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Contact: Clare Ovey
Tel: 03 88 41 36 45

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Communication from the Secretariat (judgment of the Appeal Court of Sheki concerning the case of Ilgar Mammadov against Azerbaijan (Application No. 15172/13) – courtesy translation) (02/06/2016)

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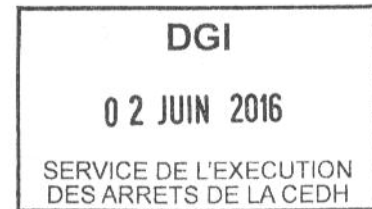
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Communication du Secrétariat (Arrêt de la Cour d'Appel de Sheki concernant l'affaire Ilgar Mammadov contre Azerbaïdjan (requête n° 15172/13) - traduction de courtoisie) (02/06/2016) (**anglais uniquement**)

Case No. 1(107)-31/2016

Copy



DECISION
on behalf of the Republic of Azerbaijan
(on results of review of the appeal)

April 29, 2016

City of Sheki

The Criminal Collegium of Sheki Appeal Court

The judges – Salimov Humbat Gamuna (presiding judge and rapporteur), Majidov Aladdin Tofiq and Asadli Mahir Abdulla (members of the collegium) with the participation of the court session's secretary Hunmatov Zaur Adil, Public prosecutor – prosecutor of the Public Prosecution Support Department of the General Prosecutor's Office of the Republic of Azerbaijan, the lawyer of the II degree Aliyev Vusal Azad, the defendant – Mammadov Ilgar Eldar, his attorneys – advocate of legal consultation office of Baku # 13 Agayev Arif Arif and private counsel Javadov Javad Yusif, the defendant – Yagublu Tofiq Rashid and his attorney – advocate of legal consultation office of Baku # 3 Kerimli Nemat Aga Having reviewed at the open hearings the appeals submitted by the attorneys of the defendant Mammadov Ilgar Eldar – Agayev Arif Arif and Bagirov Khalid Zakir and attorney of the defendant Yagublu Tofiq Rashid – Kerimli Nemat Aga on the verdict of Sheki Grave Crimes Court dated March 17, 2014 on criminal case opened under Articles 220.1 and 315.2 of the Criminal Code of the Republic of Azerbaijan against

Mammadov Ilgar Eldar and Yagublu Tofiq Rashid

defined:

By the decision of Sheki Grave Crimes Court (comprising of judges Huseynov Rashid Ingilab – presiding judge, Samadov Khagani Haji and Suleymanov Ali Ziya) dated March 17, 2014,

Mammadov Ilgar Eldar born on July 14, 1970 in Baku, the citizen of the Republic of Azerbaijan, married, unemployed, with higher

education, without previous criminal record, registered and residing at 5, Bashir Safaroglu Str., apt. 10, Yasamal district, Baku arrested as a measure of restraint and was

found guilty under Articles 220.1 and 315.2 of the Criminal Code of the Republic of Azerbaijan, sentenced to 6 (six) years imprisonment under Article 220.1 of the Criminal Code and to 4 (four) years imprisonment under Article 315.2 of the Criminal Code and based on Article 66.3 of the Criminal Code sentenced to 7 (seven) years imprisonment in total in general regime penitentiary institution starting from the date of detention, i.e. February 4, 2013.

Yagublu Tofig Rashid born on February 6, 1961 in Bolnisi region of the Republic of Georgia, the citizen of the Republic of Azerbaijan, married, with higher education, employed by Yeni Musavat newspaper as the observer and analyst, without previous criminal record, registered and residing at 15/11, E. Bakirli Str., Garachuhur settlement, Surakhani district, Baku and was

found guilty under Articles 220.1 and 315.2 of the Criminal Code of the Republic of Azerbaijan, sentenced to 4 (four) years and 6 (six) month imprisonment under Article 220.1 of the Criminal Code of the Republic of Azerbaijan and to 4 (four) years imprisonment under Article 315.2 of the Criminal Code of the Republic of Azerbaijan and based on Article 66.3 of the Criminal Code of the Republic of Azerbaijan sentenced to 5 (five) years imprisonment in general regime penitentiary institution starting from the date of detention, i.e. February 4, 2013.

Merits of the case:

According to the verdict of the court of first instance, Mammadov Ilgar Eldar and Yagublu Tofig Rashid were found guilty and convicted because on January 23, 2013 at around 21:30 in response to the intentional hooligan acts of a group of citizens comprising of Ismailli region residents Agamaliyev Safdar Dadash, Hasanov Anar Rasim, Ibrahimov Vasif Adalat who organized and participated in burning 4 cars and 5 other vehicles with inflammable petroleum product gasoline and intentionally destroyed and damaged many private property items of other individuals in Ismailli town, at the Chirag hotel located at 21, Nizami Str. and a private house located at 8, R. Teyubzadeh Str., resisted and applied force against police officers who performed their duties to protect public order and safety, thus threatened their life and health and inflicted lesser harm, light body injuries and unidentified level of harm to their health, and taking advantage of mass riots accompanied with acts of violence, arrived to Ismailli town as Baku residents on

January 24, 2013 to extend the above-mentioned crime incident with a view to imitate tensions under false notion of “insurgency” and undermine political and public stability in the country.

Starting at around 16:00 Yagublu Tofig Rashid and Mammadov Ilgar Eldar with active participation of others took advantage of possible feelings and provoked local residents Ismaili Elshan Samad, Abdullayev Mirkazim Mirazim and others who gathered in crowd at Nariman Narimanov street of the town in the area between the administrative building of Ismaili Region Executive Power and administrative building of the regional Education Department Office, situated across, publicly articulated illegal slogans, complicated car traffic and pedestrians movement in front of the Ismaili Region Chief Executive’s Office, which is the authorized representative of the executive branch of the Republic of Azerbaijan, and did not obey to lawful demands of the representatives of the local authorities who tried to prevent acts of violence and illegal behavior. They used various objects, applied force and resisted to the police officers in uniform in charge of public safety and thus posed threat to their life and health, ruthlessly violated public order and stayed in the area for a long time, undermined normal operation of the Ismaili Region Executive Power, state-owned enterprises, public, trade and services facilities, closed the central avenue and Nariman Narimanov street, stopped traffic and organized mass riots. A group of individuals consisting of Ismaili Elshan Samad, Abdullayev Mirkazim Mirazim and others conducted mass riot towards the administrative building of Ismaili Region Executive Power and acted violently against Ismaili region police post-patrol service unit commander Khalafov Bakir Khatir, policemen Azizov Faraj Yusif, Ahmadov Rashad Shakir, Fakhtiyev Yunis Khamis, Soltanzadeh Valeh Taleh, Mirzayev Vusal Adilshah posing threat to their life and health.

The defendant Mammadov Ilgar Eldar’s attorneys Agayev Arif Arif and Bagirov Khalid Zakir as well as the defendant Yagublu Tofig Rashid’s attorney Kerimli Nemat Aga submitted appeals against the verdict of the Sheki Grave Crimes Court dated March 17, 2014.

The injured persons as well as the Public prosecutor did not submit appeals against the verdict of the Sheki Grave Crimes Court dated March 17, 2014. The Public prosecutor objected to the submitted appeals and requested not to grant them in court.

On September 24, 2014 the Sheki Appeal Court’s Criminal Collegium (judges M.M.Huseynov (presiding judge and rapporteur), R.A.Aliyev and I.H.Shukurov) upheld the decision of Sheki Grave Crimes Court dated March 17, 2014 in part related to convicts Ilgar Mammadov and Tofig Yagublu and not to grant the appeals made by the attorneys of the indicted Mammadov Ilgar Eldar and Yagublu Tofig Rashid.

The attorney Agayev Arif Arif of the convicted Mammadov Ilgar Eldar and the attorney Kerimli Nemat Aga of the convicted Yagublu Tofig Rashid were not

satisfied with this decision of the court of appeal and submitted the cassation complaint and requested to annul the verdict of the Sheki Appeal Court dated September 24, 2014 and issue a decision on termination of proceedings in relation to the convicts.

The Criminal Collegium of the Supreme Court of the Republic of Azerbaijan (judges Imran Teymurkhan Hajıgayibov - the presiding judge and rapporteur, Gulzar Latif gizi Rzayeva and Farkhad Abdulkerim Karimov) resolved on October 13, 2015 to partially upheld the cassation of the attorneys and annul the verdict of the Criminal Collegium of the Sheki Appeal Court dated September 24, 2014 against the convicted Mammadov Ilgar Eldar and Yagublu Tofiq Rashid and send back the criminal case for another review of appeal.

Yaqublu Tofiq Rashid was pardoned by the Executive Order of the President of the Republic of Azerbaijan dated March 17, 2016.

Evidences of cassation complaint:

Agayev Arif Arif, the attorney of the indictee Mammadov Ilgar Eldar, justified his appeal on the grounds that the verdict of the court of first instance was totally biased, illegal and unjust and therefore, should be abolished. If the court intended to hold impartial, independent and just hearings and take a final decision, based on judicial inquiry, Ilgar Mammadov should have been released. In fact, the indictment of Ilgar Mammadov was ambiguous.

