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## Committee on Legal Affairs and Human Rights

# Strengthening the protection and role of human rights defenders in Council of Europe member states

## Information memorandum about the situation of human rights defenders in the South Caucasus region (Armenia, Azerbaijan and Georgia)

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### 1. Introduction

1. This rapporteur mandate stems from the Bureau decision<sup>1</sup> to give follow-up to the Assembly's Resolution 1891 (2012) on the situation of human rights defenders in the Council of Europe member states<sup>2</sup>. On 19 March 2013, the Committee appointed me as rapporteur, following the departure from the Assembly of the previous rapporteur, Mr György Frunda (Romania, EPP/CD). On 24 June 2013, the Committee authorised me undertake fact-finding visits to Armenia, Azerbaijan and Georgia.

2. My current rapporteur mandate is a continuation of the work carried out by the previous rapporteurs on this subject – a former Committee colleague Mr Holger Haibach (Germany, EPP)<sup>3</sup> and myself<sup>4</sup> - and focuses on the situation of “those who work for the rights of the others” – individuals or groups who act to promote and protect human rights, whether they are lawyers, journalists, NGOs or others. The findings of the reports of my predecessor and myself of respectively 2009 and 2012 showed that in some Council of Europe member states, namely Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, the Russian Federation, Serbia, Turkey and Ukraine<sup>5</sup>, human rights defenders had been confronted with particular obstacles or even a generally hostile environment. Since the adoption of the Assembly's Resolution 1891 (2012), several prominent NGOs and human rights defenders have reported to me about the deterioration of their situation. As my mandate has a very wide geographical scope, I decided to carry out my work by regions, starting with the South Caucasus countries (Armenia, Azerbaijan and Georgia), and to conduct *in situ* inquiries.

3. My fact-finding visits to Armenia, Azerbaijan and Georgia from 21 to 29 November 2013 were very instructive, and I should like to reiterate my thanks to the Armenian, Azerbaijani and Georgian delegations for their hospitality and the efficient organisation of the visits. During these visits I had the opportunity to meet with several human rights defenders and other representatives of civil society, representatives of the authorities, including ministers, fellow MPs, ombudspersons and other high officials and representatives of other international organisations (the European Union, the OSCE and the UN). I would now like to present my findings on the visits in the form of this information memorandum. Most of my findings are also corroborated by those of several prominent international

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<sup>1</sup> Référence 3885 of 29 June 2012.

<sup>2</sup> Résolution of 27 June 2012.

<sup>3</sup> Situation of human rights defenders in Council of Europe member states, Doc. 11841. See also Assembly's Resolution of 28 April 2009.

<sup>4</sup> Situation of human rights defenders in Council of Europe member states, Doc. 12957 of 11 June 2012.

<sup>5</sup> *Ibid*, paragraph 6.

NGOs, including Amnesty International, Frontline Defenders, Human Rights House, Human Rights Watch and the Observatory for the Protection of Human Rights Defenders (“the Observatory”).

## 2. The situation of human rights defenders in Armenia

4. On 21 and 22 November 2013, I carried out a fact-finding mission to Yerevan (Armenia). During my visit, I had the opportunity to meet with Mr Hrayr Tovmasyan, Minister of Justice, Mr Vladimir Gasparyan, Chief of Police, Ms Elinar Vardanyan, Chairperson of the Committee on Protection of Human Rights and Public Affairs of the National Assembly and Mr Karen Andreatsyan, Ombudsman. I also met a number of human rights defenders, civil and environmental activists. My interlocutors from civil society invoked the following problems: obstacles to the work of human rights defenders working on sensitive issues such as minorities’ (sexual, religious, ethnic and others) rights, gender equality, killings in the army or corruption cases; physical attacks on civic activists, in particular during peaceful demonstrations, impunity of the perpetrators of attacks against them, and restrictions to the freedoms of expression and assembly. Whilst during the pre-election period in 2012 certain politicians directly threatened human rights organizations with reprisals for their activities<sup>6</sup>, nowadays the situation seems to be more stable.

5. Activists working on the **rights of minorities** are in a particularly delicate position, as Armenian society hardly accepts “non-traditional” values and is not ready for legal changes in this respect and the Apostolic church remains very influential<sup>7</sup>. **LGBT rights defenders** are particularly vulnerable to attacks, threats and harassment from private citizens and nationalist groups, referring to a purported “national ideology”. Prominent politicians supported these acts, using nationalist rhetoric to justify certain actions (for example, an arson attack on the DIY gay-friendly bar in Yerevan in May 2012<sup>8</sup>) and supporting new civic organisations promoting “traditional” values (such as the creation of a “Parents Committee”). Some actors, supported by the government, explicitly used hate speech, for example by calling to blow up the Women’s Resource Centre, an NGO advocating women’s rights.

