Denqe Kurd* was published in 2004 only 8 times and was to be stopped entirely in 2005.⁶⁰ Other minority newspapers, which were initially supported by State after the mentioned decree (e.g. *Tolyshi Sedo*), are now abandoned and find themselves in a similar financial situation. So, situation of minority media during the nationalist government 12 years ago was even better than now. The earlier published newspaper *Tolyshi Sedo* failed to get registration and therefore is published in the amount of 999 copies, permitted for non-registered newspapers⁶¹.

127. Moreover, some minority newspapers publishing abroad like *Tolysh*, *Talyshsky Vestnik*, *Lezginsky Vestnik* is under suspicion, and their distribution is de facto prohibited. E.g., in February 2003, a passenger was detained in Baku Airport because of transportation of six copies of the “Tolysh” newspaper legally issued in Russia.⁶² In October 2004, some Bakhtiyar Agazade who distributed 3 copies of the leaflet “Namaz (prayer) times in Ramazan month in Talysh region” in Lenkaran was summoned to the local police during 3 days and interrogated. A number of former participants of events in Southern regions still are harassed by police to prevent their political activism.

128. The Talysh poet Khanali Agayev was dismissed from position of the school director in Qizilavar village, Masalli region in 2002, after publication of his verse in the same “Tolysh” newspaper, torture. Mr. Atakhan Abilov was strongly criticized for critical statements on the situation of Talyshes during a meeting with other PACE Rapporteur on Azerbaijan, Mr. Andreas Gross. Abilov lost his position as a teacher’s aid, some newspapers suggested to arresting him.

129. In August 2002, the newspaper “Akhsham” and its editor-in-chief Valid Qardashli were the focus of a scandal related to the coverage of trial of the case of Talysh autonomist Alakram Hummatov. Lack of quotation marks in his statement in court “Talysh Mugan Autonomous Republic de facto exists!” was used in the header of article, resulted in meeting of some media editors and human rights defenders in Baku Press Club with proposal to close the newspaper. There began phone threats to Qardashli.⁶³

(ix) The right to freedom of peaceful assembly and association

Peaceful assembly

130. The conference “Dialogue of women of Azerbaijan and Daghestan” conducted by the

⁵⁹ It is traditionally published from the Soviet time as a magazine of the Writers’ Union of Azerbaijan.

⁶⁰ *Impuls* newspaper, 14.01.2005

⁶¹ Information of Talysh Human Rights Project.

⁶² Polit.Ru website, 21.02.2003 <http://www.polit.ru/docs/584378.html>

⁶³ Source: <http://www.echo-az.com/facts.shtml#10>

IHMM and supported by the organization Non-Violence International – CIS faced problems in Azerbaijan. The project was aimed to discussion of crossborder problems including problems of divided mountainous minorities. The first women’s meeting in October 2000 was conducted in Derbent (Russia) without the problems with active participation of representatives of local non-governmental and governmental bodies. However, in Azerbaijan the situation was different.

131. In general, Northern Caucasus issues are considered politically sensitive. In October 2002, the Chechen refugee, a head of the Chechen Human Rights Center, Mayrbek Taramov, freely participated in the OSCE conference against terrorism and extremism in Baku. After his speech, the Embassy of Russian Federation expressed its protest.⁶⁴ One year later, in October 2003, M.Taramov was not permitted to attend the seminar in Baku devoted to the minority issues in Caucasus. The Embassy of Russia baselessly stated that Taramov and other invited Chechen NGO representatives are the officials of Chechen rebellion administration, and the organizers decided not to invite any participants from Northern Caucasus.⁶⁵

Peaceful association

132. At late October 2004, in Azerbaijan were officially registered 42 political parties, about 40 trade unions and 1,600 non-governmental organizations (NGO),⁶⁶ while many of such structures act without registration because of prohibitive position of Ministry of Justice.