When reviewing the criminal case, the court of first instance should have observed paragraphs 'a' and 'b' of parts 1 and 3 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and should have strictly ensured Ilgar Mammadov's right to freedom and non-discrimination (Articles 5 and 14 of the Convention).

According to the attorney, the manner in which prosecutor investigation and judicial inquiry at the court of first instance were carried out and the verdict was made represent declarative attitude towards provisions of the part I of the Article 63 of the Constitution of the Republic of Azerbaijan.

According to the joint report of the General Prosecutor's Office and the Ministry of Interior of the Republic of Azerbaijan dated January 29, 2013, Ilgar Mammadov and Tofiq Yagublu when going to Ismailli, made calls to the residents of the region aimed at undermining public and political stability, such as to resist to police, to disobey to authorities, block roads and hinder vehicle traffic, i.e. law enforcement bodies actually convicted him on January 29, 2013. However, despite this fact, the defense party clearly proved innocence of Ilgar Mammadov.

The attorney noted that the court of first instance rejected almost all their motions including requests for making audio and video records of the court hearings, release from custody, exclusion of unacceptable evidences, submission of new evidence, abolition of injured party status of persons who were recognized as

such but did not have any injuries etc. – these motions were rejected without justification whereas they had to be satisfied.

In addition to unjustified rejection of audio and video recording of the hearings at the court of first instance, the defense party was not allowed to familiarize with protocols of court proceedings for the last 5 months. The said court even did not create conditions for obtaining some case materials and copies of some video materials. Here again, it is obvious that at minimum there was a violation of Article 5, Article 6 (§§ 1 and 3 (b)) and in relation to Ilgar Mammadov also Articles 14 and 18.

The attorney also noted that in order to be indicted under Article 220.1 of the Criminal Code of the Republic of Azerbaijan, the person should be either organizer or participant of mass riots plus those riots must be accompanied with 1) violence, 2) robberies, 3) arsons, 4) destruction of property, 5) application of fire arms and explosives, 6) armed resistance to representatives of authorities. For application of this Article there should be mass riots accompanied with at least one of the above.

According to the attorney, while Ilgar Mammadov was in Ismailli town, there were neither mass riots nor ruthless breach of public law and order. According to the verdict, Ilgar Mammadov together with Tofiq Yagublu were accused of organizing mass riots that never existed, i.e., they planned and prepared mass riots, created groups to commit illegal actions, assigned roles to members of those groups – Ilgar Mammadov had to plan all this, assign roles and functions within one hour that he stayed in Ismailli town (including some 15 minutes in the city center). Therefore, it is also hypothetically impossible to do all this in an unfamiliar place with unknown people. However, if mass riots did not occur, then there was no offense provided for by Article 220.1 of the Criminal Code. The same applies to the Article 315.2 of the Criminal Code. The attorney believes that there is no relevant evidence that proves Ilgar Mammadov committed actions envisaged in the said Articles.

The attorney also notes that during the court hearings the prosecution and the court were informed that news agencies, TV and radio companies, other mass media outlets airing reports from Ismailli did not refer to any mass riots within the time of Ilgar Mammadov's stay in Ismailli town, as well as TV and other video materials available to the investigation demonstrate that there were no clashes within 15:30-17:00 and even until 20:00 in the town of Ismailli. Therefore, the defense party requested the court to arrange for review of web-sites of pro-governmental APA and Trend news agencies, however the court rejected these motions.

Agayev Arif Arif, the attorney of the indicted Mammadov Ilgar Eldar submitted a motion to annul the verdict of Sheki Grave Crimes Court dated March 17, 2014 with regard to Mammadov Ilgar Eldar, to acquit him under Articles 220.1 and 315.2 of the Criminal Code of the Republic of Azerbaijan, release from custody, conduct judicial inquiry and ensure presence of the indicted Mammadov

Ilgar Eldar in the courtroom for that purpose.

Bagirov Khalid Zakir, the attorney of indicted Mammadov Ilgar Eldar, cited the same evidences in his motion and requested to annul the verdict of the Sheki Grave Crimes Court dated March 17, 2014 with regard to Mammadov Ilgar Eldar, to acquit him under Articles 220.1 and 315.2 of the Criminal Code of the Republic of Azerbaijan, release from custody, conduct judicial inquiry and ensure presence of the indicted Mammadov Ilgar Eldar in the courtroom for that purpose.

Karimli Nemat Aga, the attorney of indicted Yagublu Tofig Rashid, noted in his motion that the verdict of the court of first instance is illegal and unjustified as the preliminary investigation violated the presumption of innocence principle guaranteed by the Article 7 of the European Convention of Human Rights and Article 63 of the Constitution of the Republic of Azerbaijan, Tofig Yagublu was not even questioned as a witness, and on January 29, 2013 joint report of the General Prosecutor's Office and the Ministry of Interior of the Republic of Azerbaijan declared that full and comprehensive investigation would be conducted on illegal actions of Ilgar Mammadov and Tofig Yagublu in Ismailli which were aimed to undermine public and political stability including address to local residents to resist to police, not obey to authorities and bloke the roads.

Also the investigation body violated the Articles 223.1 and 223.2 of the Criminal Code of the Republic of Azerbaijan when arrested Tofig Yagublu as a suspect ignoring reasonable doubt and extended period of his custody on March 18, May 15 and August 13, 2013.

According to the case-law of the European Court of Human Rights, a grounded doubt means presence of fact and information that can convince an objective observer. However, the investigator's decision does not reflect a totality of preliminary evidences and those were not grounded, i.e. there was not any fact or information that could prove existence of all elements of corpus delicti in the committed actions in order to make charges.

According to the Article 15 of the Law of the Republic of Azerbaijan on Operative and Search Activities, the operative and search activities should be recorded in the operations records file by the investigator in accordance with the part III of the Article 11 thereto. Results of the operative and search activities should be reflected and systematized in the operations records file. Therefore, the defense party requested the court to inquire the Ministry for National Security and the Ministry of Interior about those records file but the request was rejected without explanation.

The attorney notes that the prosecution party takes testimonies of police officers as the evidence of criminal intent and commitment of conscious criminal act by Tofig Yagublu but fails to carry out a comparative analysis of those testimonies with other evidence. Testimonies of Mehman Kerimli and Galandar Mukhtarli in favor of the accused were not assessed versus testimonies of police officers and others.

The attorney believes that actions of Tofig Yagublu (travelling to Ismailli in a capacity of a journalist) do not contain elements of mass riots, resistance to the representative of authorities and violence and the indictment is based only on assumptions.

The attorney notes that though the defendant submitted several motions to familiarize with protocols of the hearings, but those motions were illegally rejected with reference to the notion that “reading protocols should be at the end of the court hearings after the verdict is made” and to the Article 310.7 of the Criminal Procedure Code.

According to the Article 121.2 of the Criminal Procedure Code of the Republic of Azerbaijan, a decision made in response to the motion and request should be justified and include the applicant’s opinion on the evidence provided. According to the Article 323.6 thereto, the court shall justify rejection of the motion. The attorney believes the vast majority of the defense’s motions were rejected unlawfully and groundlessly without any comments and thus the principle of equality of arms has been violated.

Karimli Nemat Aga, the attorney of indictee Yagublu Tofig Rashid, requested in his appeal to annul the verdict of the court of first instance, acquit the defendant, recognize violation of Articles 5, 6 and 14 of the Convention and provide to Yagublu Tofig Rashid 200,000 AZN as compensation of material and moral damage.

Testimonies of the proceeding parties

During their speeches at the Court Collegium the indictee Mammadov Ilgar Eldar, his attorneys Agayev Arif Arif and Javadov Javad Yusif requested annul of the verdict of the Sheki Grave Crimes Court dated March 17, 2014 with regard to indictee Mammadov Ilgar Eldar and acquit him under Articles 220.1 and 315.2 of the Criminal Code of the Republic of Azerbaijan.

During their speeches at the Court Collegium the indictee Yagublu Tofig Rashid and his attorney Kerimli Nemat Aga requested annul of the verdict of the court of first instance with regard to Yagublu Tofig Rashid and acquit him as well as recognize violation of Articles 5, 6 and 14 of the Convention and pay him 500,000 euros in compensation for material and moral damage.

During his speeches at the Court Collegium the public prosecutor Aliyev Vusal Azad requested rejection of appeals and upholding the verdict of the Sheki Grave Crimes Court dated March 17, 2014 on indictees Mammadov Ilgar Eldar and Yagublu Tofig Rashid.

The injured party – Ahmadov Rashad Shakir, Fakhtiyev Yunis Khamis, Khalafov Bakir Khatir, Soltanzadeh Valeh Taleh, Mirzayev Vusal Adilshah, Aliyev Elmir Sahib did not appear at the court due to unknown reason though they were duly informed about the time and place of the hearings. The court

collegium ruled to review the case without their participation.

Legal matters

According to the Article 397.1 of the Criminal Procedure Code of the Republic of Azerbaijan, the main appellate body shall verify the court of first instance accurately established the facts of the case and applied the provisions of criminal law and of the Criminal Procedure Code.

According to the Article 397.2 of the Criminal Procedure Code, the facts established by the court of first instance shall be verified by the court of appeal only within the limits of the complaint or appeal. The first instance court's compliance with the provisions of the criminal law and of the Criminal Procedure Code shall be verified by the court of appeal regardless of the evidence for the complaint or appeal.