6. Many of my interlocutors complained about the inefficient and corrupted judiciary, describing it as **unresponsive to complaints about human rights violations**. This discourages human rights defenders from taking human rights cases to court and defending their clients’ rights. **Impunity** remains a serious problem, as most human rights violations, including those against human rights defenders and other activists (including LGBT), have not been elucidated.

7. However, there were also some successful civic initiatives like that of the “**Army in Reality Coalition**”, based on exchanges on Facebook, which shed light on a number of human rights violations (including killings and ill-treatment) in non-combat situations in the army and changed public perception in the highly-militarised Armenian society, where military service remains obligatory and alternative service for conscientious objectors, has been introduced only recently and is still far from being in line with international standards<sup>9</sup>. Unfortunately, the Armenian legal system still lacks an effective remedy against human rights violations in the army and police<sup>10</sup>

8. Cases of excessive use of **force by police** against protesters have been reported to me on many occasions<sup>11</sup>. On 24 August 2013, the police brutally dispersed a peaceful gathering of citizens complaining against the construction site at 5 Komitas street in Yerevan, arresting dozens of citizens, including Mr Arishti Kiviryan, an activist and journalist<sup>12</sup>. Although Mr Kiviryan was allegedly beaten by police during the incident, a criminal case on charges of violence against a representative of the authorities has been opened against him subsequently. According to the Head of Police, this case

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<sup>6</sup> Report on the Situation of Human Rights Defenders in South Caucasus 2011-2013, prepared by members of the South Caucasus Network of Human Rights Defenders with the support of the Human Rights House Foundation, South Caucasus, 2013, p. 13.

<sup>7</sup> A draft law on freedoms of conscience and religion has been criticised by the Venice Commission and OSCE/ODIHR, see [CDL-AD\(2011\)028](#).

<sup>8</sup> ‘[Virulent’ homophobic attacks put South Caucasus activists at risk](#), article by Amnesty International of 18 May 2012. See supra note 6, pp. 10-11.

<sup>9</sup> See opinion of the Venice Commission [CDL-AD\(2011\)051](#).

<sup>10</sup> See the case of [Robert Horsepyan](#) forced to confess guilt under duress.

<sup>11</sup> See also paragraph 9.3 of Assembly’s Resolution 1837(2011) on “The functioning of democratic institutions in Armenia”, adopted on 5 October 2011 and the report on this subject by co-rapporteurs: Mr John Prescott (United Kingdom, Socialist Group) and Mr Axel Fischer (Germany, Group of the European People’s Party), Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Doc. 12710 of 15 September 2011.

<sup>12</sup> <http://news.am/eng/news/168909.html>.

remains pending and four policemen who took part in dispersing the “Komitas 5” demonstration have been sanctioned for unlawful actions.

9. In August and September 2013, Human Rights Watch documented five violent attacks against peaceful demonstrators which, appeared to be an effort to intimidate them. In each case, unidentified men in civilian clothes set upon the demonstrators late at night after they left protest sites in Yerevan<sup>13</sup>. On 5 September 2013 **Haykak Arshamyan**, Project Coordinator of the Yerevan Press Club, and **Suren Saghatelyan**, Board member of Transparency International Anti-Corruption Center, who had taken part in a demonstration against the accession of Armenia to the Russian-led customs union, were brutally attacked by about six unknown men. Both activists were hospitalized for severe injuries<sup>14</sup>. Other similar incidents concerned attacks on youth activists - Arman Alexanyan on 4 September and on Babken Der Grigoryan and Mihran Margaryan on 25 August. In all these cases, investigations have not been effective, although one of the victims had identified his suspected attackers.

10. In January 2011, the office of human rights lawyer Artak Zeynalyan, who represents the interests of the victims of excessive use of force by police during the events of 1 March 2008, was burgled and his computer monitor and keyboard were stolen, while money and other valuable objects were left untouched. It also appeared that his office had been searched for documents<sup>15</sup>.

11. Issues related to the Armenian-Azerbaijani conflict also appear to give rise to abuses, which is well illustrated by the case of the film festival organized by the Caucasus Center of Peace Making on the premises of the Helsinki Citizens' Assembly (HCA) in Vanadzor. In April 2013, the organizers felt obliged to cancel the screening of a series of short films produced in Azerbaijan in the wake of aggressive public protests held outside HCA's office. This case also shows the inefficiency of the police, which did not prevent the attacks by the mob and arrived only after the protest dispersed<sup>16</sup>.

12. Although some of my interlocutors complained about restrictions on media freedom (namely the broadcasting license system), no major attacks on journalists dealing with human rights violations have been reported to me. Following a broader interpretation of the freedom of speech by the Constitutional Court in 2012, the number of lawsuits against journalists has diminished<sup>17</sup>.

13. Except lack of funding for NGO activities, no major obstacles concerning **freedom of association** were raised by my interlocutors from the civil society. During my meeting with Ms Elinar Vardanyan, Chairperson of the Parliamentary Committee on Protection of Human Rights and Public Affairs, I was informed that civil society representatives were consulted on new draft legislation concerning human rights protection and invited to public hearings in the Parliament. There are nearly 1,000 NGOs in Armenia, according to my interlocutors from civil society, but the number of activists remains very limited and there is a general atmosphere of citizen distrust and apathy.

