



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.
GENERAL

CAT/C/CR/30/RESP/1
14 July 2004

ENGLISH
Original: RUSSIAN

COMMITTEE AGAINST TORTURE
Thirty-third session
15-26 November 2004

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

**Comments by the Government of the Republic of Azerbaijan to the
conclusions and recommendations of the Committee against Torture**

[7 July 2004]

INFORMATION FROM THE REPUBLIC OF AZERBAIJAN CONCERNING THE RECOMMENDATIONS IN PARAGRAPHS 7 (c), (f), (h), (i) AND (n) OF THE CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE AGAINST TORTURE, PURSUANT TO ITS CONSIDERATION OF THE SECOND PERIODIC REPORT OF AZERBAIJAN

In order to implement the recommendations of the Committee against Torture, the President of the Republic of Azerbaijan promulgated Order No. 1344 of 27 September 2003 on measures to implement the recommendations adopted by the Committee against Torture following its consideration of the second periodic report of the Republic of Azerbaijan under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and a working group has been set up to give effect to these recommendations. The working group has prepared the following information on the basis of the above-mentioned Presidential Order. In addition, and also on the basis of the Presidential Order, the working group has drawn up proposals to implement the recommendations of the Committee against Torture and submitted them to the President for his consideration.

Pursuant to the Presidential Order referred to above, the implementation of the Committee's recommendations has been extensively discussed at a high-level meeting at the Ministry of Justice and in the national law enforcement agencies. An order on the subject adopted by the Minister of Justice outlines the tasks of the various departments of the Ministry in this area.

In accordance with the Presidential Order referred to above, the Minister of Justice has developed and approved a comprehensive and integrated plan of action to ensure implementation of the Committee's recommendations by the various bodies answering to the Ministry.

In view of the importance and topicality of this matter, and as happened after the consideration of the first periodic report of Azerbaijan under the Convention, the Ministry of Justice prepared and published a special compendium of relevant material comprising international instruments in the field of torture, the United Nations Convention, the Committee's recommendations and other documents. This compendium was circulated to all penal institutions, departments of the Ministry of Justice, the courts and other law enforcement agencies.

To keep the Azerbaijani public informed of this matter, the Committee's recommendations and the Convention itself have been given wide publicity, including publication on the web sites of the Ministry of Justice and other departments.

To ensure that judges study international norms and standards in greater depth, particularly those intended to uphold and protect human rights as proclaimed by the United Nations, the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE), the American Bar Association, the German Agency for Technical Cooperation (GTZ) and others, training sessions, seminars, courses and a host of other training activities have been organized.

It should be emphasized that, in the context of cooperation with international organizations, two special manuals approved by the Legal Training Centre attached to the Ministry of Justice, entitled “Torture is Prohibited” and “Are You Ready to Meet the CPT? Questions and Answers”, have been published.

Following an order issued by the Minister of Justice on compliance with the obligations arising from the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention has been included in the curriculum of the Ministry’s Training Centre as a separate subject.

Furthermore, the Ministry of Justice Training Centre’s curriculum for the training and retraining of staff of penal institutions and remand centres, besides legal and special subjects, includes specialized courses on the study of human rights and international instruments relating to the treatment of offenders.

With a view to providing methodological assistance to the courts in the proper application of legislation and convention-based international rules against torture, the Supreme Court of the Republic of Azerbaijan has consolidated judicial practice in this area, as a result of which a decision was adopted reflecting the recommendations of the Committee against Torture and indicating in particular that when instances of the use of torture, cruel treatment or physical or mental violence are found to have occurred, they must be formulated in terms of a criminal offence, since these are criminally punishable offences and no exceptional circumstances can serve to justify them. Evidence obtained by unlawful means cannot form the basis of a judgement.

This Supreme Court plenary decision was transmitted to all courts and pre-trial investigation agencies for practical use in their work.