The collegium of the court of appeal reviewed evidence contained in the appeal within the limits of the complaint, statements of the defense and prosecution and resolved that based on the below reasons, the verdict of the Sheki Grave Crimes Court dated March 17, 2014 on indictees Mammadov Ilgar Eldar and Yagublu Tofiq Rashid should remain in force.

Indictee **Mammadov Ilgar Eldar** spoke at the Collegium, stated he is not guilty under the charges made against him, confirmed his previous testimonies and declared no additions thereto.

In his testimony at the court of first instance he stated that the current government had long-run plans to arrest him. He learned about mass riots in Ismailli on January 23 after 22:00 surfing on the Internet; according to quite vague news, it appeared that an individual close to the Head of local Executive Power of Ismailli region insulted Ismailli residents due to some reason, which led to mass protests and people set fire at some property belonging to the Head of local Executive Power. On January 24, 2013 at around 15:30 he arrived in Ismailli region and at about 16:00 reached the central square of Ismailli town. On the way he asked the passers-by on the road to take and on the latest events. When arrived at the square, they stopped the car right at its center. There was a group of journalists there. He spoke to them and found out that despite the tranquil situation, the strain was in the air and more clashes could occur. Upon speaking to journalists he shared some of his own observations on his Facebook page. When he joined Natig and Nijat Samad to a teahouse, he noticed Tofiq Yagublu walking in the street and speaking on the mobile, shackled his hand while the latter was on the phone and went on still speaking on the phone. Next to the teahouse there were workshops but no people or crowd around were noticed. Overall, he did not notice any small crowd or confrontation during his stay in Ismailli. After spending some 30 minutes in the teahouse they decided to return to Baku. Nijat mentioned some of his stuff was left with journalist Idrak Abbasov, who told him on the phone that

he could meet in front of Unibank office to give back the stuff and after retrieving the stuff, they went back to Baku. On the way back, between 17:41-17:46 he gave an interview to Azadlig (Liberty) radio. He believes that indictment against him is irrelevant, biased, the investigation forged evidence and using this false evidence accused him of the crime he did not commit.

The indictee **Yagublu Tofiq Rashid** spoke at the Collegium and stated he is not guilty under charges made against him, confirmed his previous testimonies and declared no additions thereto.

He testified at the court of first instance that he learned about protests in Ismailli on January 23, 2013 evening and was assigned by the newspaper's editorial office to travel to Ismailli region, where he travelled the next day in Mehman Kerimli's car together with photo reporters Galandar Mukhtarli and Elshan. Some time in the afternoon, around 16:00 or 17:00 he reached Ismailli town and stopped the car next to the "Unibank" office located close to the administrative building of the regional Executive Power. There he saw the special action forces and police officers blocking roads with different installations. He presented his journalist ID and went toward the Executive Power office. While going, he noticed many journalists in the area and learned they were waiting for an interview with the Head of Executive Power. After a quick 2 min conversation, he went towards the square and received a mobile call and while speaking on the phone, noticed leader of REAL movement Ilgar Mammadov and Natig Jafarli whom he knew from the media reports. He exchanged glances with Ilgar Mammadov and that moment was recorded on camera. He greeted him while speaking on the phone and mentioned about the calm situation. This conversation lasted for maximum of 5-10 seconds. They have not talked again, he said good-bye and then shot the surrounding area with camera of his mobile phone. Few young people and police reached the area from the side of Executive Power, he saw them by the monument, the area was quiet, then he went to the area of "Chirag" hotel, which had been set on fire and when he reached the area where journalists stood, Mehman asked him to give the phone as his own one was discharged, and then during conversation with Mehman 2-3 police officers came up and took hold of his arm saying "we know who you are, the boss wants to see you". His phone was left with Mehman and he was taken to see Shohrat Karimov. There they asked him about the purpose of the visit and he responded that he was a journalist. Shohrat Karimov said "Chirag" hotel was the pride of Ismailli and told him to call Mehman to the police office. He answered that his phone is with Mehman, while he owned 2 phones with two different numbers, he used Shohrat's phone to call Mehman and said: "do what you are doing". Shohrat grabbed his phone and invited Mehman to the police office, then said "okay, you have come here and seen that situation is silent, so go back to Baku and write it down". He responded: "I will write down everything objectively, but also I will note on the restriction of journalist's rights". Mehman called and said that police officers were not letting him in, Shohrat

offered him “to tell his location so the police picks him up”. Journalists Mehman and Javanshir were brought in together. Also came the head of police Nizami Gojayev and greeted Mehman warmly. Nizami Gojayev shook his hand expressing his high respect and saying that he was reading all his Articles and was ready to arrange for fuel for his car and arrange a dinner for him in any restaurant on the road to Baku just to make sure they leave Ismailli for Baku. He (Yagublu) replied saying: “you are complicating my journalist responsibilities, you do not need to teach us”. Afterwards, Nemat, Mehman and him were brought to “Unibank” office’s whereabouts. They waited for Galandar Mukhtarli there. He spent in Ismailli only 10 minutes He was not exposed to any physical force, pressure or offence from police or anyone else. He was confronted with two individuals who claimed he together with Ilgar Mammadov conducted mass riots and even reported it on TV. However, during his trip to Ismailli he neither witnessed any confrontation nor heard any related calls for action. Overall, there were no crowds or mass gatherings in Ismailli, situation was silent. Around 17:00 he left for to Baku. He did provoke neither Elshan, nor Mirazim, and he even did not know them. During his stay in the Ismailli region there was no unrest or gathering in front of the executive power and the Education Department offices, which was confirmed with "Unibank" surveillance video camera pointed at the street. In addition, other video records submitted to the investigation and the court showed that he did not meet with strangers, stood alone with nobody around him before getting into the police car. In this case, it is not clear when and how he staged the riots. He believes that the charges and evidence against him are irrational and falsified.

In his statement during the investigation Yagublu Tofig Rashid said that during his trip to Ismailli on 24.01.2013 at about 12.00-13.00, he reached Ismailli town at about 15.00 hours and noticed a group of about 8-10 people of 25-30 years of age, did not know none of them but believed they were local residents, got information from them about the incident, while Mehman Kerimli was away at the time and did not participate in the conversation with those people, they told him of their claims on resignation of the regional Executive Power Head, that conversation was short, then the police officers came and people dispersed and he went back to the square close to the “Unibank” branch.

Azer Gasimov Aghagasim questioned as a witness by the collegium testified that he knows accused Mammadov Ilgar Eldar and Yagublu Tofig Rashid. He does not have any kinship relations, or animosity and hostility feelings to them. On January 24, 2013, the day of the Ismailli events, as well as during preceding few days he was in Moscow. He followed the events via the Internet, especially through Facebook. As he is originally from Ismailli he was concerned about the events and kept frequent contacts with Azerbaijan. He called Ilgar Mammadov for that reason and the latter said he went there to explore the events in Ismailli.

Goyushov Altay Rashid questioned as a witness at the court collegium

testified that he knows accused Mammadov Ilgar Eldar and Tofig Rashid Yagublu. He does not have any kinship relations, or animosity and hostility feelings to them. He heard at the time of Ismailli events that Tofig Yagublu and Ilgar Mammadov were there. He might be calling them over the phone asking about the situation there. But he was not in Ismailli and did not witness events there. But he knows Tofig Yagublu and Ilgar Mammadov committed no crime in Ismailli.

The injured person **Ahmadov Rashad Shakir** testified at the court of first instance that on 23.01.2013 at about 22:00 he went to "Butterfly circle" under instructions of the police action force commander B. Khalafov. There he saw Safdar, Anar and Vasif, and observed crowd throwing stones at "Chirag" hotel, burning it and cars, saw Shukran setting hotel on fire and Elshan Gurbanov standing outside with the wooden stick in his hand. At that time, the crowd threw stones at them as well. He heard Anar Hasanov saying "do not throw stones, they are also our children, I have talked to the administration, justice should prevail". "No, we finished here, let's go to the governor's house," someone said, went ahead of others and built a barrier in front of the building.

However, the crowd threw stones at them. Stones injured police officers Safa, Imran and Rauf, their scooters and "Land Cruiser" car were burned. Despite the back-up from Goychay and Gabala police stations, they pulled back as the crowd kept throwing stones at them. Head of Mingachevir police Alesger Badalov arrived and spoke to the crowd, which listened to him a bit and then the people went to the "Butterfly Circle" at around 02.00. On 24.01.2013 at around 16:20 he saw Tofig Yagublu and Ilgar Mammadov urging people to riot and saying, "close the road, disobey to authorities, throw stones, move to the Executive Power building" and then Elshan Ismailli and Mirkazim Abdullayev joined them. Young people also joined T.Yagublu and I.Mammadov and threw stones at police in front of the governor's office. Stones hit arms and other parts of bodies. But police did not allow them to advance to the area close to local executive power office. On 23.01.2013 the crowd shouted, "relatives of the head of Ismailli eat our bread and get brazen," and demanded resignation of the head of Executive Power. Anar, Safdar and Vasif were also there. When the management arrived, Anar and Safdar approached them, then addressed the crowd saying:

"Be patient, the administration said that justice will be served tomorrow, do not worry." After hotels and cars were burned, there were calls: "we're done here, let's move to the governor's office building". Claims on resignation were heard on the scene. He saw Shukran as an active arsonist of cars, while Elshan Gurbanov did not throw stones but urged others to do so telling: "do not step back, keep on throwing". Jafar was seen at the front of the governor's house. M.F.Akhundov Street between "Unibank" and the regional administration was open. "Unibank" office is located about in 150-200 meters from the Department of Education.

