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Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Honouring of obligations and commitments by Azerbaijan

Information note on a fact-finding visit to Baku (12 – 14 January 2017)

Co-rapporteurs: Mr Stefan Schennach, Austria, SOC, and Mr Cezar Florin Preda, Romania, EPP/CD

I. Introduction

1. Our fact-finding visit to Baku took place from 11 to 14 January 2017. Our visit aimed at assessing the implementation of Resolution 2062 (2015) and mainly focused on the follow-up to the referendum on the constitutional amendments, the justice system and the human rights situation, including the question of religious activists in detention (as a follow-up to our previous visit).

2. The Assembly adopted its most recent resolution on the functioning of democratic institutions in Azerbaijan in June 2015, in which it condemned what it called “the crackdown on human rights in Azerbaijan” and called for an end to the pressure and politically motivated prosecution of human rights defenders, the media and those critical of the government. The Assembly called on the authorities “to use all available legal tools to release those prisoners whose detention gives rise to justified doubts and concerns”, and made a series of recommendations to the authorities of Azerbaijan as part of the Assembly’s ongoing monitoring of the country – including steps to reinforce democratic “checks and balances” in the system, ensure a fairer electoral framework, and further boost judicial independence.

3. In Baku, we had a long discussion with the President of the Republic. We also held meetings with the Head of the Presidential Administration, the Minister of Internal Affairs, the Deputy Speaker of Parliament, the Deputy Prosecutor General, the Deputy Justice Minister, the Bar Association, as well as members of Azerbaijan’s delegation to PACE and members of parliamentary committees. In addition, we met with representatives of civil society, journalists and representatives of extra-parliamentary opposition parties, as well as members of the international community. Long talks took place with Khadija Ismayilova and with Mehman Huseynov. Meetings were also organised with persons in detention, notably Ilgar Mammadov in Prison 2, Ilkin Rustamzade in Prison 13, Seymur Haziyevev in Prison 17 and Said Dadashbayli in Prison 15.

4. We would like to thank the Parliament of Azerbaijan and in particular the Head of the Azerbaijani delegation to the Assembly, as well as the Head of the Council of Europe Office in Baku and her staff for the programme and kind assistance given to our delegation. We would also like to thank the Ministry of Justice for facilitating the visits to persons in detention.

5. We consider it essential to give a renewed impetus to the reform processes and to pursue our dialogue with the authorities, in particular in the areas of the judiciary, media freedom and human rights, notably concerning the legislation on NGOs. We welcome the readiness expressed by the authorities to cooperate with the Council of Europe and in particular with the Venice Commission in this framework.

¹ Document declassified by the Monitoring Committee at its meeting on 8 March 2017.

II. Reform of the NGO legislation and practice

6. We discussed with the authorities the need for the reform of the NGO legislation and the possibility of working closely with the Council of Europe on this reform and its implementation to ensure compliance with European standards in respect of democracy and human rights.²

7. We were informed by the authorities that the NGO legislation was being reformed. The authorities acknowledged that some problems had been observed regarding the implementation of the NGOs legislation including the legislation on grants, and informed us that on 15 April 2015 the Extractive Industries Transparency Initiative (EITI) Board had made a decision to lower the status of Azerbaijan from a "permanent member" to a "candidate country" due to concerns about civil society representatives' ability to operate freely. In October 2016 EITI Board noted meaningful progress in EITI implementation but considered that more needed to be done, especially on civil society engagement; the next review will take place on 8-9 March 2017.

8. Members of Parliament informed us that a Government-Civil Society Dialogue Platform had been established in September 2016 with the participation of NGO and State agencies representatives. We were told that discussions had been held with civil society institutions to improve the working conditions for NGOs, and that a package of proposals simplifying the rules on the registration of the grant contracts had been submitted to the government. We insisted that this dialogue platform should include not only NGOs close to the government but also other independent NGOs. We also insisted that in addition to the legislative problem, NGOs and their staff are facing practical problems such as blocked bank accounts and travel bans.