It should also be emphasized that, in the practice of the courts, acts of torture or maltreatment identified at the pre-trial investigation stage are not ignored. Thus, in the course of a judicial investigation all claims of the use of torture against persons being investigated are considered, evidence is gathered and the court scrupulously verifies the full observance of such persons’ right to protection. Moreover, in the event of a complaint of torture or maltreatment from the person investigated, the courts immediately call for a forensic examination and the thorough, objective and independent conduct of that examination is ensured. Thereafter, when a definitive decision is rendered by the courts, all the evidence gathered is again evaluated and instances of violence against the person investigated are noted therein, if such acts occurred at the time of the pre-trial investigation.

Azerbaijan is currently pressing ahead with judicial and legal reforms. In doing so it attaches great importance to the recommendations by the experts of the Council of Europe on the need to ensure the independence of the courts, including the procedure for appointing judges. An ad hoc working group was set up pursuant to the Council’s decision. In partnership with the Council of Europe and other authoritative international organizations, the working group has taken the necessary measures, studied practice abroad with a view to formulating a set of proposals to further improve the work of judges and ensure their independence, and drawn up a specific plan of action.

In March this year the Ministry of Justice and the Council of Europe held a bilateral meeting of experts to discuss the plan of action for ensuring the independence of the courts and assessing their performance, and for appointing judges.

Given the importance of this question to Azerbaijan, a plan of action to ensure the continued independence of judges was fully agreed upon and approved in conjunction with authoritative international experts. The plan is now being implemented and the forthcoming scheduled elections of judges in 2005 will be conducted under the new improved system.

It should also be noted that the relevant working group of the Milli Mejlis (Parliament) of the Republic of Azerbaijan is currently studying the feasibility of fully aligning article 133 of the Azerbaijani Criminal Code with the definition of torture contained in article 1 of the Convention against Torture.

7 (c) The Committee recommends that the State party clearly instruct police officers, investigative authorities and remand centre personnel that they must respect the right of detained persons to obtain access to a lawyer immediately following detention and a medical doctor on the request of the detainee, and not only after the written consent of the detaining authorities has been obtained. The State party should ensure the full independence of medical experts.

Under article 85 of the Code of Criminal Procedure, investigators are obliged to ensure the right of suspects to have the services of counsel from the moment of arrest, the laying of charges or remand in custody. Under article 153 of the Code of Criminal Procedure, the criminal prosecution authorities must make arrangements for detainees to meet their lawyers or legal representatives in private.

Articles 92.7 and 92.9 of the Code of Criminal Procedure stipulate that, as soon as he or she is admitted to a case, a lawyer shall have unimpeded access to a place of detention to meet with his or her client at any time. No prior authorization is required for a meeting between counsel and a person under investigation, and neither lawyers nor persons under investigation encounter any problems in this regard.

In addition to substantive efforts to improve amenities and the conditions in which convicted prisoners are held, great importance is attached to the provision of qualified medical assistance in the penal enforcement context.

As stipulated by the Penal Enforcement Code, penal institutions are organizing and carrying out medical, hygiene and epidemiological initiatives. Sick prisoners are provided with bedding and their hygiene has been improved. Prisoners are treated and provided with medicines at State expense.

In order to raise the professional skills of the medical service, qualified specialists from the Ministry of Health are helping to run courses for medical personnel working in penal institutions and measures are being taken to ensure that junior doctors fill vacancies.

Medical workers at penal institutions and remand centres attend extended courses under a special programme to upgrade their skills, in which experienced specialists from the Ministry of Health are involved. The courses that finished in March 2004 focused in particular on the detection by medical experts of instances of torture and ill-treatment and how to document such cases.

By order of the Minister of Justice, the administration at places of detention must ensure that all persons entering such institutions are medically examined, registered and accorded the right to receive essential medical treatment for as long as they are detained. Note is taken of physical injuries described in complaints of ill-treatment and the appropriate agencies are informed. Arrangements have been made for remand prisoners, convicted prisoners and counsel to inspect these records.