The injured person **Fakhtiyev Yunis Khamis** testified at court of first instance that he was on duty all the day on 23.01.2013 to guard the police station.

On 24.01.2013 he was assigned to be stationed by the Education Department along with protection of public order in the general urban area. He was on duty there from 08.00 till 20.00. At 16:00-17:00 a group of around 16-17 people began to gather in the square in front of the Education Department, in order to ensure the safety mobile police units were deployed. He saw Ilgar Mammadov and Tofig Yagublu standing rather far from each other and talking to young people, urging them "do not be afraid, enter the governor's office, and throw stones at police, close roads". Some people rose to it and began moving toward the administrative building of the executive power; Tofig Yagublu and Ilgar Mammadov were among them.

Police officers tried to separate Ilgar Mammadov and Tofig Yagublu from the crowd, but they disobeyed and walked behind the crowd. Police appealed to the people to disperse and stop illegal actions but the crowd of 200 people got aggressive and disobeyed to police and started to throw large stones at police cordon trying to break it. The stone hit him when he was standing in the police cordon. Thanks to the pea-jacket he was not injured. Riot police officers stood in front of the cordon with the glass shields to protect them. The crowd stoned the police trying to break through the cordon and attack the administrative building of the executive power. Elshan Ismayilov and Mirkazim were also in the crowd. While the crowd managed to enter the square in front of the administrative building of the executive power, the police back-up force deployed in the area helped to stop their movement. I. E. Mammadov and T.R.Yagublu incited the crowd and they kept throwing stones at police.

The injured person **Aliyev Elmir Sahib** testified at the court of first instance that on 23.01.2013 he was deployed to Ismailli region to protect public safety and prevent illegal actions and riots. On 24.01.2013 at about 10.00-11.00 in the downtown he noticed the crowd of about 300 people near the regional education department, approached them and asked to disperse. But they disobeyed his lawful request and did not leave the area. They blocked the road to stop the traffic. When he approached the crowd again and repeated the request to disperse, they went to the end of the street and continued to stone police but more intensively. Police used plastic shields in defense. Shields sustained stones. One of the stones thrown by the rioters hit his left knee. With the help of his colleagues and feeling strong pain he was carried out to the local Central hospital. First aid identified that the shank bone cracked. After 1 day of treatment, he was taken to the hospital of the Ministry of Interior on 25.01.2013 and spent there 11 days in in-patient ward. He has no complaint or claim against anyone.

The injured person **Khalafov Bekir Khatir** testified at the court of first instance that on 23.01.2013 he rested at home when received an alert message and at around 22:00-23.00 he went to "Butterfly Circle" and observed burning cars and "Chirag" hotel and the crowd moving toward the residence of the head of Executive Power. He was ordered to enter the courtyard of the house and therefore

he was unable to see what was happening outside. However, he saw stones were thrown. He was on duty from 3 to 5 am. On 24.01.2013 from 8 am till 8 pm he was on duty in the town. The crowd emerged again at about 10.00-11.00. He stood in the cordon in front of the Education Department office trying to calm the crowd down. At around 16:00-17:00 crowd got emotional again and at that time he saw the indictees T.Yagublu, I.Mammadov, E.Ismailli and M.Abdullayev separately.

The riot police unit stood in front of them and tried to block the crowd from breaking to the office of the Executive Power. Being the commanding officer, he frequently visited checkpoints. He did not hear what I.E.Mammadov and T.R.Yagublu were saying to the crowd.

The injured person **Soltanzadeh Valeh Taleh** testified at the court of first instance that on 24.01.2013 at 10.00-11.00 the people gathered again, Mingachevir and Shamakhi police chiefs addressed to the crowd to disperse but they ignored the appeal. At the time, the riot police unit prevented the crowd from moving towards the Executive Power. On 24.01.2013, at 16:00-17:00 E.Ismailli, M.Abdullayev, I.E.Mammadov and T.R.Yagublu were also in the crowd. T.R.Yagublu I.E.Mammadov urged the crowd to riot. The crowd stood up in front of the Education Department chanting "resignation", "freedom" and throwing stones. On 24.01.2013 he was hit with stone at the head but did not go to hospital due to lack of serious injuries.

The injured person **Mirzayev Vusal Adilshah** testified at the court of first instance that on 24.01.2013 from 08.00 till 20.00 he was on duty in the city. Same day at 10.00-11.00, 16:00-17:00 and 1-2 am there were riots in the town. After 2 am law and order was reinstalled. On 24.01.2013 at 16:00-17:00 the crowd began to gather at the square in front of the Department of Education, a riot police was deployed to provide safety. He saw Ilgar Mammadov and Tofiq Yagublu standing in the crowd separately from each other swinging arms and urging people "do not be afraid, enter the executive authority's office, throw stones at police". A group of people followed the call and began to move toward the administrative building of the Executive Power together with Tofiq Yagublu and Ilgar Mammadov among them. Police officers tried to take Ilgar Mammadov, Tofiq Yagublu out of the crowd, but they rejected and marched behind the mob. Police urged the crowd to disperse and stop illegal actions, but they did not obey and instead threw large stones at police cordon to break through. A stone hit him but thanks to the pea-jacket he was not injured. Riot police unit stood in front of the crowd and protected themselves with glass shields. The rioters stoned police and managed to break through to the square by the Executive Power, but the police back up arrived and prevented them from further actions.

On 24.01.2013 while calling people to riot I.E.Mammadov was standing next to the traffic light and T.R.Yagublu in front of the education department.

Witness **Valiyev Nijat Ikram** testified at the court of first instance that on 23.01.2013 the duty police reported on a group of people gathered in downtown of

Ismaili, by “Chirag” hotel close to the “Butterfly circle”, who were doing illegal actions and he joined the other policemen to go to the site. Around 22:00 about 400-500 people gathered in front of the hotel and claimed that the hotel staff should leave the region, saying that Emil Shamdinov and Elmeddin Mammadov insulted local people and must apologize and be punished. Some people in the crowd provoked the people to stone at hotel – two of them were Elshan Gurbanov and Vasif Ibrahimov. Though he demanded E. Gurbanov should leave the place, he disobeyed and continued his provocations to set the hotel on fire. V. Ibragimov also provoked the crowd to burn the hotel down. The crowd in front of the hotel shouted “the hotel should be burned down, the staff should leave the region!” Some stones hit police officers. One of the stones hit the head of police officer Safa Askerov, who fell down in front of the hotel. A little later, people moved to the side of the hotel and stoned the hotel at close distance, then broke the rear gate and entered the backyard of the hotel. Outnumbered by the crowd, the police officers were unable to prevent their illegal actions. After entering the backyard Shukran Muhubaliyev called the mob to burn the vehicles parked there. Crowd broke into the yard and set fire to “Chevrolet Camaro”, “Hummer” and “Chevrolet Niva” vehicles. After that the crowd set fire to the first floor of the hotel, but police was unable to stop their illegal actions. After that at 00.30 someone in crowd demanded to burn residence of the former head of Executive Power and a group moved towards the house chanting some slogans. About 1500-2000 people gathered in front of the house, threw stones disobeying to the police demands to disperse. Shukran Muhubaliyev, Vasif Ibrahimov and Elshan Gurbanov led the stoners. The crowd broke through the fence to the inner yard and burned 1 “Land Cruiser” car, 3 scooters, 2 mopeds, penthouse and security guard room. Police yet again called on them to stop their unlawful acts and disperse. Vasif Ibrahimov responded that they would not leave until the house is not burned down. Vasif tried to climb on the fence but deputy police chief Shohrat Karimov prevented this illegal act. E.Gurbanov, Sh.Muhubaliyev and V.Ibrahimov continued stoning the house. As additional police back-up force arrived to the scene the crowd got more aggressive and stoned them as well. But then the additional police force managed to contain the crowd and move them away from the house.

Since 8:00 till 20:00 on 24.01.2013 in various places, including downtown Ismaili, riots continued and he together with colleagues Namig Aslanov and a Vahid Maharramov talked to local residents and observed in Narimanov street group of people encouraged by Ilgar Mammadov and Tofiq Yagublu to attack and stone police, as well as block the roads. Ilgar Mammadov and Tofiq Yagublu called people “not to fear, stone police and if needed, the Executive Power as well”. Due to I. Mammadov’s and T. Yagublu’s provocations the group of local residents in high emotions stoned police. He saw police officers Yunis Fakhtiyev and Valeh Khalafov confronting with the protesters in the downtown. They reported the events to the head of police. Then they pulled T. Yagublu to the side

trying to prevent his illegal behavior. While they talked to T. Yagublu, I. Mammadov mixed with the crowd and left somewhere. T. Yagublu kept provoking the crowd to riot despite police efforts to stop him. Upon decision of the regional Police Department T. Yagublu was brought to police office. I. Mammadov disappeared and could not be apprehended. Events started on 23.01.2013 continued on the whole day of 24.01.2013 in the downtown, from 08:00 until 20:00. In front of the hotel Safdar Agamaliyev and Anar Hasanov tried to calm the crowd down, saying “no need, disperse”.