133. The UN Human Rights Committee in 2001 expressed its “concern at reported obstacles imposed on the registration and free operation of non-governmental human rights organizations and political parties (arts. 19, 22, 25). The Committee urges the State party to take all necessary steps to enable national non-governmental human rights organizations to function without hindrance”.⁶⁷

134. According to the legislation, it is impossible to establish a political party based on ethnic origin. Those ethnic parties which were active and even registered in the past, e.g. Party of Equality of Peoples of Azerbaijan (mainly with Talysh membership), Lezgin Democratic Party of Azerbaijan (with Lezgin membership) were later prohibited in 1990s. Simultaneously, the parties propagating the superiority of Azeri (Turkish) population (e.g. National Democratic Party, former “Boz Qurd”) are acting legally.

135. Despite more than one decade of existence, the Baku-based Republican Center of Talysh Culture led by Seyfulla Asadullayev is still not officially registered. Also, the Talysh Historical and Ethnographic Center led by Barat Qasimov also acts without registration in Lenkaran.⁶⁸ Some officially registered Talysh cultural organizations like *Avesta*, *Mada* became inactive after the suppression of attempt of establishment of Talysh autonomy in Southern regions.

136. In 2003, the Advisory Committee of FCNM “has received information, including from representatives of the Kryz minority, that these problems have caused registration difficulties also for organizations dealing with the protection of national minorities”.⁶⁹

137. One of human rights NGOs, the Association of Homeless and Deprived Baku Residents, which members are mainly minority representatives deprived of their housing, was not registered

⁶⁴ *Echo* newspaper, 12.10.2002.

⁶⁵ *Kavkaz-Tsentr* News Agency, 09.10.2003.

⁶⁶ *Turan* News Agency, 30.10.2004

⁶⁷ Concluding Observations of the Human Rights Committee, Azerbaijan, U.N. Doc. CCPR/CO/73/AZE (2001), par.23

⁶⁸ Information of the Talysh Human Rights Project.

⁶⁹ ACFC/INF/OP/I(2004)001, Advisory Committee on the FCNM. Opinion on Azerbaijan, 22 May 2003, par.44

even after the positive decision of Constitutional Court in May 2004. The traditional coverage of their actions by pro-governmental media obligatorily mentions that a part of its members are ethnic Armenians. Therefore, there is strong suspicion that illegal refusals to register this NGO are related to its 'undesirable' ethnic composition. The Association lodged a complaint to the European Court of Human Rights.

(e) ECONOMIC, SOCIAL AND CULTURAL RIGHTS

(iii) The right to housing

138. Since the beginning of the conflict over Nagorno Karabakh, hundreds of thousands Azeris and Armenians became refugees. Being homeless during the Soviet period when the absence of housing and passport registration (*propiska*) meant *de facto* deprivation of rights, citizens tried to solve the problem by several ways: exchange of housing, buying the flats, false marriages.

139. The most serious problem is the illegal occupation of apartments of Armenians, and later Russians and other minorities, who still are living in Azerbaijan as well as marginal elements of Azeri origin (alcoholics, elderly people and so on). The UNDP reports that at least 9.5% of refugees live in illegally occupied apartments⁷⁰. Partially, these flats are buildings under construction, but the more significant part is the housing of forcibly expelled people. According to informal data, the occupation of apartments by refugees resulted in about 50,000 homeless people in Baku⁷¹.

140. A Member of Parliament, a head of Russian Community of Azerbaijan (RCA) Mikhail Zabelin confirmed a seizure of the flats of RCA members. In cases of Russians, "the flats are seized in the moment when the citizen really lives in it".⁷²

141. The police, public prosecutors office and the court refused to intervene, referring to the direct prohibition of the highest authorities to evict the refugees, from instruction of the Baku city mayor on the order of the President not to liberate the housing occupied by refugees. On 2 July 2004, the State Program was adopted for improving living standards and increasing the employment rates among refugees and IDPs. The program included a special clause prohibiting the eviction of IDPs from public buildings, apartments and other places, regardless of the form of the property, which they occupied in 1992-1998.