It should be noted that an ad hoc working group was established to formulate proposals on implementing practical measures to ensure the independence of medical experts. The working group has carefully studied the recommendations of international organizations and foreign experience in this domain. Accordingly, it has been decided to remove the medical service from the jurisdiction of the Central Department for the Enforcement of Judicial Decisions and subordinate it directly to the Ministry of Justice, in order to enhance the status and guarantee the independence of medical experts and provide treatment to convicted prisoners exclusively on the basis of medical criteria. Organizational issues connected with these structural transformations are currently being addressed.

The Ministry of Internal Affairs has devised a special plan of organizational and practical measures. Its most important components are careful selection of personnel and managers, improvement of the legal framework, the inculcation in every employee of the Ministry of a profound awareness of the role and place of the police in the ongoing social transformations and their realization that the success of these changes is related to the level of legality and law and order in the country, the effectiveness of crime control and the observance of human and civil rights and freedoms.

The senior echelons of the Ministry of Internal Affairs take special measures to deal with officers who have breached police codes of ethics, violated operational rules or broken the law. Such officers are subject to disciplinary sanctions up to and including dismissal from the internal affairs agencies and referral of their case to the judicial authorities.

A total of 108 officers were punished in 2003 in connection with 72 cases of unethical behaviour towards citizens, unjustified detention, unlawful searches, battery and other offences. Criminal proceedings were brought against 1 officer, 3 were convicted, 10 were dismissed from the service, 9 were demoted, 2 were punished by the loss of one step in grade, and 83 were subject to other disciplinary sanctions.

On 4 March 2002 the Ministry of Internal Affairs issued Order No. 80 on additional measures to strengthen law and order among its staff, Order No. 81 on additional measures to improve detention procedures for detainees and remand prisoners and Order No. 82 on additional measures to better uphold the rights of detainees, all of which specifically define the procedure for upholding the rights of detainees and remand prisoners in accordance with international standards and stipulate that they shall be provided with counsel from the moment of detention, in accordance with legislation. They further stipulate that conversations between detainees and their lawyers shall be confidential, that detainees shall undergo a medical examination and that appropriate entries shall be made in medical records at temporary detention facilities.

Systematic efforts are being made to implement the provisions of Presidential Order No. 354 of 10 March 2000 on measures connected with the report of the Committee against Torture and Amnesty International on Azerbaijan.

To ensure the implementation of the recommendations contained in the conclusions and recommendations of the Committee against Torture, and pursuant to the Presidential Order No. 1344 of 27 September 2003, a special programme of measures was devised and circulated to regional police units with a view to execution.

This programme aims, among other things, to give staff of the Ministry of Internal Affairs in-depth knowledge of international human rights instruments, provide detainees and remand prisoners with a lawyer and medical assistance in the manner prescribed by law, take further measures to prohibit the use of torture, strengthen oversight to ensure that police officers operate within the law, ensure that no one is detained in a police lock-up for longer than the statutory period, and curtail any such abuses.

An instruction on the procedures for protecting and monitoring detainees in police lock-ups and rules on internal discipline in police lock-ups were approved by order of the Ministry of Internal Affairs on 6 November 2001. With a view to ensuring implementation of Presidential Decree No. 671 of 5 March 2002 on the application of the Constitutional Act on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan and Order No. 50 (s) of the Cabinet of Ministers dated 9 March 2002, the instruction and rules were amended and added to by Orders No. 224 and 29 of the Ministry of Internal Affairs dated 12 June 2002 and 1 January 2004, respectively. Thus, in order to investigate complaints, the Commissioner for Human Rights has the right, without impediment or prior notification, to visit lock-ups and verify that persons in custody are being lawfully detained.

The instruction also requires the chief officer of the lock-up to receive the Commissioner without delay, permits the latter to meet and converse with detainees directly and establishes proper arrangements for inspection of documents confirming the lawfulness of their detention.