9. We were told that State financial support is provided to NGOs through the State Council for Support to NGOs, under the auspices of the President of the Republic. As a result, organisations exclusively funded by the State might have difficulties to maintain their independence.

10. On 21 October 2016, the President of the Republic signed a decree facilitating grants by foreign donors to the Azerbaijani NGOs, and establishing, as of 1 January 2017, a "one-stop shop" for this procedure. The decree instructs the Cabinet of Ministers to simplify the procedure for obtaining an opinion on the financial and economic expediency of grants, and ensuring the implementation of the grant at the request of both the foreign donor and the recipient.

11. Throughout the visit, we encouraged the authorities to cooperate with the Venice Commission to reform the legislation on NGOs. The Venice Commission already issued two opinions (in 2010³ and 2014⁴) on the NGO legislation, recommending the simplification and decentralisation of the registration process, the adoption of specific measures to ensure full respect of the legislative requirements and to prevent *contra legem* practices, as well as to limit the grounds for refusal of registration to serious deficiencies. The Venice Commission also considered that the requirement for international NGOs to create local branches and representations and obtain state registration, as well as the related limitations should be reconsidered. Foreign funding of NGOs should be authorised unless there are clear and specific reasons not to do so, and the procedure for obtaining the right to give a grant, if maintained, should be associated with clear criteria and procedural indications clearly laid down in the legislation. According to the Venice Commission, provisions allowing unwarranted interferences into the internal autonomy of NGOs, i.e. reporting obligations and State supervision on NGOs' internal organisation and functioning should be removed.

12. The longstanding problems of the NGOs legislation have also been highlighted by the European Court of Human Rights in the case *Rasul Jafarov v. Azerbaijan*⁵ of March 2016, where the Court notes that the legislative environment regarding the operation of non-governmental, non-commercial organisations, including the regulation of matters relating to their State registration, funding and reporting requirements, has grown increasingly harsh and restrictive. According to the Court, the new onerous regulations, coupled with the reportedly intransigent and arbitrary manner in which they were applied by the authorities, made it increasingly difficult for NGOs to operate. The Court thus considers that all the punishable acts attributed to

² Venice Commission, CDL-AD(2011)035, op. cit., paragraph 117; Venice Commission CDL-AD(2014)043, "Opinion on the Law on non-governmental Organisations (Public Associations and Funds) as amended of the Republic of Azerbaijan", adopted by the Venice Commission at its 101st Plenary Session (Venice, 12-13 December 2014); Report of 6 August 2013 by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Azerbaijan from 22 to 24 May 2013 CommDH(2013)14; Report of 23 April 2014 of the Commissioner for Human Rights "Observations on the human rights situation in Azerbaijan: An update on freedom of expression, freedom of association, freedom of assembly, and the right to property", CommDH(2014)10

³ [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)035-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)035-e).

⁴ [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)043-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)043-e).

⁵ [http://hudoc.echr.coe.int/eng#{"itemid":\["001-161416"\]}](http://hudoc.echr.coe.int/eng#{).

the applicant had essentially stemmed from the fact that he had operated an NGO lacking State registration and that he had failed to register grants. The Court came to the conclusion that the facts relied on by the prosecuting authorities had not been sufficient for a reasonable suspicion that he had committed any of the criminal offences with which he had been charged and found violations of the European Convention on Human Rights regarding his arrest and detention (Articles 5§1, 5§4).

13. Having been informed that the NGO legislation is currently under revision, we encouraged the authorities to send the new draft regulations to the Venice Commission for opinion, prior to completion of the reform, in order to ensure that the reformed NGO legislation is fully in line with Council of Europe standards. We welcome the expressed readiness of the authorities to cooperate with the Venice Commission in the reform process and noted the high expectations in this regard of the international community representatives we met.