### 3. The situation of human rights defenders in Azerbaijan

14. On 28 and 29 November 2013, I carried out a fact-finding mission to Baku (Azerbaijan). During my visit, I had the opportunity to meet with Mr Ramil Usubov, Minister for Internal Affairs, and his deputies – Messrs Oruj Zalov and Fazil Guliyev, deputy Minister of Justice Mr Azar Jafarov, Ms Rabiyyat Aslanova, Chairperson of the Parliamentary Committee on Human Rights of the Parliament (*Milli Mejlis*), members of PACE delegation, members of the cabinet of the Ombudsman<sup>18</sup> and Mr Azar Taghiyev, Chairman of the Presidium of the Bar Association. I also met with a number of human rights defenders and bloggers and I do regret that some of my invitees did not show up, which could be related to the current policy of intimidation of civil society. The main problems faced by human rights defenders and activists in Azerbaijan may be summarized as follows: judicial harassment and arbitrary detention, restrictions on freedom of expression, freedom of association and freedom of assembly<sup>19</sup>, pressure against them and attacks on their physical integrity (and also of their relatives),

<sup>13</sup> [Armenia: Spate of Attacks Against Protesters](#), article by Human Rights Watch of 12 September 2013.

<sup>14</sup> [Armenia: Civil Society activists hospitalised after brutal attack in Yerevan](#), article by Amnesty International of 6 September 2013.

<sup>15</sup> Supra note 6, p. 12.

<sup>16</sup> [Armenia: Investigate Mob Attack on Local NGO | Human Rights Watch](#), article by Human Rights Watch of 17 April 2012.

<sup>17</sup> Supra note 6, p. 16.

<sup>18</sup> In the absence of Ombudsman Elmira Suleymanova.

<sup>19</sup> For more information on these issues see report on “The honouring of obligations and commitments by Azerbaijan”, Committee on the Honouring of Obligations and Commitments by Member States of the Council of

other obstacles (including on freedom of movement) and defamation campaigns. They have a chilling effect on human rights advocacy and more generally on the development of civil society in Azerbaijan.

15. Since the beginning of 2012, the crackdown on Azerbaijani civil society has been reported by many prominent NGOs: dozens of political activists and critical journalists arrested on bogus charges, peaceful public rallies broken up and new restrictions on fundamental freedoms adopted<sup>20</sup>. The general situation has apparently deteriorated even more seriously in the run-up of the election of 9 October 2013, which resulted in President Ilham Aliyev being re-conducted for a third term. It also differs depending on the region. While in Baku human rights lawyers are still quite numerous and enjoy access to information (including opposition newspapers and internet), the situation outside the capital is very different. The Autonomous Republic of Nakhchivan, an exclave of Azerbaijan with nearly 410,000 inhabitants separated from the rest of Azerbaijan by a piece of Armenian territory, is seen as a region governed by arbitrary rule. According to my interlocutors from civil society, there are only some 30 NGOs and very few defense lawyers and internet service providers left and access to opposition newspapers and non-state media is limited. Human rights defenders from this region told me that due to their activities, they were considered as “cooperating with foreigners” and had sometimes been refused access even to basic medical care.

16. Lawyers dealing with sensitive cases and/or operating independently are often sanctioned by the Bar Association and might be even disbarred (like Elchin Namazov, who was defending opposition activists)<sup>21</sup>. Several actors also complained about the poor quality of defense lawyers in Azerbaijan<sup>22</sup>. Moreover, there are not enough lawyers in Azerbaijan - I was informed by Mr Taghiyev, Head of Bar Presidium, that there were less than a thousand lawyers, as some of them had move to another legal profession; efforts were being made to recruit new lawyers.

17. According to the Azerbaijani authorities, there are nearly 3,000 NGOs in Azerbaijan<sup>23</sup>, most of them dealing with women’s, refugees’ and children’s rights, and the government provides generous financial support to some of them. The President’s Council for State Support to NGOs operates as a forum for NGOs and allocates funds to them; however, according to some analysts, this agency only supports regime-friendly organisations<sup>24</sup>. I was also informed by the authorities (head of the Parliamentary Committee on Human Rights, the Minister of Interior, the deputy Minister of Justice and the Ombudsman Office) about their meetings with various NGOs and activists. But although the Azerbaijani authorities assured me that the NGOs could freely conduct their activities, many activists whom I met complained about a blurred line between activities attracting the authorities’ special attention (such as human rights, democracy, elections, corruption, legal education, etc.) and those being less ‘risky’ (such as ecology, children rights, school education, etc.). They feared that even the latter activities could lead to harassment by either state or non-state bodies.