Additionally, at the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), changes were made to the register of persons held in temporary holding facilities. The register must show their first name, surname, signature, identity card number, place of work, date and time of meeting with the lawyer protecting the detainee's rights, and observations signed by the medical worker (surname, first name, patronymic, date and time) checking the detainee's state of health.

In accordance with Order of the Procurator-General No. 02/16 of 12 January 2001 on the referral of special communications, district and city procurators must unfailingly carry out the instruction to refer immediately to the Procurator-General's Office special communications regarding all unlawful actions conducted in the course of a pre-trial investigation or an initial inquiry.

In accordance with Order No. 02/35 of 9 February 2001 on improving the way that communications from citizens to procuratorial bodies of the Republic of Azerbaijan are handled, subordinate procurators must immediately, under direct supervision, scrutinize all communications relating to the improper conduct of preliminary investigations and unlawful actions by bodies conducting investigations and initial inquiries, violations of accused persons' or suspects' right to protection, torture, battery, the use of other forms of physical or mental coercion during the pre-trial investigation or initial inquiry, and unlawful detention.

Under the Order of the Procurator-General on additional measures regarding compliance with the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 17 December 1999, steps have been taken to enhance the effectiveness of procuratorial supervision to prevent and suppress the use of torture and other unlawful methods during initial inquiries and pre-trial investigations and to prosecute officers who engage in such practices.

Training courses run by the Procurator's Office focus on the Convention against Torture and other international human rights instruments, and compulsory knowledge of the provisions of these instruments is accorded particular weight in officers' performance appraisals.

In line with the Procurator-General's Order on the role of the procurator's office in intensifying efforts to combat the use of torture and other unlawful methods during initial inquiries and pre-trial investigations, pursuant to the entry into force of the Procurator's Office Act of 14 March 2000, specific steps are being taken to enhance the effectiveness of procuratorial oversight of the enforcement and application of the law and safeguard human rights in the course of the initial inquiry and the pre-trial investigation in the light of the Convention and the recommendations of the Committee against Torture.

In line with the Order and pursuant to these recommendations, and with a view to correctly applying the provisions of the Code of Criminal Procedure, it is incumbent upon persons conducting initial inquiries and investigators to inform detainees of their statutory rights as soon as they are taken into custody, including the right to counsel.

A person taken into custody shall immediately be provided with counsel; only if he or she refuses the services of counsel shall a report to this effect be drawn up.

As prescribed by article 153.2.4 of the Code of Criminal Procedure, a detainee's family and immediate relatives shall be informed without delay of the fact and place of detention, and also of any change in the place of detention. Where the detainee is a foreign citizen or stateless person, the international law unit of the Procurator-General's Office shall immediately report the detention to the Ministry of Foreign Affairs, which will notify the appropriate diplomatic mission.

Where an individual, his or her relatives or other persons or organizations lodge a complaint or a report about the use of torture or other unlawful measures, or where signs of torture or other unlawful treatment are detected by the investigator or the person conducting the initial inquiry, even when no complaint has been lodged, each case is verified in a full, comprehensive and objective manner. Those responsible are removed from their posts and called to account. Victims are informed of the measures taken, their right to compensation for moral and material harm is explained to them and appropriate arrangements are put in place to ensure that this right can actually be exercised.

To forestall any such cases, the state of health of the detainee or remand prisoner is always uppermost in the minds of the person conducting the initial inquiry or the investigator. Where necessary, a medical examination or forensic medical assessment is carried out.

Upon receiving information about the use of torture or other prohibited methods, a person conducting an initial inquiry, investigator or procurator, in considering the evidence, and also when drawing up and authorizing a bill of indictment, shall exclude evidence obtained by torture or other unlawful means.

In addition, pursuant to Order No. 02/47 of the Procurator General's Office dated 9 March 2001 on strengthening procuratorial oversight of procedural compliance in initial inquiries and pre-trial investigations, district procurators conduct daily checks of temporary holding facilities and take measures as prescribed by law when they discover cases of unlawful custody.

Persons found guilty of human rights abuses are subject to disciplinary and criminal prosecution.