142. The UN Committee on Economic, Social and Cultural Rights "is concerned about the illegal occupation by refugees and internally displaced persons of properties belonging to Armenians and other ethnic minorities. The Committee is also concerned about the lack of adequate social housing units, particularly in Baku. The Committee further notes with regret the lack of information about forced evictions and the number of homeless persons in the State party... The Committee recommends the State party take corrective measures to ensure that Armenians and other ethnic minorities whose properties are illegally occupied by refugees and internally displaced persons be provided with adequate compensation or offered alternative accommodation... The Committee also recommends that the State party to take necessary measures to guarantee the right to housing to all persons residing under its jurisdiction, and to address the problem of the lack of adequate social housing units in the most expedient manner possible, particularly in Baku...The Committee further requests the State party to provide, in its third periodic report, detailed information on the number and nature of forced evictions and on the extent of homelessness in the

⁷⁰ UNDP, Azerbaijan Human Development Report 2002

⁷¹ The evaluation of Committee on Homeless and Indigent Baku Residents

⁷² *Echo* newspaper, 11.01.2005

State party”.⁷³

(v) The right to education and training

143. Only ethnic Russians have a complete system of education: primary, secondary and higher schools. Russian, Georgian and Jewish educational institutions may obtain their textbooks from abroad. Excluding these schools, education in other minority languages covers only first 4 years of primary schools. There is no secondary education in Talysh, Tat, Kurdish, Lezgin, Tsakhur, Avar, Khynalyg and Udin languages, despite some of minorities which have significant populations. For example, Lezgins (178,000 people) are more numerous than Russians (141,700), Talyshes have a larger population (76,800) than Georgians (14,900) or Jews (8,900).⁷⁴ The only explanation is that Russians, Georgians and Jews have their own states and can support these schools by the textbooks, etc. To realize their Constitutional guarantees, the Government should support equally minority schools. Instead, the situation of education in minority languages is severely deficient.

144. According to the instruction of the Ministry of Education⁷⁵, the program of minority languages includes the following amount of hours of native language: preparatory class – 2 hrs/week (total 16 hrs/week), 1st class - education in state language (Azeri) only, 2nd class – 2 hrs/week (total 68 hours), 3rd class – 1 hr/week (total 34 hours), 4th class – 1 hr/week (total 34 hours). There is no difference in the length of the educational programs despite Talysh alphabet has 29 letters, Tat – 33, Kurd and Tsakhur - 40, Lezgin - 44, Avar – 46, Khynalyq – 50 letters. Only for Udin language which has 52 letters, the amount of hours in 2nd, 3rd, 4th classes is more (68 hours every year).

145. A one-year break in the education in native languages explains (by necessity) the need to learn the Azeri alphabet. However, while some languages really use Cyrillic or have more letters, the Talysh alphabet is the same as Azeri, and other alphabets different only with several letters. Moreover, introduction of the above mentioned program explained that mass closure of minority schools (in Stalin’s 1930s) which was labelled a “voluntarily” act by parents. Some “requests of parents” also mentioned as explanation of the break in education in native language in 1st class.

146. Native language is used only for learning the alphabet and for children-oriented literature. No education in mathematics or other subjects in native languages is practiced. Textbooks are outdated. According to the Talysh Human Rights Project, the Talysh textbooks were last published in 1997 and since that time have not been reprinted; and the textbooks for 2nd and 4th classes were not published at all. Research of the Talysh language is conducted and published on the private initiative of scientists, without any state support.

147. There is no preparation of teachers for the majority of such schools. This naturally affects the quality of the education. For comparison, in smaller Daghestan province of Russia, where the same Avars, Lezgin, Tsakhurs, Tats live, the teachers is prepared by the State University. In the absence of capacity to prepare teachers for the languages of mountainous minorities who live along the Azerbaijani-Russian border, the Government should at a minimum sponsor their study in the Russian universities.

⁷³ E/C.12/1/Add.104, 26 November 2004. Concluding Observations of the Committee on Economic, Social and Cultural Rights. AZERBAIJAN, par.28,54.

⁷⁴ The figures of last census (1999).

⁷⁵ Ministry of Education of Azerbaijan Republic. Programs of mother language (native language) for I-IV classes of Oschools acting in the regions of compact residence of small peoples. Baku, 2003.