18. Several human rights activists or journalists<sup>25</sup>, expressing critical opinions about the government have been prosecuted on **trumped-up charges** and placed in detention on remand or even convicted and sentenced to long-term imprisonment after trials marred by gross irregularities (for example, taking place without lawyers of their choice, the court having refused testimonies of defense witnesses, the public being unlawfully excluded etc.)<sup>26</sup>. Some of them were even subject to torture or inhuman or degrading treatment (beatings, threats and verbal abuses), which were not properly investigated<sup>27</sup>. Among the best-known recent cases are those of Ilham Amiraslanov – an activist of the Kura Headquarters defending the rights of the victims of the 2010 Kur river floods sentenced to two years of prison in 2012 on fabricated charges of arms possession and allegedly tortured while in detention, he was released on parole on 9 December, having served two-thirds of his sentence<sup>28</sup>; Hilal Mammedov – a scientist and editor-in-chief of the “Tolyshi Sedo” newspaper (Talysh minority

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Europe (Monitoring Committee), co-rapporteurs: Pedro Agramunt (Spain, EPP/CD) and Joseph Debono Grech (Malta, SOC), Doc. 13084 of 20 December 2012.

<sup>20</sup> [Tightening the Screws: Azerbaijan’s Crackdown on Civil Society and Dissent](#), report by Human Rights Watch published on 2 September 2013.

<sup>21</sup> Supra note 6, pp. 26 and 30-31.

<sup>22</sup> Ibid, p. 34.

<sup>23</sup> 3,000 according to some sources, see Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe following his visit to Azerbaijan from 22 to 24 May 2013, [Com DH\(2013\)14](#), p. 19.

<sup>24</sup> Supra note 6, p. 33.

<sup>25</sup> Supra note 23, p. 5-7. According to the Azerbaijani Institute for Reporters’ Freedom and Safety (IRFS) report of 2012, there have been more than 200 violent attacks against journalists since 2005. See also, the ECHR judgment *Najafli v. Azerbaijan* of 2 October 2012.

<sup>26</sup> Supra note 6, p. 26-30;

<sup>27</sup> [Azerbaijan: Crackdown on Civil Society](#), article by Human Rights Watch of 2 September 2013.

<sup>28</sup> <http://www.omct.org/human-rights-defenders/urgent-interventions/azerbaijan/2014/01/d22523/>.



newspaper) sentenced in 2012 for 5 years of imprisonment – for drug-related crimes, high treason and incitement of hatred (his predecessor Professor Novruzali Mammadov died in 2009, having spent 2 and half years of his 10-year sentence), Bakhtiyar Mammadov – a lawyer who had defended the rights of residents unlawfully evicted from their homes in Baku, sentenced to 8 years of imprisonment in February 2013 on extortion and fraud charges<sup>29</sup>. In March 2013, Avaz Zeynalli, editor-in-chief of “Khural” newspaper was sentenced to nine years on charges of extortion and tax evasion<sup>30</sup> and in November 2013, Sardar Alibeyli, editor of pro-opposition newspaper Nota Bene, was sentenced to four-year prison on charges of “hooliganism”<sup>31</sup>.

19. Shortly after my visit to Azerbaijan, Anar Mammadli, chairman of the Azerbaijani Election Monitoring and Democracy Studies Centre (EMDS), the main domestic independent and non-partisan election monitoring organization whose reports were critical about the fairness of the October 2013 presidential elections, was arrested on 16 December 2013 on charges, which include, inter alia, “tax evasion”, “abuse of authority” and “illegal business activity”<sup>32</sup>. A few weeks before his arrest, the EMDS’s office was searched and materials, including reports and financial documents, as well as two computers were confiscated<sup>33</sup>. I am particularly concerned about the detention of Mr Mammadli, whom I met in person last year in Strasbourg. Mr Mammadli cooperated with several colleagues from the Assembly<sup>34</sup> and was seen as trustworthy source of information on electoral matters in Azerbaijan.

20. The Department for Combating Organised Crimes (DCOC) in the Ministry of Interior, dealing with organized crimes groups, terrorism, drugs-related crimes, transnational crime, etc., has the reputation of being particularly cruel with interrogated suspects<sup>35</sup>. I raised this issue during my meeting with the Minister of Interior, but he saw no particular problem with the functioning of this unit and was convinced of the efficiency of the general mechanism of complaints against abuses by police.

21. **Families** of some human rights activists have also been threatened or attacked. For example, in July 2013, Jamal Azizov, the 17-year old son of Matanat Azizova, Head of the Women’s Crisis Center and Deputy Director of the Institute for Peace and Democracy in Baku, was threatened and beaten by some unknown men<sup>36</sup>. Similarly, Alin Gyulalyev, the son of Oktay Gyulalyev (an activist of the Kura Headquarters defending the rights of victims of the floods, who was in 2012 detained and ill-treated by police agents during his custody<sup>37</sup>) was beaten and stabbed in September 2013.