III. Allegations of ill-treatments by law enforcement officials

14. We were informed before our visit of the arrest of Mehman Huseynov, blogger and Chairman of the Institute for Reporters' Freedom and Safety (IRFS), and his allegations of ill-treatment on this occasion. We met with him and raised these allegations with the authorities who gave an opposing view of the event in question. Mehman Huseynov was detained by the police on 9 January 2017. He was convicted under Article 535.1 (disobedience to lawful requirements of the police) on 10 January 2017 and fined 200 AZN and then released. On 12 January 2017, Mehman Huseynov was interviewed at the Prosecutor's Office regarding his allegations of torture by the police during his arrest. On the same day, the Ministry of Internal Affairs filed a petition with the Prosecutor General's Office against Mehman Huseynov for slander and insult and the complaint is reportedly pending before Surakhani District Court.

15. During our meetings with the authorities, we expressed concern at the allegations of the ill-treatment of Mehman Huseynov and insisted on the need to investigate the case and to hold accountable those responsible. We stressed the need to guarantee an independent, transparent and effective investigation of all allegations of torture and ill-treatment and the imposition of appropriate sanctions. We welcome the announcement that an investigation on the allegations of ill-treatment had been launched by the Prosecutor's Office during our visit. The authorities assured us that we would be promptly informed of the outcome of the investigation, and we look forward to receiving information in this regard.

16. The Minister of Internal Affairs informed us about the internal supervision mechanism of his Ministry: over the last five years 1,259 violations of rights and freedoms by law enforcement agents had been identified (such as unfounded police detention, accusations without grounds, violating the rights of drivers, making rude gestures, etc). These had been investigated and had led to disciplinary measures against 1,647 police officers, of which 156 had been dismissed from the service, 139 demoted, and 1,351 given warnings. According to the Minister, no incidents of torture, cruel, inhuman or degrading treatment against detainees or arrested persons had been recorded. In 2016 the number of violations of human rights and freedoms by law enforcement agents had decreased by 10.9 % (-31 incidents; down from 284 to 253); the number of unfounded detentions had decreased by 33.3 % (-7; down from 21 to 14), and the number of incidents of rudeness had decreased by 41.3% (-52; down from 126 to 74).

17. We reiterate that an independent and effective police complaints system is of fundamental importance for the enhancement of public trust and confidence in the police and in the justice system and to ensure that there is no impunity for misconduct or ill-treatment, as provided by the 2011 Guidelines of the Committee of Ministers on eradicating impunity for serious human rights violations.⁶

IV. Criminal justice

18. The presidential pardon decree signed on 17 March 2016 released 14⁷ human rights defenders/journalists/youth activists/political activists/NGO representatives, out of a total of 148 persons released. In addition, Rauf Mirkadirov, Intigam Aliyev and Khadija Ismayilova were released by the domestic courts that commuted their prison sentences into suspended sentences. Faraj Karimov was released under

⁶ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cd111.

⁷ - human rights defenders: Taleh Khasmammadov, Rasul Jafarov, Anar Mammadli (Vaclav Havel Prize)
 - Chairman of the National Statehood party: Nemat Penahli
 - NIDA members: Rashad Hasanov, Rashadat Akhundov, Mammad Azizov
 - Musavat members: Tofiq Yaqublu, Yadigar Sadiqov, Akif Muradverdiyev (former government official)
 - journalists: Parviz Hasimov, Hilal Mammadov
 - bloggers: Siraj Karimli and Omar Mammadov

an amnesty in October 2016.⁸ According to Amnesty International, 13 “prisoners of conscience” are still behind bars in Azerbaijan. Apart from Amnesty International’s list of “prisoners of conscience”, we were informed of the following lists: a list of so-called “political prisoners” in Azerbaijan prepared by the Monitoring Group of Human Rights Organisations in Azerbaijan, that contains 26 names; a list of so-called “political prisoners” compiled by Leyla Yunus in Russian, reportedly containing 160 names, the majority of whom are religious activists; a list of 118 names prepared by the “Working Group on a Unified List of Political Prisoners in Azerbaijan” (signed amongst others by Rasul Jafarov, Intigam Aliyev, Khadiya Ismayilova, Anar Mammadli).

19. Throughout the visit, we discussed the situation of so-called “political prisoners”, mainly based on Amnesty International’s list of “prisoners of conscience”. Referring to the release of some human rights defenders, political activists and journalists in 2016, we expressed the hope that this positive move would continue throughout 2017.