148. The Advisory Committee of the FCNM found in 2003 this situation dissatisfactory. It note that “the legal guarantees for persons belonging to national minorities to receive minority language education have recently been reduced and considers that the authorities should look into this issue in the on-going process of drafting new legislation in this sphere... The education system is at present going through a reform... these reforms need to be pursued carefully and in a manner that guarantees persons belonging to national minorities adequate opportunities for being taught the minority language or for receiving instruction in this language... The scope and the volume of teaching in minority languages, other than Russian and Georgian, is limited from the point of view of ... the Framework Convention”.⁷⁶

149. Some problems were created in 2001 by Presidential decree for quick transfer all Azeri publications from Cyrillic to Latin characters. Many elderly persons are not able read the news in the Latin alphabet, while schoolchildren are not able to read Azerbaijani classic and scientific literature in Cyrillic. Many textbooks still are not available in Latin. (In Daghestan (Russia) where the Azeris are prominent minority, the only Azeri newspaper “Derbent” still is published in Cyrillic.)

150. The fate of the minority alphabets which were in Cyrillic is uncertain. In the absence of a special decree on this matter the Talysh minority which has had the same character-set as Azeri changed the alphabet from Cyrillic to Latin, and now has the same problem of lack of reprints of old literature in the new alphabet. The President decreed and supported publication in Latin hundreds of classic books in Azeri.

151. The Russian minority maintains a satisfactory situation with native language education. Today, according to the data of the Ministry of Education, there are 22 schools with Russian-speaking education in Azerbaijan (6,581 pupils) and 356 more schools with education in Russian speaking sectors (110,000 pupils)⁷⁷. In 18 higher education institutions and secondary special educational institutions in the Russian language, 2,000 students study. The number of pupils in Russian-speaking schools and sectors (117 thousands) obviously exceeds the number of Russian children, because there are only about 142 thousand Russians live in Azerbaijan.

152. Not only Russians have interest in education in the Russian language. Even before independence, many Azeris migrated to the neighbouring republics of former USSR. This process became more intensive, and a figure of Azeris temporarily living in Russia reached 1.5-2 Mln, while 622,000 live there permanently. The knowledge of the Russian language which is used in the Caucasus as the regional language is vital. The majority of Azeris send their children to Russian speaking kindergartens, thinking that the knowledge of Russian language provides the opportunity to deal with business in Russia or to enter Russian universities, which still have a high reputation in Azerbaijan.

153. On the other hand, Russian is a native language for many non-Russians mainly in Baku city creating a language minority, so named “Rus dilliler” (Russian-speakers). One century ago, Azeris were a minority in the Absheron peninsula, where the Russian provincial center was located. This became the capital of Azerbaijan in 1918. Russian still is very popular in Absheron despite emigration of many Russian-speakers. The state advisor on National Politics Hidayat Orudjov thinks that “even in the period of Russian Empire and later in Soviet era, the people of Baku did not speak in Russian to such extent as they do now”⁷⁸.

154. However, the Russian language as both regional and minority language is considered a

⁷⁶ ACFC/INF/OP/I(2004)001, Advisory Committee on the FCNM. Opinion on Azerbaijan, 22 May 2003, par.115-117

⁷⁷ Newspaper “Echo”, 17/04/2004

⁷⁸ *Zerkalo* newspaper, 22.11.2003

foreign language in the Azeri speaking schools. Since 2003, according to the decree of the Ministry of Education, Misir Mardanov, the Russian language discipline was turned from basic program to an optional subject. On the eve of new school year in 2004, hundreds of teachers of Russian language lost their jobs—it was suggested that they receive training for a new profession—to that of teachers in history and geography⁷⁹.

155. The Jewish communities also have difficulties. During a meeting of the Representatives of Jewish communities of Azerbaijan and Levi Livaev, the president of the Federation of Jewish communities of CIS at the Baku synagogue in April 2003, it was discovered that the Jewish secondary school has been functioning in Baku for the 8 months although the Ministry of Justice has been postponing its registration during that period.⁸⁰ The registration issue was later resolved.

156. Already in 1998, the UN Committee on Rights of Child recommended that “special attention be directed to refugee and internally displaced children to ensure that they have equal access to basic facilities.”⁸¹ However, the special primary school opened by the UNHCR in 2001, was closed after 10 days by authorities with condition that the children would be educated in ordinary schools. But in reality, until September 2003, the Government informally prohibited to accept the children of Chechen asylumseekers in local schools.