22. **Freedom of expression** seems to be another major human rights problem in Azerbaijan. Attacks on journalists have been quite frequent in the last few years<sup>38</sup> and the country is near the bottom in international rankings on media freedom<sup>39</sup>. Despite relevant judgments of the European

<sup>29</sup> [Azerbaijan: Rights Lawyer Imprisoned](#), article by Human Rights Watch of 4 March 2013.

<sup>30</sup> [Azerbaijan: Journalist jailed to silence criticism](#), article by Article 19, of 13 March 2013.

<sup>31</sup> [Azerbaijan: Journalist and writer jailed as ruthless crackdown continues](#), article by Amnesty International of 13 November 2013. See also report by our Committee colleague Mr Christoph Strässer, “The follow-up of the issue of political prisoners in Azerbaijan”, Doc. 13079 of 14 December 2012 and the addendum to the report, Doc. 13079 Add. of 22 January 2013.

<sup>32</sup> As noted by the Observatory, a violation of the prohibition of “business activity by an organized group without registration in the order provided by the legislation of the Azerbaijan Republic” (Article 192.2.2 of the Criminal Code), punishable by up to five years’ imprisonment, applies only to commercial companies and not non-profit organisations. See at: <http://www.omct.org/human-rights-defenders/urgent-interventions/azerbaijan/2013/12/d22514/>.

<sup>33</sup> <http://humanrightshouse.org/Articles/19866.html>.

<sup>34</sup> See also statement of 20 December 2012 by my Assembly colleagues, Messrs Pedro Agramunt (Spain, EPP/CD) and Joseph Debono Grech (Malta, SOC), Committee on the Honouring of Obligations and Commitments by Member States, co-rapporteurs on Azerbaijan, at <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=4821&lang=2&cat=3>.

<sup>35</sup> For example, Rashad Ramazanov, a writer and blogger critical about the government, who was sentenced to nine years of prison on dubious drug charges, was kept for 11 days in the Ministry of Interior and allegedly severely beaten during his custody; [Azerbaijan: Journalist and writer jailed as ruthless crackdown continues](#), article by Amnesty International of 13 November 2013. Or lawyer Aslan Ismayilov, who criticized Minister Usubov and claimed that the said Department tortured blogger Rashad Agaaddin, was threatened with physical harm at that Department in May 2013, see [Death Threats from Police to Lawyer Aslan Ismayilov](#), of 31 May 2013.

<sup>36</sup> [Azerbaijan: Assault against the son of two women human rights defenders](#), urgent appeal of the Observatory of 7 August 2013.

<sup>37</sup> [Azerbaijan: Arbitrary detention of Mr. Ogtay Gulaliyev](#), urgent appeal of the Observatory of 26 April 2012.

<sup>38</sup> [Dispatches: Azerbaijan President no ‘Friend’ of Journalists](#), article by Giorgi Gogia, Human Rights Watch, of 26 November 2013.

<sup>39</sup> Reporters Without Borders ranks Azerbaijan 156 out of 179 in the 2013 World Press Freedom Index; [Azerbaijan’s Leading Dailies Pay Steep Price for Criticism of the Regime](#), article by Vugar Gojajev, Human Rights Watch, of 13 December 2013.

Court of Human Rights<sup>40</sup>, there has been no significant improvement concerning laws on defamation, which has still not been decriminalized, and excessive pecuniary damages are sometimes awarded in civil cases<sup>41</sup>. My interlocutors from civil society also complained about their lack of access to opposition newspapers, especially outside the capital, and about the closure of some alternative publishing houses. Even an alternative theater group (ODA) had to close down after it featured a play criticising the authorities in November 2013 (but it reopened in December 2013).<sup>42</sup>

23. Several cases of fabricated charges against pro-democracy **bloggers** were reported to me<sup>43</sup>. For example, in November 2013, Mr Abdul Abilov, a blogger criticizing the Aliyev government, was sentenced to three months in prison on charges of drug trafficking, while the blogger himself and his friends affirm that the police had planted the drugs on him<sup>44</sup>. Mr Mehman Huseynov, a pro-democracy blogger who works for the Institute for Reporters' Freedom and Safety (IRFS) and Turan Information Agency was detained for one day in June 2013<sup>45</sup> and was accused of "hooliganism committed with resistance to representative of the authority", a charge punishable by up to five years imprisonment. Although he was released, the prosecution is still pending and he is not authorized to leave Baku. In March and April 2013, seven youth activists of the so-called NIDA ("exclamation mark" in Azeri) movement, who were posting criticism about alleged government corruption and human rights abuses on Facebook and Twitter, were placed in detention on remand on bogus charges, including that of hooliganism and illegal drugs and explosives possession<sup>46</sup>. While held in pre-trial detention, the state of health of one of them – Zaur Gurbanli – has deteriorated<sup>47</sup>.

24. Although social networks on the internet seem to remain channels for **free exchange of opinions**, limitations have been placed on this means of communication, as in 2013 the application of the law on defamation has been extended to online statements<sup>48</sup>. Defamation over the Internet may be punishable by fines up to 1,000 manats (1,250 USD) and prison terms of up to three years<sup>49</sup>.