20. Ahead of our visit, on 8 December 2016, NIDA civic movement activist Bayram Mammadov was convicted and sentenced to 10 years in prison. The verdict followed that of 24 October 2016 previously given against NIDA activist Qiyas Ibrahimov, who was arrested and charged in similar circumstances. Both deny the accusations of drug trafficking and consider that they were arrested for writing slogans on the Heydar Aliyev monument. They are both part of the Amnesty International list of “prisoners of conscience”.

21. During our meeting, Khadija Ismayilova informed us that she was unable to travel abroad. On 28 June 2016, Binagadi District Court denied her request to temporarily leave the country. On 15 August 2016, the Baku Court of Appeal rejected her appeal and upheld the Binagadi District Court’s decision. On 8 December 2016, the Supreme Court rejected her appeal against the travel ban imposed on her. In its Resolution 2141 (2017) on attacks against journalists and media freedom in Europe,⁹ the Assembly welcomed “the release from detention of Khadija Ismayilova”, but expressed “concern with regard to the legal proceedings, travel bans and restrictions on freedom of movement imposed on her”. We hope that the travel ban and other restrictions on her freedom of movement imposed on her will be lifted without delay.

22. As mentioned previously, while during our visit we considered specific ongoing cases of persons in detention, our discussions mainly focused on the reforms of the justice system as a whole. It is important to address the root causes of the problem and to restore confidence in, and the independence of the justice system.

23. During our meeting with the Deputy Minister of Justice, we were informed about the reforms carried out in the field of justice. He mentioned in particular the reform regarding the Judicial Legal Council, the selection procedure of judges and prosecutors, the age of retirement for judges, and initial and continuous training for judges. He considered that an independent justice system has been developed, guaranteeing the irremovability of judges and independence of the Prosecutor Office.

24. And yet, in its last resolution, while welcoming the recent legal amendments with regard to the judiciary, the Assembly encouraged the authorities “to further ensure full independence of the judiciary and, in particular, to prevent influence and interference by the executive branch”.

25. In the case of *Ilgar Mammadov v. Azerbaijan*,¹⁰ the European Court of Human Rights explicitly stated that the domestic courts had limited their role to one of mere automatic endorsement of the prosecution’s requests and that they could not be considered to have conducted a genuine review of the “lawfulness” of the applicant’s detention (violation of Article 5 § 4 of the European Convention on Human Rights). In their decision of December 2016 on the supervision of the execution of the *Ilgar Mammadov* case, the Committee of Ministers firmly reiterated that “it is not acceptable that, in a State subject to the rule of law, an individual remains deprived of his liberty on the basis of proceedings carried out in violation of the Convention in order to punish him for having criticised the government and that, in consequence, the continuing arbitrary detention of *Ilgar Mammadov* constitutes a flagrant breach of the obligations under Article 46, paragraph 1, of the Convention”; they affirmed their determination to ensure the implementation of the judgment “by actively considering using all the means at the disposal of the Organisation, including under Article 46, paragraph 4 of the European Convention on Human Rights”.

26. It is of utmost importance to ensure full implementation of decisions of the European Court of Human Rights, which is a strict obligation on all members of the Council of Europe. In our meetings with the

⁸ <http://www.contact.az/docs/2016/Politics/100400170576en.htm?23#.WJntRWczVaQ>.

⁹ See full text of the resolution [here](#)

¹⁰ [Ilgar Mammadov v. Azerbaijan](#) (application no. 15172/13), 22 May 2014

authorities, we reiterated the Council of Europe's readiness to help find solutions to the outstanding problems that impede the full execution of the Court judgments by the Azerbaijani authorities, and we insisted that the Secretary General's initiative under Article 52 of the Convention can be instrumental in this regard.

