



Roundtable Discussion on the ‘State of implementation of the Law of the Republic of Azerbaijan on ensuring the rights and freedoms of individuals held in detention facilities and enhancing the complaint review procedures’

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Reinforcing the fight against ill-treatment and impunity

Council of Europe/European Union Joint Programme

Roundtable Discussion on the 'State of implementation of the Law of the Republic of Azerbaijan on ensuring the rights and freedoms of individuals held in detention facilities and enhancing the complaint review procedures'

Baku Excelsior Hotel, 27 June 2013

Report by the Council of Europe Consultant, Dr Graham Smith*

1. Introduction

- 1.1 In the opening session the principal organiser and moderator of proceedings, Mr Mahir Mushteidzada (Project Manager of the Human Rights Policy and Development Department in the Council of Europe's Directorate General of Human Rights), explained that the purpose of the Roundtable Discussion was to outline a framework to advance the development of bylaws and regulations of the *Law of the Republic of Azerbaijan on ensuring the rights and freedoms of individuals held in detention facilities* (referred to as the 'New Law' in this Report).
- 1.2 The morning session commenced with a presentation of the *Opinion of the Commissioner for Human Concerning Independent and Effective Determination of Complaints Against the Police* by the Council of Europe Consultant. This was followed by presentations by representatives of the General Prosecutor's Office (GPO) and the Ministry of Internal Affairs (MIA); and, in the afternoon, by representatives of the Penitentiary Service of the Ministry of Justice (MoJ), General Medical Department of the MoJ, Office of the Ombudsman (OO) and the Constitutional Court. Each presentation was followed by extensive discussion.
- 1.3 Participants in the discussion were generally optimistic that enactment of the New Law will enhance the fight against ill-treatment and impunity. There was constructive debate about the difficulties encountered preparing for implementation of the New Law and agreement that a flexible approach would be best suited to ensuring the intended reforms are positively embedded in Azerbaijani society.
- 1.4 Some problem work areas were identified which this Report seeks to address. The Report is divided into four sections:
 - Independent and effective investigation of complaints against law enforcement officers;
 - Observations of the existing complaints system;
 - Observations of arrangements to implement the New Law;
 - Recommendations.

2. Independent and effective investigation of complaints against law enforcement officers

- 2.1 If Articles 2 (Right to life) or 3 (Prohibition of torture, inhuman or degrading treatment or punishment) of the European Convention on Human Rights are engaged, the European Court of Human Rights has established a procedural obligation on the state to commence an investigation by its own motion, regardless of whether or not a complaint has been made.¹
- 2.2 Five principles of effective complaints investigation have been developed in the jurisprudence of the European Court of Human Rights:²
 - Independence
 - Adequacy
 - Promptness
 - Public scrutiny
 - Victim involvement.
- 2.3 In recent years the Court has found that the state authorities in the Republic of Azerbaijan failed to meet their procedural obligations to effectively investigate substantive Article 3 violations by law enforcement officers in contravention of the adequacy and promptness principles;³ and independence and victim involvement principles.⁴
- 2.4 The existence of an independent police complaints body with responsibilities for the investigation of allegations of abuse and ill-treatment and oversight of the entire complaints system serves to facilitate and reinforce independent and effective investigation procedures. The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, recommended creation of such a body following his 2010 visit to Azerbaijan,⁵ and so too has the Council of Europe Consultant, Mr Eric Svanidze, in 2009, 2012 and 2013.⁶

3. Observations of the existing complaints system

- 3.1 Mapping the existing complaints system in the Republic of Azerbaijan criminal justice system is difficult. Complainants can access the system at a number of points and the most popular appear to be the OO, the GPO and the Presidential Administration.
- 3.2 The GPO has responsibility for investigating allegations of torture and ill-treatment. GPO Representative, Mr Sadirkhan Sadirkhanov, explained to the Roundtable that complaints were recorded in a book, and in the first half of 2013 the Office received 68 complaints of torture and ill-treatment to investigate, and no criminal proceedings had been commenced. 29 complaints were forwarded by the OO; 16 were made directly to the GPO by citizens; 10 by

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¹ See, for instance, *Jordan v. United Kingdom* (Application no. 24746/94) Judgment 4 May 2001.