25. As regards **freedom of association**, many NGOs complained about the restrictive legislation on the registration of NGOs (for example, some NGOs were refused registration 3 to 8 times), reporting obligations to various ministries<sup>50</sup>, tax inspections and problems with receiving funding. Many of these restrictions have been pointed out in the 2013 Annual Report of the Observatory for the Protection of Human Rights Defenders "Violations of the right of NGOs to funding: from harassment to criminalization"<sup>51</sup>. The report notes that NGOs in Azerbaijan are subject to a highly dissuasive and arbitrary tax regime. Profits derived from the economic activities of NGOs are taxed in the same way as commercial entities and funds from foreign donors are subject to an additional tax of 22% on wages, which strongly discourages granting and receiving foreign aid<sup>52</sup>. My interlocutors from civil society also complained about being presented by government media as "foreign agents" because of the foreign funds they receive<sup>53</sup>. Domestic NGOs have also faced long delays in the registration process or absence of any formal decision of the Minister of Justice, due to the restrictive application

<sup>40</sup> *Mahmudov and Agazade v. Azerbaijan*, judgment of 18 December 2008 and *Fatullayev v. Azerbaijan*, judgment of 22 April 2010. See also [Committee of Ministers' decision of 5 December 2013](#) adopted at its 1186<sup>th</sup> (DH) meeting.

<sup>41</sup> Supra note 23, pp. 2 and 9.

<sup>42</sup> [http://www.contact.az/docs/2013/Culture/122000062583en.htm#\\_UrQxD\\_1L4pE](http://www.contact.az/docs/2013/Culture/122000062583en.htm#_UrQxD_1L4pE).

<sup>43</sup> Supra note 23, pp. 12-13.

<sup>44</sup> [http://azerireport.com/index.php?option=com\\_content&task=view&id=4212](http://azerireport.com/index.php?option=com_content&task=view&id=4212).

<sup>45</sup> <http://www.frontlinedefenders.org/node/18675>.

<sup>46</sup> [Azerbaijan: Authorities Target Youth Activists](#), article by Human Rights Watch of 3 April 2013, and [Azerbaijan: Bogus Drug Charges to Silence Critics](#), article by Human Rights Watch of 27 May 2013.

<sup>47</sup> Supra note 23, p. 13.

<sup>48</sup> After the President of Azerbaijan signed legislative amendments on 4 June 2013. See the [joint press release](#) by the Commissioner for Human Rights of the Council of Europe and the OSCE Representative on Freedom of the Media Dunja Mijatović of 6 June 2013.

<sup>49</sup> A new draft law on the Protection against Defamation was assessed critically by the Venice Commission in October 2013, [CDL-AD \(2013\)024](#) of 14 October 2013.

<sup>50</sup> Every NGO has to report to the Ministry of Taxation, Ministry of Justice, Ministry of Finances, Ministry of Labour and Social Welfare, State Fund of Social Welfare.

<sup>51</sup> Published jointly by the World Organisation Against Torture (OMCT) and the International Federation for Human Rights (FIDH).

<sup>52</sup> At p. 53.

<sup>53</sup> See also the Observatory 2013 Report, *ibid*, p. 62. For instance, in 2011-2012 some pro-government media ran a smear campaign against the Institute for Reporters' Safety –RATI, which took part in the "Sing for Democracy" campaign launched in the context of the Eurovision Song Contest in Baku in May 2012.

of registration criteria<sup>54</sup>. There are nearly 1,000 NGOs unable to register. For example, the EMDS had to close down in May 2008 following a court decision and could not register, despite several attempts (a case is now pending before the European Court of Human Rights due the authorities' persistent refusal to register it<sup>55</sup>) and the Human Rights Club's appeal against the Minister of Justice's refusal to register was rejected in February 2013. Some NGOs prefer to work without registration – however, as from February 2013, such organisations are not allowed to receive foreign funding exceeding 200 AZN (190 EUR) without a formal agreement<sup>56</sup>. Another problematic issue is the obligation to conclude formal agreements with the Ministry of Justice for international NGOs introduced in March 2011. Following this change of legislation the Human Rights House (HRH) in Baku had to close, although it re-applied for registration under the new rules<sup>57</sup>. During my visit in Baku, I raised this problem with the authorities and fellow parliamentarians had expressed their wish to discuss this issue with the HRH representatives. The Ombudsman Office staff members also informed me that the Ombudsman was dealing with some complaints concerning delays in the registration of NGOs and that she was advocating the NGOs' registration.

