

**ECRI CONCLUSIONS
ON THE IMPLEMENTATION OF THE RECOMMENDATIONS
IN RESPECT OF AZERBAIJAN SUBJECT TO INTERIM FOLLOW-UP**

Adopted on 19 March 2014¹

¹ Any developments which occurred after 28 November 2013, date on which the response of the Azerbaijani authorities to ECRI's request for information on measures taken to implement the recommendations chosen for interim follow-up was received, are not taken into account in this analysis.

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FOREWORD

As part of the fourth round of ECRI's monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI's country reports.

Accordingly and in line with the guidelines for the fourth round of ECRI's country-by-country work brought to the attention of the Ministers' Deputies on 7 February 2007¹, not later than two years following the publication of each report, ECRI addresses a communication to the Government concerned asking what has been done in respect of the specific recommendations for which priority follow-up was requested.

At the same time, ECRI gathers relevant information itself. On the basis of this information and the response from the Government, ECRI draws up its conclusions on the way in which its recommendations have been followed up.

It should be noted that these conclusions concern only the specific interim recommendations and do not aim at providing a comprehensive analysis of all developments in the fight against racism and intolerance in the State concerned.

¹ CM/Del/Dec(2007)986/4.1.

1. *In its report on Azerbaijan (fourth monitoring cycle) published on 31 May 2011, ECRI strongly recommended that the Azerbaijani authorities swiftly complete the procedure for the registration of religious communities currently under way, taking into account the case-law of the European Court of Human Rights. It underlined that, in this connection, it is essential to clarify the legal situation of communities still awaiting a final response from the State Committee for Relations with Religious Organisations or the courts, particularly by clearly specifying that those already registered under the previous legislation must be able to continue to function normally during the transitional period.*

The authorities informed ECRI that more than 800 religious communities had requested registration following the changes to the Law on Freedom of Religious Belief in 2009. As of June 2013, 577 communities had been registered, including 556 Muslim, 12 Christian, six Jewish, one Krishna and two Baha'i. Up to November 2013, 17 applications for re-registration and 11 applications for initial registration had been rejected, as the "documents failed to comply with the regulatory requirements";¹ a large number of applications from minority Muslim communities, Protestant communities and Jehovah's Witnesses were still pending. Certain registration rejection decisions were challenged before the courts. In 2012, one community won its case before the Supreme Court. At least one re-registration rejection is the subject of proceedings before the European Court of Human Rights.

With regard to the second part of the recommendation, the authorities have confirmed that the certificates of those communities which have submitted an application for re-registration remain valid. Concerning the applications that have been rejected, it would appear that the suggestion had been made to several communities to request liquidation and then to submit a new registration application. These communities are not automatically de-registered. Under Article 12 of the Law on Freedom of Religious Belief, a religious community can only be dissolved at the request of representatives of that community or by court decision.² However, it would also appear that the communities awaiting registration or re-registration encounter problems. Civil society representatives informed ECRI that the members of a considerable number of these communities live in constant fear of being given heavy penalties if they practise their religion. In this connection, ECRI refers to the case-law of the European Court of Human Rights which does, it is true, accept the State's power to put in place a requirement for the registration of religious denominations. However, it did not follow that it would be compatible with the Convention to sanction individual members of an unregistered religious denomination for praying or otherwise manifesting their religious beliefs.³

ECRI notes that this recommendation has been only partially implemented.

¹ This concerns in particular Muslim communities, the "Jews of Azerbaijan", Jehovah's Witnesses, Baptists and Adventists.

² Joint opinion of the Venice Commission and the OSCE/ODIHR on the Law on Freedom of Religious Belief, CDL-AD(2012)022, paragraph 88.

³ *Masaev v. Moldova*, No. 6303/05, 12 May 2009, paragraph 26; Joint Opinion of the Venice Commission and the OSCE/ODIHR, see Note No. 2.

2. *In its report on Azerbaijan (fourth monitoring cycle), ECRI strongly encouraged the Azerbaijani authorities to complete the process for adopting a Migration Code as a matter of priority. In this connection, it underlined the need to provide for effective remedies, in particular with a view to asserting rights safeguarded by international instruments such as the European Convention on Human Rights and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.*

The new Migration Code entered into force on 1 August 2013. This Code and the Code of Administrative Procedure provide for the possibility of administrative and judicial remedies.

ECRI considers that the adoption of this code is a major step forward and that this recommendation has been fully implemented.

3. *In its report on Azerbaijan (fourth monitoring cycle), ECRI recommended that the Azerbaijani authorities establish a system for collecting judicial system data, in compliance with European standards on data protection and protection of privacy, breaking down such data according to categories such as ethnic or national origin, religion, language and nationality of complainants and of persons prosecuted, convicted or imprisoned, so as to detect any cases of direct or indirect discrimination against persons belonging to groups coming within ECRI's mandate in their dealings with the judicial system and facilitate the determination of means of combating such discrimination.*

In its 3rd report on Azerbaijan, ECRI had noted that the experiences with the judicial system of persons belonging to groups falling within ECRI's mandate was globally negative and that they lodged very few complaints of racial discrimination or racism with the judicial authorities.

The authorities informed ECRI that an Internet portal had been set up, making it possible to consult the case-law of the courts of first instance, the courts of appeal and the Supreme Court. However, ECRI fails to see how this system could help identify possible instances of discrimination against people belonging to vulnerable groups in their dealings with the judicial system. No other information is available regarding the collecting of data which would make it possible to identify such discrimination.

ECRI therefore considers that this recommendation has not been implemented.