² *Opinion of the Commissioner for Human Rights Concerning Independent and Effective Determination of Complaints Against the Police*: Council of Europe, CommDH(2009)4; available at <https://wcd.coe.int/ViewDoc.jsp?id=1417857>.

³ *Mammadov (Jalaloglu) v Azerbaijan* (Application no. 34445/04) Judgment 11 January 2007; *Muradova v Azerbaijan* (Application no.22684/05) Judgment 2 April 2009; *Rizvanov v Azerbaijan* (Application no. 31805/06) Judgment 17 April 2012; *Najafli v Azerbaijan* (Application no. 2594/07) Judgment 2 October 2012.

⁴ *Najafli v Azerbaijan* (Application no. 2594/07) Judgment 2 October 2012.

⁵ *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Azerbaijan from 1 to 5 March 2010*. CommDH(2010)21; available at <https://wcd.coe.int/ViewDoc.jsp?id=1642017>.

⁶ *Country Report of Azerbaijan: Combating Ill-treatment and Impunity and Effective Investigation of Ill Treatment*, 2009, Council of Europe and European Union Joint programme 'Reinforcing the Fight Against Ill-treatment and Impunity', unpublished; *Stock-taking analysis of the implementation of the recommendations of the 2009 Country Report on Azerbaijan*, June 2012, Council of Europe and European Union Joint programme 'Reinforcing the Fight Against Ill-treatment and Impunity', unpublished; *Briefing on Azerbaijan: Support to Human Rights National Implementation Unit*, May 2013, Council of Europe and European Union Joint programme 'Reinforcing the Fight Against Ill-treatment and Impunity', unpublished.

the Presidential Administration; six by investigative isolators; two by the Ministry of National Security; and one by each of the following – Parliament, Supreme Court, MoJ, MIA and the Committee Against Torture NGO.

- 3.3 Representative of the MIA, Mr Elshad Mammadov, told the Roundtable that all of the complaints recorded by the Ministry are internally investigated in the first instance and the Department of Internal Investigations was set up for this purpose. He explained that, because not all complaints involve allegations of torture or ill-treatment, not all complaints recorded by the MIA are forwarded to the GPO.
- 3.4 The representative of the Penitentiary Service of the MoJ, Mr Musa Humbatov, told the Roundtable that when visiting prisons he was sometimes told by prisoners that they had grievances about the way in which they had been treated and had not been able to complain. When he checked the details of these incidents in the prison records he always found that the complaints, which were not about ill-treatment, had been documented.
- 3.5 Representative of the OO, Mr Vugar Maharramov (Head of the National Preventative Mechanism Group), said that relatives of prisoners sometimes forward complaints to the OO and prisoners complained in the past that their complaints were not dispatched to the GPO in a timely fashion by the Penitentiary Service. He explained that the OO does not investigate complaints and refers them to the appropriate authority for investigation. The OO publishes full complaints statistics. A total of 12,470 complaints against law enforcement officials were recorded in 2012. Disciplinary action was taken against 266 MIA officials (including dismissal of 15 police officers) and 62 GPO officials (including 6 dismissals).
- 3.6 Fair and effective complaints systems are dependent on standard procedures and uniform treatment of complainants. From what was said at the Roundtable it would appear that a complaint made by a member of the public to the MIA or MoJ is likely to be handled differently to a complaint made to the OO.
- 3.7 The large disparity in the annual OO figure for 2012 compared to the number of complaints investigated by the GPO in the first six months of 2013 suggest that the various state authorities responsible for handling complaints against law enforcement officers experience difficulties monitoring the number of public complaints and outcomes. It is suggested that these problems are exacerbated by i) the number of access points to the complaints system, ii) the absence of a single body with responsibility for recording complaints against law enforcement officers and iii) a lack of standard procedures for the allocation of complaints to the appropriate investigative body.

4. Observations of arrangements to implement the New Law

- 4.1 Passed in July 2012, but not yet implemented, Roundtable participants spoke positively about the New Law as a step forward in the fight to combat ill-treatment and impunity. Concern was expressed at the delay in drafting the rules to accompany the legislation, particularly the internal discipline rules, which should have been adopted within six months of enactment of the statute. It was explained that one of the reasons for the delay was that each rule, providing detainees access to television for example, had to be agreed by various authorities with detention responsibilities.
- 4.2 Mr Iftikhar Gurbanov of the General Medical Department of the MoJ and Mr Humbatov of the Penitentiary Service outlined in some detail how the MoJ have prepared for implementation of the New Law by putting in place arrangements to provide detainees access to health, communication, exercise, recreation and complaints facilities. Mr Maharramov of

the OO similarly spoke of the arrangements in place to ensure access to the complaints system. Officials also referred to the resource management issues their services face as a consequence of costs associated with meeting their new statutory duties.