157. The Advisory Committee of Framework Convention on Protection of National Minorities expressed in May 2003 its concern by “the reports suggesting that children of Chechens, who are not citizens of Azerbaijan and who have not been recognized as refugees by the authorities, have had serious problems in terms of their access to education. The Advisory Committee considers that this is an issue that merits increased attention by the authorities concerned so as to ensure that the relevant legislation guaranteeing equal access to education is fully implemented”.⁸²

158. Only under pressure of UN and CoE, Chechen children were allowed to study in the Russian schools in Baku city, because Russian is a second language for majority of them. The Minister of Education Misir Mardanov noted a “saddening tendency” that the number of 6-years-old children entering school decreased by 4-5 thousands every year,⁸³ so there was no problem of overloaded classes of primary schools.

159. But even now, about half of Chechen children do not attend schools in Baku, because of financial reasons.⁸⁴ Being formally free-of-charge, the schools needs some financial investments of parents because of widespread and officially denied corruption.

160. UN confirms that among the Azeri refugees and IDPs, only 5.2% can provide the children with school accessories, and 27.7% - cannot do it at all. Among this category of population, about 21.8% of children do not attend the schools at all. 20.6% children did not complete the mandatory secondary education, twice the average figure from the rest of the country⁸⁵. The situation of Chechen children is even worse, because they have no official status, no privileges, no temporary free housing.

161. The UN CESCR called upon the State party in 2004 “to take effective measures to ensure that all children under its jurisdiction have access to free compulsory education as a right stipulated

⁷⁹ *Echo* newspaper, 31.08.2004

⁸⁰ *Turan* News Agency, 03.04.03

⁸¹ CRC A/53/41 (1998). Concluding observations on Azerbaijan, par.953

⁸² ACFC/INF/OP/I(2004)001, Advisory Committee on the FCNM. Opinion on Azerbaijan, 22 May 2003, par.41.

⁸³ Newspaper “Zerkalo”, 15/09/2004

⁸⁴ The Chechen NGOs figured the number of such children as approximately 1,200 people.

⁸⁵ UNDP, Azerbaijan Human Development Report 2002

in the Covenant, and to significantly increase the public expenditure on education. The Committee further encourages the State party to consider amending in this regard the Legal Status of Aliens and Stateless Persons Act.”⁸⁶

Negative aspects of campaign on protection of state language

162. Taking into consideration an official figure of 90.6% of ethnic Azeris, the campaign on protection of Azeri language seems exaggerated.

163. For example, in April 2002, the Milli Mejlis (Parliament) of Azerbaijan ratified a law "About modification and additions in the Code about administrative irregularities". A new Article 315-1 of the Code "An obstacle to usage of the state language" was added, which realized latent or open propagation against the state language, resistance to its use and development, attempts of restriction of the language punishable by fine.⁸⁷ Though this provision has not been applied yet, the uncertainty of definitions creates grounds for arbitrary conduct.

164. On 30 September 2002, the Parliament passed a law "About use and protection of Azeri language". According to the law, the total amount of programs in non-Azeri languages in electronic media have not to exceed 1/6 of on-air broadcasting time.⁸⁸ This makes it impossible to create even private local TV & radio stations broadcasting in minority languages. At the same time, the foreign TV & radio stations in Turkish, English, French and Russian languages broadcast without obstacle or interference.

165. In 2002, the Government was obliged to publish every 5 years the Orthographic dictionaries of Azeri language. In 2003-2004, the state funds were invested into publication in Azeri language hundreds of books of national and foreign authors. The work of the new Azerbaijan Encyclopedia was intensified.

166. Nothing similar is proposed to punish for restrictions of use or to protect endangered minority languages, despite some of them (Udin, Khynalyq, etc.) used by 1-4 thousands people only; others have no school education, etc. No funds were allocated for the publication of textbooks for minority schools (excluding Russian), the dictionaries or to reprint in new Latin lettering old books of Talysh authors.