For example, for unlawfully escorting Fazil Rafiq oghly Djafarov to a police station on suspicion of theft and causing him bodily injury, the Surakhan district procurator's office in Baku instituted criminal proceedings under article 309.2 of the Criminal Code against Lieutenant Colonel Akber Djavanshir oghly Nasirov, a criminal investigative officer based at Surakhan district police department (station No. 34), who was subsequently convicted by a court on 30 October 2003.

Violations of citizens' rights resulted in disciplinary action being taken against 61 people in 2002 and 72 people in 2003. The total number of disciplinary offences in 2003 included 2 cases of intentional bodily harm, one case of physical violence, 17 cases of wrongful arrest, 9 cases in which a person was needlessly conducted to a police station, 2 cases of unlawful detention, 1 case of unwarranted criminal prosecution, 18 cases of unjustifiable revocation of a driving licence, 1 violation of the rights of foreigners and stateless persons, and 20 cases of unlawful use of standard-issue weapons and other offences.

Of those disciplined in 2003, 52 were officers and 58 were junior officers and other ranks.

Under the Act on the ratification and entry into force of the Code of Criminal Procedure and the legal regulation of issues associated with this development, and pursuant to paragraph 3, subparagraphs 2, 6 and 7 of the Presidential Decree of 25 August 2000 on the application of the

Code of Criminal Procedure, approved by the said Act, the investigative department of the Ministry of National Security handles administrative investigations of the economic crimes and offences against public security, public order and State power stipulated in articles 206, 214, 214-1, 216, 219, 270, 271 and 285 of the Criminal Code of the Republic of Azerbaijan. To this end, the Ministry of National Security administers a remand centre that enables it, on a temporary basis, to restrict the liberty and detain suspects and accused persons in the manner and for the period prescribed by law.

The Ministry's investigative department and its remand centre operate in compliance with presidential decrees, the Criminal Code, the Code of Criminal Procedure, the Penal Enforcement Code, orders and instructions of the Minister of National Security, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1955 Standard Minimum Rules for the Treatment of Prisoners, the 1979 Code of Conduct for Law Enforcement Officials, and the 1982 Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Judicial and procuratorial bodies supervise the work of the investigative department of the Ministry of National Security to ensure that it complies with the law. In recent years there have been no recorded cases of unlawful arrest, detention or criminal prosecution by the Ministry's investigative department, nor have there been any cases of torture or cruel, inhuman or degrading conduct on the part of investigators. The Ministry has received no complaints of this kind.

Every detainee, accused person or remand prisoner has actually been provided with counsel. Detainees and remand prisoners have been allowed proper face-to-face meetings with their lawyers, without restrictions on the number or the duration of such meetings, and the confidentiality requirement has been observed. All investigative actions in respect of suspects and accused persons, including the initial inquiry, have been conducted with the obligatory presence of a lawyer. As stipulated by the Code of Criminal Procedure, all suspects or accused persons have been notified in writing of their rights and obligations, and their right to make a complaint about the actions of an investigator to a procurator conducting procedural oversight of the pre-trial investigation or to a court conducting judicial oversight is explained to them.

Persons legally in custody have the right of correspondence and the right to meet with their relatives. They also have the right to receive and consult copies of letters accompanying any requests, claims and complaints sent to a specified addressee.

As stipulated by law, persons in custody have the right to submit requests and complaints to officials (a judge, a procurator, or the Commissioner for Human Rights of the Republic of Azerbaijan) in confidential format (i.e. in sealed envelopes). Detainees in remand centres also have this right. On the day a person is detained or remanded in custody, the person's family, immediate relatives and place of work are notified of this fact in writing. Arrangements are made for detainees at the Ministry of National Security remand centre to meet with their immediate relatives, should they so wish.