27. We were told in our meetings with civil society and journalists that it has reportedly become very difficult for lawyers to defend human rights defenders, journalists and NGO representatives due to strong pressure on them, such as arrests and prosecutions, investigations into lawyers' organisations, travel bans, and disciplinary proceedings, which reportedly have resulted in disbarments or threats of disbarment. In our meeting with the Chairman of the Collegium of Advocates, he disagreed and claimed that lawyers could exercise their duties freely in Azerbaijan. And yet, in September 2016, the Commissioner for Human Rights intervened before the Court of Human Rights in the case of *Bagirov v. Azerbaijan* concerning the disbarment from the Azerbaijani Bar Association of the applicant, an Azerbaijani lawyer who had been actively involved in the defence of human rights activists, following remarks he had made at a hearing before the Shaki Court of Appeal in September 2014.¹¹ The Commissioner considered that his disbarment exemplifies a more general practice whereby lawyers are prevented from pursuing their human rights defence work or punished for doing so.

V. Alternatives to detention and the juvenile justice system

28. When looking into the criminal justice system it is necessary to focus in particular on the use of pre-trial detention, the development of alternative sanctions and the creation of a separate juvenile justice system.

29. As outlined at length in the previous co-rapporteurs' memorandum of June 2015,¹² in a number of judgments, the European Court of Human Rights found violations of Article 5 of the Convention showing that in practice, judges order pre-trial detention in the vast majority of criminal proceedings without proper or adequate consideration of the grounds or whether less restrictive measures, such as house arrest or release on bail, would be sufficient. We also note that this practise is in contravention of the decision "on the application of the legislation by the courts during the examination of requests for the application of the preventive measure of remand in custody in respect of an accused" of 3 November 2009, by the Plenum of the Azerbaijani Supreme Court in which it instructed the courts to consider alternatives to detention on remand. We were informed by the President of the Supreme Court that a review of the use of detention on remand since then was made in 2016, but we have not yet been given the results of this review.

30. The Deputy General Prosecutor gave us the following statistics: in 2015 there were 13,270 convictions, out of which: 7,774 persons were imprisoned, 112 were sentenced to time in disciplinary military units, 1,858 were sentenced to "corrective work", 121 to "public work", 2,244 were fined, and 1,161 were given suspended sentences.

31. The President of the Republic, the Deputy Minister of Justice, and the Deputy General Prosecutor acknowledged the need to reduce reliance on prison sentences for mid-range offenders. We welcome the openness of the President of the Republic himself on this matter. Our discussion focused on the need to establish a probation service in Azerbaijan, to develop alternative sanctions and to limit imprisonment to certain crimes and shorten the length of sentences. We welcome the Executive Order signed by the President of the Republic of Azerbaijan on "improvement of operation of penitentiary, humanisation of penal policies and extension of application of alternative sanctions and non-custodial procedural measures of restraint". This executive order covers a wide range of issues such as inter alia alternatives to pre-trial detention, decriminalisation of a number of offences and improvements in the management of penitentiary institutions. We will follow closely the implementation of this executive order, especially in the light of the timeline fixed by the President. We invite the authorities to inform us in a timely manner of the measures taken.

32. We have expressed our concerns regarding the absence of a separate juvenile justice system in Azerbaijan. There is hardly any difference between the treatment of children and adults by the criminal justice system. Children are equally detained without any consideration of alternatives to detention such as education measures, referral to social services and probation. We discussed with the authorities the need for a comprehensive juvenile justice system based on the development of a wide range of measures to ensure the best interest of the child, such as care, guidance and supervision, counselling, probation, foster care, educational programmes, and other alternatives to institutional care. We welcomed the work being carried

¹¹ [Commissioner for human rights' written observations submitted to the European Court of Human Rights](#)

¹² <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21802&lang=en>.

out with the support of United Nations Children's Fund on the issue of children in conflict with the law and we were informed of an ongoing pilot project. Based on a Memorandum of Understanding for collaboration in juvenile justice, signed with the UNICEF Office of in Azerbaijan, the OSCE Baku Office and the Alliance of Non-Governmental Organisations, the Children's Law Clinic and the Social Rehabilitation Center were opened in the Narimanov district of Baku to receive children who had committed a crime or for delinquency. It is important that the authorities sustain such initiatives and replicate them.