167. The Advisory Committee of Framework Convention for Protection of National Minorities (FCNM) expressed in May 2003 its strong criticism of the discriminatory provisions of Law "About the State Language".⁸⁹ On the meeting held on July 13th, 2004, the Committee of Ministers of the Council of Europe reviewed and adopted the Resolution on fulfilment of FCNM by Azerbaijan. It noted: "despite certain positive legislative initiatives, there are a number of shortcomings in the legislation pertaining to the implementation of the Framework Convention. The 2002 Law About the State Language contains regrettable reductions in the legal guarantees relating to the protection of national minorities. These put at risk, for example, certain commendable practices in the field of electronic media. The process of amending the said law should be pursued further with a view to making it compatible with the Framework Convention.

168. There is a need to couple the Law on State Language with improved legal guarantees for the protection of national minorities in such fields as minority language education and use of

⁸⁶ E/C.12/1/Add.104, 26 November 2004. Concluding Observations of the Committee on Economic, Social and Cultural Rights. AZERBAIJAN, par.59.

⁸⁷ ANS TV, 19.04.02

⁸⁸ PRIMA news Agency, 01.10.2002, source: <http://prima-news.ru/news/news/2002/10/1/17101.html>

⁸⁹ ACFC/INF/OP/I(2004)001, Advisory Committee on the FCNM. Opinion on Azerbaijan, 22 May 2003

minority languages in relation to administrative authorities, with a view to consolidating and expanding the positive practices that exist. Priority should be given to the adoption of a new law on the protection of national minorities, providing the necessary guarantees for the implementation of relevant minority language standards.”⁹⁰

169. It makes sense to notice that not enough attention has been paid to teaching the Azeri language to the adult Russian-speaking population. As a result, in the period of independence, thousands of employees from governmental enterprises have been discriminated against for deficient knowledge of the State (Azeri) language. The absence of State programs for Azeri language education was discussed during the meeting of the delegates of the Second Assembly of Russian Community of Azerbaijan with the president of the country I. Aliyev. The weakness of the technical base of State language education was emphasized, “Particularly, there are no dictionaries, manuals for self-tuition”.⁹¹

170. The Advisory Committee of the FCNM found in 2003 that “the current language legislation of Azerbaijan contains provisions that could be interpreted in a manner that would make language proficiency requirements in employment overly extensive and considers that the application of such requirements should be limited carefully to the situations where they are necessary to protect a specific public interest”.⁹²

Article 6 **Effective protection and remedies**

171. Local and international organizations consider unfair trials one of the biggest human rights problems of Azerbaijan. According to the Information Centre of Council of Europe in Baku, among the complaints to the European Court of Human Rights most popular is article 6 ECHR, i.e. right for fair trial. Article 13, i.e. right for effective domestic remedies takes third place.⁹³

172. The different UN bodies criticized the general situation of national judiciary. For example, “the apparent lack of independence of the judiciary despite new legislation” was noted by the UN Committee Against Torture in 2003.⁹⁴ The Committee on Social, Economical and Cultural Rights also expressed its concern in 2004 “about the lack of independence of the judiciary and the persistence and the extent of corruptions in the State party, and once again stresses the importance of an independent judiciary for the enjoyment of all human rights, including economic, social and cultural rights, and the availability of effective remedies in case of violation.”⁹⁵

173. Official denial of any ethnic discrimination in the country is a clear instruction for the courts to avoid from considering with such complaints and to decide such complaints negatively. Also, the representatives of some particular minorities often are afraid to bring cases to the court to avoid worsening of their status.

174. Until now, the articles of Criminal Code punishing for violations of ethnic equality are applied only against groups of minority nationalists. While at least 65 Lezgins, Talyshees, Avars were sentenced for minority nationalism in 1995-2004, none was sentenced for Azeri (Turkish)

⁹⁰ Council of Europe Committee of Ministers Resolution ResCMN (2004)8

⁹¹ *Bakinskiy rabochiy* newspaper, 15.10.04

⁹² ACFC/INF/OP/I(2004)001, Advisory Committee on the FCNM. Opinion on Azerbaijan, 22 May 2003, par.121.

⁹³ *Echo* newspaper, 30.10.04

⁹⁴ Press Release. Committee Against Torture issues provisional conclusions on Cambodia, conclusions on Azerbaijan. 12 May 2003.