Immediately upon arrival at the remand unit of the Ministry of National Security, all detainees and remand prisoners undergo a medical examination. To improve the efficiency of

medical recording, every detainee has a personal medical card and all the medical cards are kept in a separate locked room. Prisoners have the right to pay confidential visits to the medical service, to receive medical advice and, if they wish, to request a medical examination at all stages of an administrative investigation in criminal cases. All medical examinations of prisoners (upon arrival or subsequently) are conducted in locations where they cannot be seen or heard by the prison guards (except when specifically requested by physicians).

7 (f) The Committee recommends that the State party ensure the prompt creation of the new bar association and take measures to guarantee an adequate number of qualified and independent lawyers able to act in criminal cases.

An ad hoc working group has been constituted to enhance the effectiveness of the provision of legal assistance and review legislation to bring it into line with European standards.

In December 2003, with a view to establishing a new Bar Association as quickly as possible, the working group, together with experts of the Council of Europe, prepared a bill on introducing changes to the Legal Profession and Legal Practice Act of 28 December 1999. In December 2003 this bill was submitted to Parliament for discussion.

However, bearing in mind the considerable interest in this question, it was decided to organize a forum in cooperation with the Baku office of the Organization for Security and Cooperation in Europe (OSCE), to which representatives of all relevant stakeholders would be invited. The forum was held on 22-23 January 2004. A broad discussion of the bill was organized, with the participation of a very broad range of representatives of the legal profession, lawyers, judges, procurators, independent jurists, scholars, international experts, etc. In the light of the comments and the proposals made by the forum participants, the working group revised the bill and prepared a new version.

Discussion of the bill was postponed until the spring session of Parliament. At the end of March 2004 the revised bill was submitted to the Council of Europe for the rendering of an expert opinion. Once the experts of the Council of Europe have presented their conclusions and comments, it is planned that the bill will be discussed and adopted during the spring 2004 session of Parliament.

7 (h) The Committee recommends that the State party ensure the full protection of non-governmental human rights defenders and organizations.

Under article 58 of the Azerbaijani Constitution, everyone has the right to associate freely with others. Everyone has the right to form any association, including a political party, trade union or other voluntary association, or to join an existing association. The freedom of activity of all associations is guaranteed.

In the Republic of Azerbaijan, non-governmental human rights defenders operate on the basis of the Non-Governmental Organizations (Voluntary Associations and Foundations) Act of 13 June 2000.

In addition, under the new version of the Azerbaijani Constitution (which incorporates amendments adopted by referendum in August 2002), everyone is entitled, in the manner

prescribed by law, to petition the Constitutional Court for redress of rights violated by legislative or executive enactments or municipal and judicial acts. To define this procedure for lodging private appeals, a new Constitutional Court bill has been drafted with help from the experts of the Venice Commission of the Council of Europe. The Azerbaijani Parliament passed this bill into law on 23 December 2003.

The country has over 40 non-governmental human rights organizations that operate in complete autonomy. The rights of NGOs are protected by all State bodies under the provisions of article 28 of the Non-Governmental Organizations (Voluntary Associations and Foundations) Act. NGOs have the right to carry on their activities independently within the limits imposed by the law.

It should be noted in particular that voluntary organizations are involved in re-educating convicted prisoners and the work of reformatories, and that they exercise a degree of social control over the work of penal enforcement institutions and agencies. This is reflected in the new Penal Enforcement Code.

Another important development has been the signing of agreements on joint activities between the Ministry of Justice and a number of NGOs and the pursuit of a wide variety of programmes and measures in penitentiaries.

The Committee's concern about reports of intimidation and attacks on human rights defenders is possibly attributable to isolated and untypical occurrences in Azerbaijan, for example comments made by a particular human rights defender that are interpreted ambiguously and somewhat emotionally by some members of the public, including other NGOs.

Any reports of this nature are carefully investigated by the law enforcement agencies to establish evidence of wrongdoing.

7 (i) The Committee recommends that the State party ensure that all persons have the right to review of any decision about his/her extradition to a country where he/she faces a real risk of torture.