VI. Persons deprived of their liberty

33. We would like to thank the penitentiary service for facilitating and organising the visits to persons in detention, notably Ilgar Mammadov in Prison 2, Ilkin Rustamzade in Prison 13, Seymur Haziyevev in Prison 17 and Said Dadashbayli in Prison 15.

34. Said Dadashbayli said that he had been detained since January 2001 and that he had lodged an application with the European Court of Human Rights in 2007 that was still awaiting first judicial decision.¹³

35. We are concerned about the health of Ilkin Rustamzade who is currently detained in Prison 13. He should be transferred without delay to hospital to undergo a computed tomographic scan, as prescribed by his doctor, and provided with medical treatment as needed.

36. More generally, we are alarmed by the insufficient material and sanitary conditions of detention in Prison 13. A dormitory that was visited accommodated 123 inmates on very narrow (50 cm) double bunk beds. The dormitory was apparently not equipped with a proper heating system as it was very cold. The sanitary annex adjacent to the dormitory was composed of only one urinal and two toilets lacking privacy, as well as three washbasins which were dirty and in a poor state of repair. Access to showers did not appear to be sufficient. The prison is located on wetlands causing humidity in barrack buildings. Furthermore, the only access road is in dire disrepair with deep potholes due to heavy truck traffic convoys from the SOCAR extraction site nearby.

37. Concerning the prison for women that we visited during one of our previous visits, we were informed of problems in accessing menstrual products while in prison which causes hygiene problems but is also a cause of tension between inmates. All female inmates should be provided with feminine hygiene products freely.

38. We ask the authorities to authorise the publication of all CPT reports, recalling the clear message given by the Committee of Ministers in February 2002, encouraging "all Parties to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to authorise publication, at the earliest opportunity". So far, only two out of the ten reports on the CPT's visits to Azerbaijan have been made public.

VII. Follow up to the referendum on the constitutional amendments

39. During our visit we discussed the follow-up to the referendum held on 26 September 2016. On 11 October 2016, the Central Election Commission announced the final results of the referendum, according to which all proposed constitutional amendments should be considered approved. On 12 October 2016, the President of the Republic signed an order related to the entry into force of the Referendum Act. According to the order, the cabinet must review and/or draft the normative and legal acts deriving from the constitutional changes within six months, for submission to the President.

40. The PACE assessment mission of the constitutional referendum in Azerbaijan concluded inter alia that the referendum was organised in accordance with the national legislation and the Constitution of Azerbaijan and considered legal and legitimate, it noted that the voting process was transparent, well organised, efficient and peaceful throughout polling day. In addition, it invited the Azerbaijani authorities to respect the opinion of the Venice Commission concerning relevant laws during the further process of implementation of the modifications to the Constitution.

41. The Venice Commission indeed raised some serious concerns related to the procedure as well as to the substance of the reform in its Opinion of October 2016 on the draft modifications to the Constitution of Azerbaijan.¹⁴

¹³ *Dadashbeyli v. Azerbaijan* application number 11297/09

¹⁴ [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)029-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)029-e).

42. The co-rapporteurs recall that in its Resolution 2062 (2015) on the functioning of democratic institutions in Azerbaijan, the Assembly had already noted that the Azerbaijani institutional structure grants particularly strong powers to the President of the Republic and the executive, with limited competence of the Milli Mejlis. The Assembly therefore called on the authorities, with regard to checks and balances, to reinforce the effective application of the constitutionally guaranteed principle of the separation of powers, and in particular strengthen parliamentary control over the executive.

43. As regards the human rights chapter of the Constitution the Venice Commission considers that most of the modifications are generally positive. However, according to the Venice Commission, the limitation clauses introduced need to be interpreted in the light of the proportionality principle, and in strict compliance with the case law of the Strasbourg Court. Concerning the limitation of property rights, the Venice Commission considers that the broad notions used in the text such as “social responsibility”, “social justice” and “effective use” must be developed in the implementing legislation.