Witness **Novruzov Rovshan Mehdi** testified at the court of first instance that on 23.01.2013 he had no information of the events, i.e., stoning of “Chirag” hotel and other incidents, he just left home on 24.01.2013 morning to buy cigarettes and walked along the street toward Ismailli hospital at around 17:00 hours heading to the downtown, when he saw a large number of people gathered on the sidewalk and discussing yesterday's events. He also witnessed the roads to police department and the Executive Power was closed by police and crowd in front of the Education Department. While he passed by he saw the crowd getting instantly aggressive and attacking police officers and stoning them. He saw Tofiq Yagublu and Ilgar Mammadov whom he did not know before, who were shouting and urging people to stone police officers and close roads next to the Education Department. He witnessed rising tensions around the Department of Education and stood by the tea house next to it observing 5-6 young people attacking police officers and Ilgar Mammadov and Tofiq Yagublu telling those youngsters “do not be afraid of police, if needed, stone the local government building too”. At that moment policeman Namig, whom he knew before, and two other policemen tried to approach Ilgar Mammadov and Tofiq Yagublu to prevent them from provoking people.

T. Yagublu separated from police officers and vanished in the crowd continuing to call for blocking roads and attacking the office of the Executive Power. I. Mammadov vanished in the crowd and disappeared. The witness saw people walking toward traffic lights, turned to the marketplace and walked back home. Young people gathered in the downtown on 24.01.2013 were of around 18-25 of age. Police officers Vahid and Nijat, who took T. Yagublu to the local police stations, also took the witness to the police as he observed Tofiq Yagublu making calls and other illegal actions. He saw T. Yagublu from about 7-8 meters distance. The first time he saw T. Yagublu he observed his behavior for 15 minutes

Witness **Mehdiyev Israfil Gahraman** testified at the court of first instance that on 24.01.2014 at 17:00-18:00 he went to the drug store in the downtown Ismailli to buy medicine and noticed some noise from the center of the city. When he walked to the park located in the downtown, he noticed crowd at the Education Department saw and stopped to observe. He saw a group marching toward the office of the local government and police trying to stop them and protecting themselves with helmets from stones thrown at them by people. He also observed

riot police unit and local police officers urging the crowd to stop stoning and disperse. He observed two persons whom he knew later as Tofig and Ilgar calling people to stone police, disobey and attack the local government building. Youngsters provoked by Tofig Yagublu and Ilgar Mammadov got even more aggressive, stoned police and tried to break through to the local government building. At this moment policemen Vahid and Namig urged Tofig Yagublu and Ilgar Mammadov to refrain from provocations. Moreover, Namig and Vahid had a chat with T. Yagublu as they saw the crowd being too heated. Despite police efforts, Tofig Yagublu and Ilgar Mammadov continued provocations against police officers. Then Vahid took away T. Yagublu. Remaining police continued to urge crowd to disperse.

Witness **Budenko Ruslan Dmitriyevich** testified at the court of first instance that on 24.01.2013 he went from his village Ivanovka to the marketplace and buy movie discs in the downtown Ismailli and on the way back home dropped by “Bollug” grocery shop which he knew is an affordable place. On the way he observed police blocking crowd from moving to the downtown, bought “Pampers” for his baby and on the way back observed police officers being attacked and stoned and the road closed by the crowd. Also a lot of people gathered in front of Ismailli district Department of Education, among them two young people urging others to stone police and seize the Executive power office building. Youngsters around them became aggressive, excited and attacked police. He did not interfere and took a taxi to go back home. Later on when looking at the Internet pictures on 24.01.2013, he recognized Tofig Yagublu and Ilgar Mammadov being those two people who were calling for rioting.

Witness **Maharramov Vahid Bagi** testified at the court of first instance that on 24.01.2013 in the noon he patrolled Narimanov street with his colleagues Nijat Veliyev and Namig Aslanov to prevent illegal actions in downtown Ismailli and at about 17:00 near the Education Department he observed Tofig Yagublu and Ilgar Mammadov urging rioters to actively violate public order, resist to police officers, close roads for vehicles, and stone police. He participated in neutralizing of T. Yagublu as the crowd stoned police at his orders. Yagublu was told to stop provoking crowd but disobeyed and police took him away to police station. Ilgar Mammadov disappeared in the crowd, so police could not find him. T. Yagublu and Ilgar Mammadov were in the crowd. He saw Ilqar on the right side of the Education Department.

Witness **Jafarov Elzadeh Firdovsi** testified at the court of first instance that on 23.01.2013 after taking Emil and Elmaddin to police station, he came back and saw the crowd in front of the hotel and police failed to prevent it from breaking into the building. First, the crowd stoned the hotel, then burned cars and the hotel itself. Then the crowd went to the residence of the head of Executive Power intending to burn it too. Rauf Karimov, Imran Latifov were injured with stones. Police back-up units from Gabala and Goychay were also stoned by the crowd.

The whole day of 24.01.2013 he was on duty in the area of marketplace and at 17:00 he learned about the crowd in front of the Education Department and was called to help. When he came there, he saw two people provoking the crowd. T.Yagublu and I.Mammadov were gesticulating in the crowd. After T.Yagublu and I.Mammadov arrived in the town, resistance to police, stoning and car burnings occurred again. The one who he later knew as T.Yagublu was put into the car and taken to police station. He did not know where I.Mammadov left. He did not see and does not remember Safdar Agamaliyev and Anar Hasanov urging the crowd to disperse on 23.01.2013.

Witness **Gadirli Erkin Togrul** testified at the court of first instance that he works with Ilgar Mammadov in the same organization. He read about the events in Ismaili on the Internet at “facebook.com” social network at night of 23.01.2013 and the next day learned that I.Mammadov and T.Yagublu went to Ismaili. The organization did not decide on I.Mammadov’s trip to Ismaili. He spoke to Ilgar after he returned to Baku and according to I.Mammadov’s words, he spent 1-1.5 hours in Ismaili.

Witness **Karimov Shohrat Yolchu** testified at the court of first instance that on 23.01.2013 at 21:30 he learned about an accident in the “Butterfly Circle” area and sent an operative taskforce there. 10 minutes later the deployed unit requested back-up support and with 4 other police officers he went to that place. When arrived, they saw around 60-70 people gathered there, and “Chirag” hotel manager Emil Shamdinov and his friend Elmaddin Mammadov fighting with local people. Both Emil Shamdinov and Elmaddin Mammadov were drunk. Operative unit called and informed about increased number of people there and their obvious intention to attack “Chirag” hotel. He immediately ordered to send additional forces to “Chirag” hotel, around 22:00 about 400-500 people gathered at the “Chirag” hotel claiming that Emil Shamdinov and Elmaddin Mammadov insulted local residents and should be punished and leave Ismaili region. Gradually number of people gathered in front of the hotel began to grow, some started to provoke the crowd to stone the hotel, among these provokers the witness recognized Elshan Gurbanov and Vasif Ibrahimov. As it was too noisy around he was unable to identify other people who used provocative rhetoric. Police urged the people to calm down, built a fence to stop them, but they did not listen and threw stones hitting some police officers.

Later some people moved to the side of the hotel, and stoned the building from at shorter distance, broke the rear gate and entered the back yard of the hotel. Local resident Shukran Muhubaliyev and his friends unknown to the witness burned 3 vehicles - “Chevrolet Camaro”, “Hummer” and “Chevrolet Niva”. Then the crowd set fire to the first floor of the hotel, but police failed to block their illegal actions. Then some people in the crowd suggested marching to the residence of the head of Executive Power and the some people started moving toward the residence while calling for resignation of the Executive Power head. Around 00.30

the witness left 10-12 policemen by the hotel and rushed to the said residence to ensure its safety. By that time, some 1500-2000 people gathered in front of the residence. He tried to urge them to stop wrongdoings but failed and the crowd started throwing stones at the house. The crowd got more excited, broke the fence and entered the house yard, burned 1 “Land Cruiser”, 3 scooters, 2 mopeds, a penthouse and security guard room. Police tried to calm down the crowd once again but Vasif Ibrahimov shouted that until the house is not burned down, they would not leave, tried to climb on the fence but the witness took hold of his clothes and dragged him down. A group in the crowd saw arrival of additional police force and got more excited and stoned them either. Vasif Ibrahimov kicked the gate and stoned the house. Police gradually silenced the crowd pushed them out of the residence. The witness saw Anar, Safdar and Jafar in the crime scene on 23.01.2013. He has not seen their actions before arrival, but while he was there the latter three tried to make the crowd calm down. He was confident that he saw Shukran Muhubaliyev, Vasif Ibrahimov, Elshan Gurbanov active participation in burning down vehicles at “Chirag” hotel and in the courtyard of the residence. When police detained T.Yagublu on 24.01.2013, it was known that I.Mammadov was also there but vanished in the crowd. He spoke to T.Yagublu and advised him stop illegal actions. T.Yagublu was kept for half an hour at the RPS (Regional Police Station). He was brought in around 17:00. In general, there were illegal actions all day long on 24.01.2013 with minor breaks.