An important stage in the reform of Azerbaijani extradition law is the Extradition of Offenders Act of 15 May 2001, the principal object of which is to establish a legal framework for the extradition of criminals to countries that are not bound to the Republic of Azerbaijan by treaty obligations. The Act is based on the provisions of key instruments of international law such as the 1957 European Convention on Extradition and the two Additional Protocols of 1975 and 1978, which entered into force for the Republic of Azerbaijan on 26 September 2002, and the 1990 United Nations Model Treaty on Extradition.

Under the provisions of the Extradition of Offenders Act, the decision to extradite is rendered by the Serious Crimes Court at first instance. This decision may be appealed to a higher court.

The right to extradite criminals is a sovereign right of every State. From this fundamental provision flows the inadmissibility of delivering persons suspected of committing crimes from the territory of one sovereign State to that of another without the official

authorization of a duly empowered representative of the central justice department, or in violation of the procedure for extradition established by the norms of international law and national legislation.

The Republic of Azerbaijan provides in its legislation (Constitution, art. 70) for the right of political asylum for foreigners and stateless persons. It forbids the extradition to another State of persons persecuted on account of their political activities, and also for acts that are not considered crimes in the Republic of Azerbaijan.

Under article 496.4 of the Code of Criminal Procedure, a person may not be extradited in the following circumstances:

- If the person whose extradition is requested is an Azerbaijani citizen or has been granted political asylum in the Republic of Azerbaijan;
- If the person whose extradition is requested is being persecuted on political, racial or religious grounds.

Under article 497.2 of the Code of Criminal Procedure, a person detained prior to the rendering of a decision on extradition shall, on the basis of article 495.1 of the Code of Criminal Procedure, be immediately released if the criminal prosecution agency of the Republic of Azerbaijan decides that it is impossible to extradite or refuses to extradite the person.

Under article 3.2 of the Extradition of Offenders Act, extradition may be refused on the following grounds: if the legislation of the requesting foreign State stipulates the death penalty for the crime forming the basis of the extradition request; if there exist sufficient grounds for supposing that as a result of extradition the requested person will be subjected to torture or cruel, inhuman or degrading punishment in the requesting State; if there are sufficient grounds for supposing that as a result of extradition the requested person will be persecuted on account of his or her race, ethnic background, language, religion, citizenship, political views or gender; if the crime forming the basis of the extradition request was committed outside the territory of the requesting foreign State, and Azerbaijani legislation does not provide for the criminal prosecution for such an offence; if criminal proceedings have been initiated in Azerbaijan in connection with the crime forming the basis of the extradition request; if there are sufficient grounds for supposing that the person's extradition will be prejudicial to the sovereignty, security or other important interests of the Republic of Azerbaijan; or if a decision has been made to discontinue criminal proceedings under Azerbaijani law in respect of the crime forming the basis of the extradition request.

It should be noted that the Republic of Azerbaijan has acceded to the European Convention on Extradition and conscientiously complies with the international obligations that flow from it, in particular the grounds for denying extradition.

At the same time, Azerbaijan has concluded bilateral extradition treaties with a number of countries and is committed to implementing the provisions thereof.

Upon receipt of an extradition request, information is gathered about the requesting State, for example information about the occurrence of torture and ill-treatment in that State, and the reports and conclusions of international human rights organizations are studied.

The rendering of a decision on extradition is the prerogative of the Serious Crimes Court, which must examine such cases as a bench comprising three professional judges. Special attention is paid to ensuring the right of defence and the right to challenge and review decisions in appeal proceedings.

7 (n) The Committee recommends that the State party ensure prompt, impartial and full investigations into all allegations of torture and ill-treatment, and that it establish an independent body with the authority to receive and investigate all complaints of torture and other ill-treatment by officials. The State party should also ensure the Presidential Decree of 10 March 2000 is implemented in this respect.

With a view to establishing in Azerbaijan a special body to independently and objectively oversee penal enforcement and uphold the statutory right of untried and convicted prisoners to a prompt, impartial and full investigation of allegations, including those of torture and ill-treatment, a study was made of foreign experience and an ad hoc seminar on establishing an independent inspectorate was organized together with the Council of Europe. A senior official of the Ministry of Justice was seconded to the United Kingdom to gain first-hand knowledge of the work of the inspectorate in that country.