⁹⁵ E/C.12/1/Add.104, 26 November 2004. Concluding Observations of the Committee on Economic, Social and Cultural Rights. AZERBAIJAN, par.13.

nationalism, despite significant numbers crimes against minorities had ethnic origin.

175. According to the Committee of Homeless and Deprived Baku Residents, there were only a few cases which the illegal seizure of housing of minorities by Azeri refugees were tried by courts at all. In majority of cases, the plaintiffs failed with the reference to lost *propiska*. In other cases, the enforcement of the eviction was postponed until the liberation of Karabakh from Armenian occupation.

176. Even the pro-governmental Russian Community of Azerbaijan (RCA) led by a member of leadership of the ruling party reviewed about 600 applications made by Russian-speaking residents which were reviewed by RCAs in the last 2 years. The majority of these contained complaints about illegal occupation of apartments. Although it happened 10-13 years ago, the legal owners could not get back their property before the intervention of RCA and the executive President Administration. Even after that, 38 families who appealed to RCA were not able to defend their rights⁹⁶.

Article 7

Promotion of international standards against racial discrimination

Delay of the ratification of national and international standards

177. In 2000, before accession to the Council of Europe as a full member, Azerbaijan ratified the Framework Convention for the Protection of National Minorities.

178. At the same time, Azerbaijan failed to implement another obligation imposed by the Council of Europe in that area, which is “to sign and ratify, within one year of its accession, the European Charter for Regional or Minority Languages”⁹⁷. The Charter provides that regional and minority languages are languages which are «traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population; and different from the official language(s) of that State». In this context, the authority of Azerbaijan would also have the obligation to determine the special status of Russian language as regional, which is used more broadly than any other regional non-state languages; though unofficially it is actively forced out and considered as a foreign language.

179. The Framework Convention for the Protection of National Minorities and other European instruments on minorities are not available in their official translation into Azeri. The first publication of the FCNM into the languages of non-Russian national minorities (Talysh and Lezgin) was implemented in 2004 by the Human Rights Centre of Azerbaijan (AIHMM) with the support of the Council of Europe.

Lack of promotion of standards

180. The government does not publish in the state (Azeri) language the ratified international treaties on rights of national minorities (not to mention the documents which are not ratified). Some of the ratified documents like Framework Convention on Protection of National Minorities (FCNM) are not actively disseminated.

181. Seminars conducted by the Baku-based Institute of Peace and Democracy (SDI) in the regions of compact minority population on raising awareness of the FCNM in 2001-2002 faced aggressive opposition of local authorities. A seminar in Lenkaran city on 15 December 2001 was

⁹⁶Zerkalo newspaper, 15.10.2004

⁹⁷PACE Opinion 222 (2000)

stopped by local authorities. The next seminar in the same region scheduled for 26 January 2002 was prevented by police blocking entrance to the building where the seminar was to be held. The meetings with the minority activists were conducted by SDI at private flats. During the seminar in Khachmaz on 13 April 2002 shadowing by police was noticed after the seminar the police then stopped the car and detained the lecturers for 3 hours allegedly for identification of personalities. It is notable that the project was supported by the Council of Europe and propagated the European documents ratified by Azerbaijan, while authorities expressed in the negotiations with SDI that their seminars can destabilize situation.⁹⁸

182. In this connection, the Advisory Committee of the FCNM mentioned in May 2003 “reports that the authorities in some regions have approached the implementation of this right reservedly when it has concerned discussions on, and distribution of, texts containing standards on the protection of national minorities, such as the Framework Convention. While these may be isolated incidents, the Advisory Committee believes that the authorities, including at the local and regional level, should be provided with information and training to ensure that such incidents do not occur in the future”.⁹⁹

183. It is interesting is that the text of the FCNM is still not available in Azeri (SDI lecturers used Russian and English versions). The first publication of the FCNM on the languages of non-Russian national minorities was implemented in 2004 by the Human Rights Centre of Azerbaijan with the support of the Council of Europe.

184. There is no public awareness of the availability for Azeri population of the individual complaints procedure to the Committee on Elimination of Racial Discrimination and Human Rights Committee. No governmental guidelines in Azeri on this procedure are available.