44. We were not given precise information on the steps taken so far for the implementation of the referendum. We were told by the authorities that the referendum was of great importance in terms of improving the system of governance in the country, reinforcing State authorities and ensuring human rights and freedoms at a higher level. We were informed that the central executive bodies and the Council of Ministers had been asked to prepare the implementing legislation and the work had started in the parliamentary committees.

45. The President of the Republic mentioned in particular Article 29 of the Constitution which states that the right to property is limited by the “social responsibility” of the owners, for the sake of “social justice and effective use” of the land. According to him, this provision was of great importance in order to cancel the lease agreements on land that had been taken illegally and which had been left unexploited, and there was a plan to irrigate 150,000 hectares of land for agriculture purposes.

VIII. Freedom of expression/media freedom in the digital era

46. Our discussions also focused on the development of the internet and social media, and issues related to freedom of expression and media freedom in the digital area. We expressed our concerns regarding the current detention of a number of young bloggers.

47. We were informed of the adoption by the parliament at the end of 2016 of amendments to the Criminal Code, extending the application of liability for discrediting the honour and dignity of the President to expression online.¹⁵ The amendments also expand the criminal provisions on slander and insult to online expression by introducing aggravated responsibility for using fake usernames or accounts. The penalties include prison sentences.¹⁶ In its Resolution 2141 (2017) on attacks against journalists and media freedom in Europe,¹⁷ the Assembly “recalling the decision adopted by the Committee of Ministers on 6-8 December 2016 on Mahmudov and Agazade group of cases against Azerbaijan [...] regrets the absence of information on measures taken to ensure the adequacy of legislation on defamation and expresses, in this context, grave concern in the face of recent legislative amendments to the Criminal Code introducing new defamation offences subject to imprisonment, irrespective of whether incitement to violence or hatred is involved.”

48. The internet has radically transformed the way we access information and communicate, creating new opportunities for strengthening democracy, but also restricting human rights and making it easier to commit crimes. There is a need to effectively protect human rights on the net, by shaping the internet as a safe and open environment, respectful of freedom of expression, freedom of assembly and association, diversity, culture and education. The Council of Europe has issued guidelines to member States to make sure that any restrictions to freedom of expression, such as through internet blocking and filtering, comply with Article 10 of the European Convention on Human Rights. The Committee of Ministers adopted a recommendation on internet freedom,¹⁸ recalling that any national decision or action restricting human rights and fundamental rights on the internet must comply with international obligations. It is important that these standards are duly taken into account in legislative processes.

¹⁵ Amended Article 323.1 of the Criminal Code (smearing or humiliating the honour and dignity of the President of the Azerbaijan Republic in public statement, publicly shown content or mass media) provides for an extension of defamation against the President to expression on the Internet. The penalty will be a fine from 500 to 1,000 manats, or correctional labour up to two years, or imprisonment for a period of 2 years.

¹⁶ New Article 148-1 of the Criminal Code: content constituting libel or insult produced from fake profiles or accounts is punishable by a fine of 1000 to 1500 AZN, community service for 360 to 480 hours, corrective labour for up to two years, or imprisonment for up to one year.

¹⁷ See the full text of the resolution [here](#)

¹⁸ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806415fa.

APPENDIX I – Statement by PACE monitors, ending visit to Azerbaijan

After their fact-finding visit to Baku from 12 to 14 January 2017, the co-rapporteurs for the monitoring of Azerbaijan by the Parliamentary Assembly of the Council of Europe (PACE), Stefan Schennach (Austria, SOC) and Cezar Florin Preda (Romania, EPP/CD), made the following statement:

“It is essential to give a renewed impetus to the reform processes and pursue dialogue with the authorities, in particular in the areas of the judiciary, media freedom and human rights, notably concerning the legislation on NGOs. We are ready to continue our co-operation with the Azerbaijani government and people to define and implement these reforms,” they said.

The co-rapporteurs discussed respect for human rights in Azerbaijan, especially the situation of so-called “political prisoners”, mainly based on Amnesty International’s list of prisoners of conscience. Referring to the release of some human rights defenders, political activists and journalists in 2016, the co-rapporteurs expressed the hope that this positive move would continue throughout 2017.