- 4.3 Participants in the Roundtable held the view that there will be more complaints as a result of the New Law and they should be handled more effectively. Judge of the Constitutional Court, Mr Jeyhun Garajayev, suggested that if effectively implemented the legislation will result in a cultural shift in law enforcement practice.
- 4.4 There was some discussion about how to ensure compliance with the New Law. It is suggested that similar problems with the monitoring of the existing complaints system, as identified above in Section 3, are also likely to damage the effectiveness of the New Law unless addressed. Evaluation of the impact of the New Law – of what works, how to make it work better and how to disseminate best practice – would be considerably enhanced if all law enforcement agencies were required to keep accurate records of the implementation of its provisions.
- 4.5 It was apparent from their contributions to the discussion that participants were well briefed on developments within their own organisations and they demonstrated good knowledge and understanding of core concerns in regard to both the handling of complaints under the existing system and implementation of the New Law. There was little evidence, however, of a co-ordinated inter-departmental approach to introduction of the statutory reforms, or that a common understanding of the problems encountered has developed across law enforcement agencies. During the course of the debate it seemed that major concerns raised by participants, whether breach of the New Law should be a criminal or administrative offence for example, were being discussed in an inter-departmental forum for the first time.

5. Recommendations

- 5.1 The impact of the *Law of the Republic of Azerbaijan on ensuring the rights and freedoms of individuals held in detention facilities* needs to be monitored. It is recommended that the secondary legislation, the rules and regulations accompanying the New Law, require all law enforcement agencies to maintain records of the implementation of all the substantive sections of the New Law, including complaints by members of the public and detainees and disciplinary proceedings involving law enforcement officers.
- 5.2 Openness and transparency are essential to the administration of a fair and effective complaints system and this objective is fundamental to the effective implementation of the *Law of the Republic of Azerbaijan on ensuring the rights and freedoms of individuals held in detention facilities*. It is recommended that the necessary preparations are made to commence publication of comprehensive statistics which show the number of complaints recorded, investigated, substantiations and sanctions in each law enforcement sector.
- 5.3 Co-ordination of implementation of the *Law of the Republic of Azerbaijan on ensuring the rights and freedoms of individuals held in detention facilities* and monitoring of its implementation will be most effectively served by the creation of a Central Authority, which includes delegates from each Ministry with law enforcement responsibilities, and which reports directly to the National Parliament (Milli Majlis). It is recommended that discussion commences immediately with a view to appointing members of a Central Authority, governance arrangements and its terms of reference.

- 5.4 It is recommended that the secondary legislation accompanying the *Law of the Republic of Azerbaijan on ensuring the rights and freedoms of individuals held in detention facilities* is adopted as soon as practicable.
- 5.5 Written guidelines which explain the legislation, rules and regulations in ordinary language, along with comprehensive training, are essential if practitioners who are in day to day contact with detainees are to comply with the New Law and improve conditions in Azerbaijan's detention facilities. It is recommended that work commences immediately on the drafting of practice guidelines, and a working group including senior officials of each law enforcement agency should be created for this purpose. Publication of the guidelines should be an on-going project and guidance should be regularly updated in accordance with the development of best practice. The working group also to be tasked with designing a training programme on the practice guidelines to be delivered to frontline officers in their respective law enforcement agencies.
- 5.6 The mechanisms for handling complaints against law enforcement officers in the Republic of Azerbaijan require rationalisation. Notwithstanding the probability that some of the problems with the existing complaints system may be addressed with implementation of the *Law of the Republic of Azerbaijan on ensuring the rights and freedoms of individuals held in detention facilities* there remains a pressing need to consider the feasibility of setting up an independent complaints body. It is recommended that the commissioning of a study to explore the feasibility of creating an independent complaints body is included in the terms of reference of the Central Authority (Recommendation 5.3, above).

Dr Graham Smith
4 July 2013