26. As regards **freedom of assembly**, my interlocutors from civil society complained about the limited number of venues for gatherings. The authorities continue to require permissions for demonstrations, which are generally only allowed in remote and unsuitable locations (rallies in the centre of Baku have not been authorized since 2006)<sup>58</sup>. Many peaceful protests were dispersed by police using disproportionate force (for example during protests in the town of Ismayilli in January 2013 and in Baku in March 2013)<sup>59</sup>. The latest amendments to the freedom of assembly law drastically increased the fines for organizing and participating in un-“notified” gatherings, which might be even sanctioned by an administrative detention to 60 days.<sup>60</sup>

27. Violations of the right to privacy of human rights defenders or journalists through surveillance measures were also invoked during my visit. I was particularly shocked about the case of **Khadija Ismayilova**, a journalist investigating the business holdings of the presidential family, whose intimate video, obtained by the use of hidden cameras in her bedroom in 2012, was posted on internet, after she had refused to give up the investigation in question<sup>61</sup>. I raised this issue during my meeting with the Minister of Interior, Mr Usubov, who stressed that an investigation was still pending and that such surveillance measures could not be taken without a decision of a court. So far, nobody has been brought to justice.

28. Restrictions on the **freedom of movement** of human rights defenders seem to be another issue at stake. Domestic activists, against whom criminal investigations are being carried out on clearly fabricated charges (see cases mentioned above) are prevented from leaving the country, while some foreign human rights defenders working on Azerbaijan have been refused visa to enter the country.

#### 4. The situation of human rights defenders in Georgia

29. On 25 and 26 November 2013, I carried out a fact-finding mission to Tbilisi (Georgia). During my visit, I had the opportunity to meet with Mr Gocha Lortkipanidze, deputy Minister of Justice, Ms Eka Beselia, Chairperson of the Parliamentary Committee on Human Rights and Civil Integration, and other PACE delegation members, Mr Ucha Nanuashvili, Ombudsman, and Mr Meliton Benidze, head of the Legal Aid Bureau in the Ministry of Corrections and Legal Assistance of Georgia. I also met a number of human rights defenders, who invoked the following problems in their daily work: obstacles to the work on sensitive issues such as minorities' (sexual, religious, ethnic and others) rights, gender equality, torture in detention facilities or corruption cases, physical attacks on LGBT activists, namely

<sup>54</sup> Supra note 23, p. 3. See also ECHR judgments finding violations of the right to freedom of association in similar situations: *Ramazanova and others v. Azerbaijan*, of 1 February 2007; *Aliyev and Others v. Azerbaijan* of 18 December 2008; *Nasibova v. Azerbaijan* of 18 October 2007 and *Ismayilov v. Azerbaijan* of 17 January 2008.

<sup>55</sup> <http://www.omct.org/human-rights-defenders/urgent-interventions/azerbaijan/2013/12/d22514/>.

<sup>56</sup> Supra note 23, p. 21.

<sup>57</sup> [“Azerbaijan Human Rights House closed for 2 years”](#), article by the Human Rights House Foundation of 19 March 2013.

<sup>58</sup> Although the Law on Freedom of Assembly requires a “notification” for convening an assembly, the authorities interpret it as “permission”; supra note 23, p.16.

<sup>59</sup> Supra note 23, p. 15. See also judgments of the European Court of Human Rights concerning inhuman or degrading treatment of protesters by law enforcement officers, which are pending for execution before the Committee of Ministers: *Muradova v. Azerbaijan*, judgment of 2 April 2009, *Rizvanov v. Azerbaijan*, judgment of 17 April 2012 and *Najafli v. Azerbaijan*, judgment of 2 October 2012.

<sup>60</sup> For more details, supra note 23 pp. 3 and 14-17.

<sup>61</sup> Supra note 6, p. 26.

during peaceful demonstrations, impunity and surveillance measures. In regions, human rights defenders meet other obstacles in their activities, such as lack of funds and other resources, confrontation with local political criminalised groups; they often feel insecure and threatened, especially when they defend the rights of religious (Muslims) or ethnic minorities (like in Javakheti region dominated by Armenians), and cut off from their contacts in the capital and abroad.

30. Civil society in Georgia is quite active and citizens are more and more aware of their fundamental rights. As noted by the South Caucasus Network of Human Rights Defenders, sometimes the line between political activism and human rights work is blurred and now some former human rights defenders are members of Parliament<sup>62</sup>. Although human rights defenders are rather free to carry out their activities and their working environment has considerably improved since the 2012 parliamentary elections, those dealing with the rights of sexual or religious minorities, like, for instance, the NGO Identoba<sup>63</sup> – are often under pressure from state authorities and non-state actors, including representatives of the Georgian orthodox church or groups protecting so-called “national values”. The NGO Safari, promoting women’s rights, complained about obstacles to its work, including opening a shelter for homeless people.

31. LGBT people are victims of targeted violence and hate speech, as the events of 17 May 2013 show. Activists commemorating the International Day against Homophobia were violently attacked by a very large mob with active presence of clergy from the Georgian Orthodox Church<sup>64</sup>. A similar event organized a year earlier, on 17 May 2012, also led to an escalation of violence between LGBT activists and counter-protesters supported by the Church and the police failed to intervene. So far investigations into these events have not been effective, with only small fines having been imposed on the instigators.