“While we considered specific ongoing cases of persons in detention during our visit, our discussions mainly focused on the reform of the justice system as a whole. It is important to address the root causes of the problem and to enhance confidence in, and the independence of, the justice system. There is in particular a need to look into the criminal justice system, with special focus on the use of pre-trial detention, the development of alternative sanctions and the creation of a separate juvenile justice system,” the co-rapporteurs said. They welcomed the readiness expressed by the Azerbaijani authorities to closely co-operate with the Council of Europe on justice reform. They reiterated the need for full implementation of decisions of the European Court of Human Rights.

The co-rapporteurs welcomed the readiness expressed by the authorities to amend the legislation on NGOs and its implementation in compliance with European standards. “The authorities should make full use of the Venice Commission’s expertise to reform the legislation on NGOs,” the co-rapporteurs said.

Discussions also focused on the development of the internet and social media, and issues related to freedom of expression and media freedom in the digital area. The co-rapporteurs are particularly concerned by the current detention of a number of young bloggers.

The co-rapporteurs also expressed concern at the alleged ill-treatment of Mehman Huseynov, Chairman of the Institute for Reporters’ Freedom and Safety, and welcomed the willingness expressed by the authorities to investigate the case and to hold accountable those responsible. “We insisted with the authorities that the investigation should be transparent and effective,” the co-rapporteurs said. They also insisted that they be promptly informed of the outcome of the investigation.

The co-rapporteurs held meetings with the President of the Republic, the Head of the Presidential Administration, the Minister of Internal Affairs, the Deputy Speaker of Parliament, the Deputy Prosecutor General, the Deputy Justice Minister and the Chairman of the Bar Association, as well as members of Azerbaijan’s delegation to PACE and members of parliamentary committees. They also met with representatives of civil society, journalists and representatives of extra-parliamentary opposition parties, as well as members of the international community.

Meetings were also organised with persons in detention, notably Ilgar Mammadov in Prison 2, Ilkin Rustamzade in Prison 13, Seymur Haziyevev in Prison 17 and Said Dadashbayli in Prison 15.

The co-rapporteurs will present an information note regarding this visit to the Assembly’s Monitoring Committee at one of its forthcoming meetings.

APPENDIX II – Programme of the fact-finding visit to Baku (12-14 January 2017)

12 January 2017

- 10:00-11:00 Meeting with the President of Azerbaijan, H.E. Mr Ilham Aliyev
- 11:30-12:15 Meeting with the members of the Azerbaijan Delegation to PACE
- 12:15-13:00 Meeting with chairpersons of the Legal Policies and State Structuring Committee and of the Human Rights Committee of the Milli Mejlis
- 13:00-14:30 Lunch
- 14:30-15:30 Meeting with Ms Bahar Avaz Muradova, Deputy Chairperson of the Milli Mejlis
- 15:45-16:45 Meeting with Mr Azer Jafarov, Deputy Minister of Justice
- 17:00-18:00 Meeting with Mr Ramil Usubov, Minister of Internal Affairs
- 20:00 Working dinner with selected Ambassadors organised by Swiss Embassy (*)

13 January 2017

- 10:15-11:15 Meeting with Mr Ramiz Rzayev, President of the Supreme Court
- 11:30-12:30 Meeting with Mr Namig Askerov, Deputy Prosecutor General
- 12:45-13:45 Meeting with Mr Ramiz Mehdiyev, Head of Presidential Administration
- 14:00-15:00 Lunch
- 15:15-16:00 Meeting with Mr Azer Tagiyev, Chairperson of Presidium of Bar Association
- 16:15-19:15 Meetings with civil society, journalists and extra-parliamentary opposition (*)
- 20:30 Dinner

14 January 2017

- 09:00-10:00 Meeting with civil society (continued) (*)
- 10:30-19:00 Individual meetings with persons in detention

(*) organised by the Council of Europe Office in Baku