In the court of first instance a witness **Agayev Azay Akif** testified that on January 23, 2013 at about 21:30 he received information from officers on duty about the events in front of the “Chirag” hotel. When reached there, he saw half-naked Emil and Elmaddin speaking foul language. At this moment Anar Hasanov condemned them saying “you are ill-mannered, you eat bread of Ismailli, turned into naughty bastards, you do not respect local people, barely care of our traditions”. Emil and Elmaddin were taken to RPS. 10 minutes later the witness learned that local people gathered in front of the hotel. When he went there, he saw stoning at hotel building, burning of cars and the hotel. He also saw later accused persons Safdar Agamaliyev, Elshan Gurbanov, Vasif Ibragimov and Shukran Muhubaliyev in front of the hotel. Police chief N.Gojayev warned Shukran Muhubaliyev a few times due to his active behavior in the crowd, other police officers also warned Elshan Gurbanov. Before he arrived at the place, he did not know about Safdar’s actions. He did not see Safdar and Anar calming the crowd down. Then the crowd moved to the residence of the Executive Power head, broke inside and locked the gate to prevent access. Stones were thrown at police. Then he heard Vasif Ibrahimov giving an interview, in which he said that F.Alekperov and N. Alekperov threw out 26 families who lived on the land plot of the future hotel and those people became homeless. Later police back up teams arrived but guardhouse, cars and scooters were already set on fire. On 24.01.2013 he was assigned to guard the local government office, around 16:00 a group of citizens

started shouting and the guard called for riot police unit support. Suddenly riot started in front of the Education Department, he saw 2 people provoking the crowd: one in long coat, another one in a short coat. They were saying "do not fear, fight, demand your rights". While he wanted to report this to the management, he saw N.Valiyev and V. Maharramov around. N.Valiyev came up to those two individuals, take them away and soon the situation calmed down. The head of executive power was giving an interview during this time. When asked about those two individuals, people said one was the deputy head of "Musavat" party Tofiq Yagublu and the other - "REAL" movement leader I. E. Mammadov. About 20 people were around T. Yagublu and I. Mammadov. They stoned police and burned wheels. Police was across the street when the crowd has thrown stones. The witness saw T. Yagublu and I. Mammadov 50-60 meters away from the Executive Power office, close to the Department of Education. Clashes outbreak at certain moment. While T.Yagublu and I. Mammadov were there, they provoked a group of individuals to shout slogans against government and stone police officers.

In the court of first instance a witness **Malikov Nijat Samad** testified that on 24.01.2013 in the morning he saw police cars and buses full of police officers heading to the administrative building of Executive Power and went there with I.Abbasov. They put on "PRESS" jackets and started working. In the square the residents of the region expressed their demands with regard to 23.01.2013 events and police officers demanded them to disperse. During the day he gathered information on what was happening in the downtown, I. Mammadov called him on the mobile phone several times asking about updates on the situation. He himself made a few calls to I.Mammadov and updated him. At around 15:00-16:00 Ilgar Mammadov together with Natig Jafarov in the latter's car arrived to the administrative building of Executive Power. Getting off the car I.Mammadov and N.Jafarov came nearer the journalists: Idrak Abbasov, Ramin Deko from "Azadlig" newspaper, Sevinj Vagifgizi from "Bizim Yol" newspaper and Vusala from "Radio Liberty". While I. Mammadov was in the downtown, there were no riots or clashes. The witness also nodded to T.Yagublu to say hi when noticed him in the downtown. I.Mammadov did not speak to the crowd, did not gather local residents around. The witness stood with I.Mammadov in the downtown for some 15-20 minutes, then they went to the tea-house 400-500 meters away from the downtown. But he could not confirm what teahouse that was. After leaving the tea-house they decided to return to Baku but the witness remembered that he left his bag with Idrak Abbasov and had to give him "PRESS" jacket, so they drove to the downtown in N.Jafarov's car. He met Abbasov nearby the downtown, took the bag and gave him the "PRESS" jacket and afterwards drove together with I.Mammadov and N.Jafarov to Baku. On the road they stopped at the "Bado" restaurant located within Ismailli region. In the restaurant I.Mammadov gave live interview via over a cell phone. He also called I.Abbasov to learn about the development and found out that they were still ongoing. When they were in the

downtown, the crowd was not fully formed and some people were waling in small groups.

In the court of first instance a witness **Jafarov Natig Mehman** testified that on 24.01.2013 at 11:00-12:00 he spoke to Ilgar Mammadov on the phone then they met, Ilgar Mammadov said information about events is not objective and offered to go to the town of Ismailli to get complete and accurate information, around 13:00 they drove together to the town of Ismailli in his car. On the way, they contacted journalist and columnist of “Zerkalo” newspaper Nijat Malikov who was in the town of Ismailli and learned about the latest situation. About 16:00 they reached the town of Ismailli. I.Mammadov called journalists on the phone, then went to meet them in the central square in front of the administrative building of Executive Power of the region where they originally were. On the way they asked local passers-by about directions to the center and of the events in the town. When they arrived in the square, they saw a lot of police and other security guards there and some media representatives. They did not witness any clashes in front of the Executive Power building. During a conversation with journalists on the square he saw T. Yagublu, whom he knew from previous contacts with the press. They just nodded to each other at a distance. Together with I.Mammadov they communicated only to journalists in the square. They did not talk to anyone else. He left the journalists only once to buy cigarettes in the shop next to the square. Spending about 25-30 minutes in the place, together with I.Mammadov and N.Malikov he went to the teahouse in about 400-500 meters away. Nijat Malikov mentioned his bag was with journalist Idrak Abbasov, so they came back to the downtown. Driving in sideways, they reached “Unibank” branch office. N.Malikov took his stuff from I.Abbasov; on the road I.Mammadov gave live interview for about 15-20 minutes. The witness stayed with Ilgar Mammadov all the time they spent in Ismailli except for a short break for 10-15 seconds to buy a cigarette in a local shop. Around 17:00 they left Ismailli for Baku.

But during police investigation Jafarov Natig Mehman said that they stayed on the square for 25-30 minutes, met with Abbasov next to “Unibank” and then returned to Baku.

In the court of first instance a witness **Abbasov Idrak Telman** testified that on January 24, 2013 local residents gathered in the square and expressed their discontent on the events of 23.01.2013 and police demanded them to leave the place. But the crowd demanded to release persons arrested yesterday and claimed the head of executive power should apologize for what happened yesterday. When a police colonel was talking to the crowd, riot outbroke, people got excited and shouted. At 10:00-11:00 in the morning people gathered again and chanted slogans. After that conflict between the crowd and police outbroke. Police used water cannons and rubber bullets to disperse the crowd. It took about 40-45 minutes. At 14:00 a person came out from executive power office and gave the paper with names of people causing the clashes and detained. In the afternoon, at

about 16:00 other journalists including Tofig Yagublu arrived in the town of Ismailli. Later arrived Ilgar Mammadov and Natig Jafarov in Natig's vehicle and stopped next to the local government building. Ilgar Mammadov and Natig Jafarov came up to journalists. There was also Ramin Deko from "Azadlig" newspaper and Sevinj Vaqifqızı from "Bizim Yol" newspaper. Ilgar Mammadov suggested having tea with them, as the witness did not sleep at night, he excused himself. At that time there were no riots or clashes. Shortly after that Nijat came to fetch his bag from the car and approximately at 17:00, Nijat Malikov, Natig Jafarov, Ilgar Mammadov went back to Baku. After completing his work on the Internet, the witness went to the square and saw people gathering there. He learned that something was about to happen in the evening. After some time the stones were thrown around the statue and the people started choking with gas. Police passed through the yards and detained people there. The standoff lasted until 23:00. On 24.01.2013 he sent his last communication to the editorial office at 14:00 and 19:00. The person in charge of posting information on the website has not done that on time, i.e. has not posted immediately. That information was published on the Internet with at least half an hour delay. During an interview with the head of Executive Power, the witness was in the car and did not know where T. Yagublu was at the moment. I.Mammadov went to drink tea. The witness was the one shooting most of the videos broadcasted by Obyektiv TV, but the channel also aired video materials made by other people.

In the court of first instance a witness **Rahimli Mehriban Shaig** gizi testified that on 23.01.2013 she shared her pictures of Ismailli events on social networks, later in the night talked I.Mammadov to learn his opinion on the events and on 24.01.2013 she learned about I. Mammadov's trip to Ismailli. She kept in touch with him while he was in Ismailli to learn of the developments.