185. The Government never published its reports to the CERD and other UN bodies in Azeri to make them available for public discussion. They are published at the UN website close to the date of consideration. For example, in June 2004, the Human Rights Centre of Azerbaijan (AIHMM) which was preparing the alternative report to the Committee on the Economical, Social and Cultural Rights had requested a text of official report from the head of the official delegation. Four months later, one month before the 33rd Session of the CESCR the Government provided AIHMM a link to the UN website.

⁹⁸ Press releases of the Institute of Peace and Democracy, 28.01.2002, 04.02.2002, 15.04.2002

⁹⁹ ACFC/INF/OP/I(2004)001, Advisory Committee on the FCNM. Opinion on Azerbaijan, 22 May 2003, par.45.

Part III

RECOMMENDATIONS

On the base of all presented information we ask the Committee to include following recommendations to the Government of Azerbaijan in its Concluding Observations:

- 1) To adopt a national law about minorities with a clear legal definition of minority.
- 2) To amend the Law on State Language in a way, that it will provide sufficient legal guarantees of the protection of national minorities in such areas as minority language education and use of minority languages.
- 3) To correct the legislation on freedom of religion in order to lift the obstacles in the religious activities of foreigners and stateless persons
- 4) To publish in Azeri and Russian and to make publicly available information about the individual complaints procedure of the CERD.
- 5) While the Azerbaijan Government cannot be responsible for the events on the territory occupied by Armenian forces, it is necessary anyway to monitor the human rights situation behind the frontline and inform the international community about the human rights problems of population, living in occupied Nagorno Karabakh and surrounding regions.
- 6) To improve the statistics on the minorities. It should be more comprehensive, disaggregated and include more details like specific numbers of Armenians outside of Nagorno Karabakh, figures on mixed families, participation of minorities in the state bodies, pupils in the minority schools, Chechen (Afghan, Iraqi, etc.) children in Azerbaijani schools, state funds spent to culture of minorities, number of imprisoned representatives of minorities, etc. If necessary the Government of Azerbaijan should apply to UN bodies for assistance in improving statistics on minorities, foreigners and immigrants in Azerbaijan.
- 7) To develop the statistics on foreigners in Azerbaijan including the immigrants, with and without the refugee status, employees of foreign companies, etc.
- 8) To define the status of asylum seekers, in particular Chechens from Russia and Kurds from Turkey.
- 9) To stop extradition of de facto refugees to the countries with a known practice of torture and death penalty. To secure an opportunity for any expelled persons to get access to legal representation and to maintain a procedure of appeal against the decision.
- 10) To provide Azerbaijan citizenship to the children of foreigners born in Azerbaijan if their parents want so.
- 11) To bring into accordance with international human rights standards various rules and norms, governing the process of registration of the religious communities, including the prohibition to be engaged in religious activity for foreigners. To stop the persecution of religious activity of those non-registered groups which are in a process of registration.

- 12) To adopt clear instruction about the use of minority and regional languages in the state institutions, in particular, in the Constitutional Court.
- 13) To establish state supported printed mass media in minority languages to inform the population on political and social life and to maintain the standards of modern literary language.
- 14) To select and reprint the classic books, textbooks, dictionaries in minority languages.
- 15) To develop the programs of secondary education in minority languages other than Russian or Georgian.
- 16) To lift the artificial obstacles imposed on the registration and free operation of non-governmental organizations dealing with the protection of national minorities.
- 17) To restore the property rights of minority residents in Baku whose apartments were illegally occupied by refugees and internally displaced persons and to abolish the discriminatory norms, adopted in of 1990s, and to prohibit the eviction of refugees from such apartments.
- 18) To protect the abandoned minority cemeteries as cultural heritage.
- 19) To encourage “citizen diplomacy” and other informal confidence-building measures intended to resolve ethnic conflicts and to eliminate barriers between ethnic groups (see ICERD, Art.2.1(e) .
- 20) To ratify the European Charter for Regional or Minority Languages.

We also ask the Committee to take into account situation of the Meskhetians (Ahiska Turks) who have been deported from Georgia to Azerbaijan and, during consideration of the next state report of Georgia, to urge the Georgian Government to begin their repatriation.