The Presidential Decree on applying the Penal Enforcement Code provides for the establishment of an agency to oversee the enforcement of punishments. In pursuance of this decree, draft regulations on the inspectorate have been developed and submitted to the Office of the President of the Republic of Azerbaijan for approval.

Pending the resolution of organizational issues and the actual establishment of the inspectorate, the Ministry of Justice has set up a special unit to examine, together with the Human Rights Department, convicted prisoners' complaints and allegations of human rights abuses as and when they are received.

The Procurator's Office investigates criminal cases involving actions that exceed an official's authority or powers, abuse of authority or official position, the criminal prosecution of persons known to be innocent, deliberately unlawful police custody or pre-trial detention, coercion to testify, and inducement of witnesses or victims to give false testimony or experts to give false conclusions.

In addition, with reference to the Presidential Order of 10 March 2000, it should be noted that an agreement with the International Committee of the Red Cross (ICRC) was signed on 1 June 2000. In the two-year period the agreement has been in effect, close working ties have been established; in pursuit of their humanitarian mission, ICRC representatives have visited penitentiaries and remand centres without restriction, held face-to-face meetings with prisoners and facilitated their examination by ad hoc medical boards.

Following its expiry in June 2002, it was decided to extend the agreement with ICRC. On 18 July 2002 a protocol was signed extending the validity of the agreement between the Azerbaijani Government and ICRC of 1 June 2000.

Under this agreement, ICRC representatives visit places of detention on an ongoing and unrestricted basis and are able to talk in private with remand and convicted prisoners alike. Their findings are systematically published in ICRC reports, and the Ministry of Justice takes immediate measures to implement the recommendations made by ICRC representatives based on the findings of these visits.

In this connection, it has been recommended that a duly empowered, independent body be established to ensure prompt, objective and full verification of allegations of torture and ill-treatment, to gather information about all allegations of the use of unlawful methods by officials and to check these allegations.

It should be noted that the Constitutional Act on the Commissioner for Human Rights (Ombudsman) was adopted on 28 December 2001 and the first ombudsman was elected on 2 June 2002.

The Act stipulates that the institution of Ombudsman has been established to redress human rights and freedoms violated by State bodies, local government bodies and officials of the Republic of Azerbaijan. The Act establishes the rules for examining alleged human rights violations and outlines the Ombudsman's powers when investigating incidents referred to in a complaint. Under article 12.2.1 of the Act, the Commissioner has the right, without impediment or prior notification, to visit State bodies, local government bodies, military units, penitentiaries, remand centres and temporary holding facilities, to meet and talk in private with detainees, and to consult documents confirming that people are being detained lawfully. It should be noted that the Azerbaijani Constitution gives the Ombudsman the right to refer to the Constitutional Court enactments of legislative and executive bodies and municipal and judicial acts that violate citizens' rights and freedoms.

To ensure that departments of the Ministry of Justice respect the Ombudsman's prerogatives and that they implement the Constitutional Act on the Ombudsman, the Minister of Justice has signed an order obliging all structures within the Ministry's jurisdiction to allow the Ombudsman unfettered access and guarantee her complete autonomy.

It should also be noted that, in the year that has elapsed since the commencement of her mandate, the Ombudsman and her representatives have made 59 visits to places of detention under the jurisdiction of the Ministry of Justice. Pursuant to the findings of these visits, the national Ombudsman recommended better conditions for remand and convicted prisoners and appropriate measures were taken. The Ministry of Justice and the Ombudsman have close working ties.

On 26 March 2004 the Ombudsman submitted a report on her work to Parliament for discussion. Her work is also given wide coverage in the media for public information purposes.

In addition, under existing Azerbaijani legislation, procuratorial bodies investigate crimes committed by officials against the person.