In the court of first instance a witness **Karimli Mehman Bejan** testified that on 24.01.2013 he went on business trip to Ismailli with Tofig Yagublu. They reached the town together with journalist Galandar Mukhtarli and independent photo reporter Elchin at about 16:10-16:20. When entering the town and later they saw a lot of police officers and internal troops, as well journalists and TV reporters. They parked nearby the local executive authority's administrative building, by the bank. Galandar Mukhtarli walked to nearby reporters and learned on the expected interview of the head of Executive Power N.Alekperov. Tofig Yagublu separately walked to the executive authority's building. A police patrol car parked on the sideways was filming the ongoing events with camera. Before the interview of the head of Executive Power, people in civilian clothes put T.Yagublu into the car 7-8 minutes after his arrival to the downtown area. 12-15 minutes after T.Yagublu was taken away, police called on Tofig's mobile left with the witness and invited him to the police station. The witness along with journalist Javanshir went to the police station. N.Gojaev told them the situation was calm and asked them to leave the region. On 24.01.2013 the witness did not observe Tofig

Yagublu urging crowd to disobey to police and gathering people around himself while the latter was in the square by the Executive Power building. When they left Ismailli, journalists Ramin Deko, Elshan Balakhanski, Ilham Rasulzadeh, ANS TV, radio “Liberty” and printed media reporters were still there. 10 minutes after arrival to Ismailli, T. Yagublu was taken to the police station. The witness did not see I. Mammadov at all.

During the investigation Karimli Mehman Bejan stated that G. Mukhtarly left them, and he himself left T.Yagublu from time-to-time to do video shootings on of people marching on the square. He observed a lot of police officers on the square, which shied away from giving an interview. T. Yagublu was elsewhere and Elchin was busy taking photos. The head of Executive Power was giving an interview, T.Yagublu also wanted to join the journalists but people in civilian clothing took him away.

In the court of first instance a witness **Jabrailzadeh Ramin Natig** testified that having read on the social networks about mass riots in Ismailli on 23.01.2013, he went there the next morning to gather information. The interview with the head of Executive Power was expected, he saw and talked shortly for 5-6 minutes with T.Yagublu some time between 15:00-16:00. A bit later Ilgar Mammadov and Natig Jafarli arrived and the witness chatted with them for another 5-10 minutes. A little later T. Yagublu was detained by police officers in civilian clothes and taken to the RPS. Later he heard they released him. After T.Yagublu and I.Mammadov left, around 20:00-21:00 the situation in the region got complicated again and the crowd confronted with police. For the first time the witness saw T. Yagublu in the park, 150-200 meters away from the Executive Power’s office; at 14:00 the crowd gathered, then N.Gojaev arrived and dispersed them with tear gas. When T.Yagublu was detained, there were 3-4 locals present. Nizami Alekperov gave an interview at 16:00 or a few minutes later. N. Alekperov confirmed the events in the region. The witness did not know where T.Yagublu and I.Mammadov were at the time of the interview. Distance between the head of Executive Power and T. Yagublu during an interview was 100 meters. The witness saw I. Mammadov at around 16:00-17:00. The interview took maximum 20 minutes and he did not know where I. Mammadov and T. Yagublu were within those 20 minutes.

In the court of first instance a witness **Mammadaliyev Elshan Elman** testified that on 24.01.2013 in the second half of the day he saw T.Yagublu in the park and while shooting him on video, J.Mammadov showed the latter to police, they put him in the car and took away. He also saw I. Mammadov standing close to the prosecutor’s office. After T.Yagublu and I.Mammadov left the town, in the evening another confrontation occurred and he hourly communicated the unfolding events to the newspaper via Internet. When T. Yagublu was arrested, there was no crowd around. He was arrested before the interview with the head of executive power took place. The interview was approximately 15-20 minutes long.

In the court of first instance a witness **Mukhtarov Galandar Shamil** testified

that on 24.01.2013 Tofig Yagublu, journalist Mehman Kerimli and photo reporter Elchin went to Ismailli town in Mehman's car and reached the town at 16:00 or shortly after. They parked the car in front of the "Unibank" office. The witness walked to other journalists standing nearby, found out that the head of Executive Power N.Alekperov's interview is expected and 7-8 minutes later 2 people in civilian clothes put T.Yagublu into the car and drove away. The witness interviewed the head of Executive Power N.Alekperov. Elshan Balakhanski, Sevinj Vaqifgızı and other journalists were there too. Together with Elshan Balakhanski they sent the interview records to "Yeni Musavat" and "Azadlig" newspapers. A little later he received a call from Baku with the request to return. Overall, he spent 30-40 minutes in Ismailli town, and T.Yagublu spent there just 4-5 minutes. Interview with N.Alekperov took maximum 10 minutes. Around 10-11 journalists were present but not all of them asked questions. He was the one who asked most questions. 1-2 minutes prior to the interview T. Yagublu was taken away. When they arrived in the region, the situation was calm with no riots there. About 100-150 meters from Executive power office 10-15 civilians were smoking and chatting. The interview was held approximately at 16:30.

During the investigation Mukhtarov Galandar Shamil stated that M.Kerimli called Elshan Balakhanski asking about location of the bank, then they drove there and parked the car. Distance between Executive power office and the bank is 500-700 meters, T.Yagublu was a bit away. M.Kerimli was with T.Yagublu and they were shot on camera. They met Elshan and together took interview with the chief executive. R.Deko was with them, during the interview T. Yagublu was detained by people in civilian clothes. After that they stayed in the square and did their journalist job. 15 minutes later Mehman called, when the witness came up to the car, T. Yagublu, M. Kerimli, Elchin were there. T. Yagublu said he was released under the condition to return to Baku. After that they went back to Baku. The witness did not see I. Mammadov.

Search Protocol dated 26 January 2013 enclosed to the criminal case with the scheme and photos attached thereto show that the scene of massive turmoil and violence against the state representatives on January 24, 2013 in the town of Ismailli was on the square of 32x44 meters with veneer stone-made pavement at the crossroads of M. F. Akhundov street, N. Narimanov and Heydar Aliyev avenues, which form the central square of Ismailli town, in front of the regional Education Department at 36, Narimanov avenue. Besides the Education Department, the area hosts a café, library, Museum, school # 1 named after Israyil Hasanov, local executive authority, financial department, department of labor and social protection. The Department of Education is located opposite to the executive authority at 165 meter distance. M. F. Akhundov Street is located on the left side of the Department of Education and heads toward the hospital. "Unibank" OJSC regional branch is also located here. Due to repair and construction works on M. F. Akhundov Street, the area was full with stones, asphalt aggregates and wood

fragments.

The search protocol dated 7 February 2013 enclosed to the criminal case with videos and photos made by leading TV channels and other media attached thereto determines and describes perpetrators and the degree of their participation in the riots against the authorities and acts of violence committed on 24 January 2013 in the town of Ismailli. The protocol proves that the accused persons Tofig Yagublu and Ilgar Mammadov were in the area of mass riots in front of the Education Department in the downtown Ismailli on 24.01.2013.

Protocol dated 07.06.2013 on details of use of mobile phone belonging to accused Ilgar Mammadov shows the number of incoming and outgoing calls and their details: from 23.01.2013 till the early morning of 24.01.2013 when riots occurred, the phone log shows the calls made to different people, including Natig Jafarov, at 00:14, 00:58, 01:12, 01:19, 01:26, 02:38, 02:39. Antenna data for 24.01.2013 pinged Ilgar Mammadov's phone at 14:41 in Gobustan city of Gobustan district, at 15:39 – in Diyallı village of Ismailli region, at 15:46 - in Ismailli town at 30, Javanshir Street. At 15:59, 16:27, 16:40, 16:58 I.Mammadov's phone was still connected to the antenna at 30, Javanshir street of Ismailli town; at 18:09 - Bizlan village in Ismailli region, at 19:25 – on Baku-Shamakhi highway, Bederli village in Gobustan district, at 20:41 – in Baku, Yasamal district.

Protocol dated 07.06.2013 on details of use of the mobile phone owned by the accused Tofig Yagublu' confirms his trip to Ismailli town on 24.01.2013.

The court collegium determined that according to video records made with surveillance camera at Unibank ATM and surveillance cameras installed along M.Akhundov street, on January 24, 2013 at 16:00-17:00 in the downtown Ismailli the situation was relatively quiet.

The judicial inquiry determined that analysis of APA, TREND and other media confirms that they reported on general clashes, tensions, growing number of people on the streets close to the public offices and around on January 24, 2013 between 16:00-18:00 as the aftermath of events that started on January 23, 2013 in downtown Ismailli.

According to the **letter** of Ismailli Police Station No. 2/117-m dated 01.04.2013, Yagublu Tofig Rashid and Mammadov Ilgar Eldar were present at Ismailli town, in front of the Education Department called local residents to confront police and provoked and instigated anti-governmental actions in the crowded places.

The **letter** of the Ministry of National Security of the Republic of Azerbaijan No. 6/2274 dated 20.04.2013 confirms that on 24.01.2013 Yagublu Tofig Rashid and Mammadov Ilgar Eldar were in Ismailli region and urged local residents to resist to police, burn vehicles, close roads, and commit other violent actions aimed at undermining public and political stability.

The issue of Yeni Musavat-Online newspaper dated 25 January 2013 enclosed to the criminal case reported on January 24, 2013 at 16.05 that according to its

correspondent Elshan Mammadaliyev, buses, water cannons, other vehicles of police are heading to Ismailli from Baku. The number of people in the vicinity of public offices is growing and tension rises. At 17:00 another news was reported that despite police reinforcement, tensions are getting higher, number of rioters in Ismailli, which lives through heated confrontations since yesterday, is increasing. According to rumors, at night riots would continue in the downtown Ismailli.