32. Activists defending the rights of ethnic minorities also meet difficulties in their daily work and are sometimes intimidated. For example, Arnold Stepanyan, head of the organization “Multinational Georgia”, dealing with Armenian and Azerbaijani minorities, was harassed and labeled as a “Russian spy” in 2009-2010<sup>65</sup>.

33. Human rights defenders dealing with torture cases complained about the lack of efficient system to monitor the situation in penitentiary establishments and the absence of NGO participation in the existing national prevention mechanism operated by the Ombudsman and the impossibility to access detention facilities. They also complained about impunity of perpetrators of human rights violations, including law enforcement agents using excessive force against protesters or during custody in police stations. I was, however, informed by the Ombudsman (who used to be a human rights defender) that prosecutors were conducting more and more investigations into such abuses, following the revelation of torture cases in Gldani prison in September 2012. My interlocutors from civil society confirmed that there was a political will to conduct proper investigations. The general situation of lawyers dealing with grave human rights violations seems to have improved since the parliamentary elections in 2012; beforehand, lawyers were often refused access to their imprisoned clients, had their documents confiscated or were harassed by prison guards<sup>66</sup>. Lawyers dealing with criminal cases also complained about the weakness of the judiciary, the dominant role of prosecutors and excessive use of plea bargaining (in 87% of cases).

34. I also heard complaints about the bad quality of defense lawyers, whose number in Georgia amounts to 3,000. As access to the bar is relatively easy (the main requirement is 5 years of professional experience), this does not seem to ensure high standards in the legal profession. Defense lawyers providing legal aid financed from the state budget are employed by the state within the Legal Aid Bureau of the Ministry of Corrections and Legal Assistance (dealing with penitentiary establishments). A reform is now being implemented, which will give this office a new status, by separating it from the said ministry and making it accountable to Parliament. However, in my view, this will not necessarily lead to a higher standard of legal aid, as defense lawyers will still be dependent on the state budget and the whole system will not stimulate competition.

35. Human rights defenders also complained about surveillance of electronic communications, put in place under the authority of the Minister of Interior, which has also a chilling effect on civil society.

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<sup>62</sup> Supra note 6, p. 38.

<sup>63</sup> Identoba’s [submission to the UN Human Rights Committee](#) of September 2013.

<sup>64</sup> [Georgia: Homophobic violence mars Tbilisi Pride event](#), article by Amnesty International of 17 May 2013.

<sup>65</sup> [Georgia: Acts of harassment against Mr. Arnold Stepanyan](#), urgent appeal by the Observatory of 30 March 2009.

<sup>66</sup> Supra note 6, p. 41.



Transparency International has even lodged a complaint to the European Court of Human Rights in this respect.

36. Media seem to be quite independent<sup>67</sup> and free in criticizing government, although several incidents involving physical violence against journalists considered to be close to the opposition or uncovering corruption were reported in 2011 and 2012<sup>68</sup>.

## 5. Conclusion

37. Following my visits to the three Caucasian countries, I can only conclude that the human rights defenders situation is very different in each of them.

38. Armenian human rights defenders do enjoy most of their rights and fundamental freedoms, although one should strongly condemn violent attacks on some civic activists. Georgian human rights defenders seem to be free in their work and, due to the dynamic changes in the country's political life, it is sometimes difficult to make a distinction between their human rights work and their political activism. Despite some incidents of intimidation which happened before the 2012 elections, no major hindrances to the work of human rights defenders have been reported to me (although surveillance of communications remains a serious problem). However, in both countries activists dealing with minorities' rights and especially LGBT people remain the target of various verbal and physical attacks, which is due to the general attitude of societies, in which "traditional national values" are still deeply rooted.

39. While Armenian and Georgian activists enjoy a large freedom to carry out their activities, the situation of their counterparts in Azerbaijan is very difficult, due to the on-going crackdown on civil society. Fabricated charges leading to long-term imprisonment; violent repressions in detention facilities including ill-treatment, torture or death, threats and physical attacks against human rights defenders and members of their families are outrageous, unacceptable examples of grave human rights violations. Besides that, there are continuous and systematic hindrances to the enjoyment of related fundamental rights such as the rights to freedom of expression (various forms of intimidation of journalists and bloggers, limited access to information through restrictions on opposition media, provisions on defamation incompatible with international standards, etc.), freedom of assembly (various restrictions on holding of rallies) and freedom of association (due to restrictive and arbitrary NGO legislation). Most of the findings and recommendations contained in Assembly Resolution 1917 (2013) are still valid and require urgent implementation.

40. It was not my intention to make specific recommendations to the authorities of the three countries at this stage, but to describe the current situation of human rights defenders. I will certainly draw more general conclusions and make recommendations concerning human rights defenders in my final report that I will present to the Committee in a few months, after having examined the situation elsewhere.

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<sup>67</sup> [Georgia in Transition](#), assessment and recommendations by Thomas Hammarberg, September 2013.

<sup>68</sup> Supra note 6, p. 40-41.