Letter No. 474 of the First Psychiatric Hospital dated 14.02.2013, letter No. 19/51-770 of the Republican narcological center dated 12.03.2013, letter № 21 of Ismailli local clinic dated 31.01.2013 confirm that the accused persons Mammadov Ilgar Eldar, Yagublu Tofig Rashid have no mental, nervous, narcological, oncological, and neurological records.

Inquiries sent to the Department of Corrections of the Ministry of Interior of the Republic of Azerbaijan confirm that Mammadov Ilgar Eldar, Yagublu Tofig Rashid have no previous criminal records.

A copy of a birth certificate enclosed to the criminal case confirms that I. E. Mammadov has one minor child.

The court collegium rejected testimonies of witnesses Sh. Mukhtarov, E. E. Mammadaliyev R. N. Jabrayilzadeh, B. M. Amirkhanov, I. T. Abbasov, N. M. Jafarov, N. S. Malikova who said that on January 24, 2013 approximately at 16:00-17:00 there were no provocations for riots, resistance to police and any disturbances. Also the court collegium rejected testimonies of the accused persons I. Mammadov and T.Yagublu that they spent only 5-10 minutes in Ismailli.

Thus, G.S.Mukhtarov testified that after he met I. Mammadov he went to sleep in the car and did not know whereabouts of I. Mammadov and T. Yagublu. M.B.Kerimli testified that Tofig Yagublu got out of the car and walked individually toward executive authority office and G. Mukhtarlı stated during the police investigation that he was busy taking photos on the square, spoke about interview with the head of executive power and of T.Yagublu's attempt to join the interview when he was detained by people in civilian clothing. E.E.Mammadaliyev testified that T.Yagublu was detained prior to the interview; R.N.Jabrayilzadeh stated the interview took maximum 20 minutes and he did not know where I.Mammadov and T.Yagublu were within those 20 minutes. As can be seen, witnesses who alleged that they were with I.Mammadov and T.Yagublu almost all the time gave contradictory testimonies and thus tried to conceal the real facts. In addition, T.Yagublu told Radio Liberty's "After Work" program aired on 24.01.2013 at 17:41-17:46 that "he spent about 40 minutes at the police station... he was taken to Shohrat Karimov's office at the police station, who talked to him in bad manner and claimed he arrived to provoke people. But then they realized he is indeed a columnist writer and released him". The interview confirms that T.Yagublu's detention was not groundless, but was carried out to prevent his active disruptive behavior, destructive and provocative actions on the square and to isolate him in police station.

At the same time, the testimonies of injured persons V.A.Mirzoeva, V.T.Soltanzadeh, B. Kh.Khalafov, Y.H.Fakhtiyev, R.S.Akhmedov and witnesses N.Valiyeva, S.Karimov, A.A.Agaev, F.E.Jafarov, V.B.Maharramov, R.D.Budenko, I.Q.Mehdiyev, R.M.Novruzov confirm that on 24 January, 2013 at about 16:00-17:00 I.E.Mammadov, T.R.Yagublu urged the local residents to riot and resist to police.

In Radio Liberty's "After Work" program aired on 24.01.2013 at 17:41-17:46 Ilgar Mammadov stated: "Our impressions are that after the events in Guba this is the second most serious warning to the leadership of Azerbaijan that the country can no longer be governed like it was governed before. We saw heavy police presence. And we saw around 500 police, other security officers and internal troops in front of the local authorities' office. Small groups of residents discussed the events, sometimes small groups merged into bigger ones and chanted slogans. The main demand was that the head of Executive Power should apologize for the incidents that his relative allegedly committed. But the authorities, state representatives believe they are not responsible for that. Then we talked with many local residents. The people are dissatisfied, the main reason, of course, is the event in the night, the traffic incident. But in fact, the root of the issue is deep social and economic problems. A few families, a few small groups control economy of the whole region, no competition, no fair economy, and therefore, no social infrastructure development, so people live from pension to pension. A lot of people complain. Ordinary people, for example, say a Bank machine delivers cash for pensions but cash is loaded to ATMs only in a week time. The people assume that money are invested somewhere with interest and the people who control local social protection fund make benefits". In this interview I. Mammadov said, "small groups of residents discussed the matters, sometimes small groups merged into bigger ones and chanted slogans. Then we talked with many local residents. The people are dissatisfied..." – these words confirm that during his trip to Ismailli situation was not calm, "sometimes small groups merged into bigger ones and chanted slogans", and he talked with many people in the area of incident.

Also, Protocol dated 02.02.2013 includes posts from I. Mammadov's blog at <http://ilgarmammadov.livejournal.com/> and his Facebook page, which prove that the accused Ilgar Mammadov was in the town of Ismailli on 24.01.2013 to organize riots, plot violence against authorities, and not to analyze or assess the events as he claimed during the investigation. For example, he posted a message on his blog at <http://ilgarmammadov.livejournal.com/> on 25.01.2013 at 10:39, which reads: "it's an unrest situation". Another post was made on 25.01.2013 at 23:05: "Yesterday afternoon, I spent a little more than two hours in Ismailli with the Movement's Executive Secretary Natig Jafarli and media coordinator Nijat Malikov. My Facebook posts from the phone during those hours: - we entered the town. Heavy police presence, and it's getting even heavier. The protesters gather every 1-2 hours to make speeches. We are in front of the building of the executive

power. About 500 policemen in the area. We talk to locals. Ivanovka's Russians are also fed up, they were arriving for support but the road was closed and they had to turn back. Everybody is preparing for the night. As I posted in the evening, "everybody's waiting for the night". The people there say, "Tonight we will show them, we made shopping (that is, gasoline for Molotov cocktails). People are mad. There are also indifferent and fearful ones, but the fearless are really angry and will continue actions at night". Search on the Facebook page of "Ilgar Mammadov" revealed the following posts relevant for the criminal case: 24.01.2013, 01:47 - "the situation in the country is flammable in all social strata, communities, social groups". 24.01.2013, 01:07 - "Which of REAL movement demands after Guba events were been satisfied so that Ismailli residents will not rise?" These posts show again that I. E. Mammadov intended to "contribute" the organization and follow-up of mass riots before he went to Ismailli and then fulfilled his plan when arrived in the town.

The court collegium agrees with the court of first instance that the witnesses G.S.Mukhtarov, E.E.Mammadaliyev, R.N.Jabrayilzadeh, B.M.Karimli, I.T.Abbasov, N.M.Jafarov and N.S.Malikov tried to help their acquaintances, accused persons I.Mammadov and T.Yagublu so the latter avoid criminal responsibility. The aforementioned details of the testimonies cannot be accepted as sincere and true as they contradict to real circumstances of the case and irrefutable evidence.

Witnesses **Azer Gasimli Agakerim** and **Goyushov Altay Rashid** testified at the court collegium that they did not see the actual events and were unable to give any useful information on the case.

The court collegium finds that claims of the accused persons I.Mammadov and T.Yagublu that during their trip to Ismailli there were no confrontation, clashes or riots, and they have not organized or actively participated in these criminal acts do not correspond to facts and actual circumstances. Testimonies of I.Mammadov and T.Yagublu aimed at proving these statements are designed for self-defense purpose and to avoid criminal responsibility. In support to their statements they refer to the video records made on 24.01.2013 with surveillance cameras at "Unibank" ATM and along M.F.Akhundov Street. While those video records show that at 16:00-17:00 the street was relatively calm, but this is not the only street that goes to the center (executive power office), besides, possibility of people gathering in the downtown one by one or through other streets cannot be ruled out. On the other hand, according to information from Ismailli region court, on 24 January 2013 from 11:00 to 22:30, 44 people were brought to administrative responsibility in Ismailli in connection with the known events, including 9 persons from 16:00 to 19:00 on the same day with charges under Articles 298 (Violation of order of organization and conducting of meetings, demonstrations, street processions and pickets) and 310 (Persistent insubordination of legal request of policeman or military man) of the Code on Administrative Offences of the Republic of

Azerbaijan. This proves that in contradiction to statements of I.Mammadov and T.Yagublu, situation in Ismailli during their trip was not silent and the events were unfolding.

The accused persons I.Mammadov and T.Yagublu claimed that evidence used against them was falsified and as an example, referred to testimony of Rovshan Novruzov who was a witness during inspection of the scene of events on 24 January 2013 from 10:00 to 16:00 and later claimed that he saw the accused persons on that day at around 17:00 urging people in front of the Education Department to stone police officers and close roads. They believe R. Novruzov cooperated with police and testified under their instructions. However, the court collegium rules that R. Novruzov's presence during the site inspection as the witness neither makes it impractical for him to observe, nor exclude his ability to provide testimonies on the case.

The court collegium notes that during the court proceedings in the context of the present criminal case the European Court on Human Rights delivered its judgment with respect to Ilgar Mammadov's application. In its decision the European Court ruled that Ilgar Mammadov's arrest as a preventive measure was contrary to the provisions of the European Convention.

Taking into account the fact that the above judgment is relevant for the court's examination, the court collegium considers it important to express its position on the issues raised in this judgment and clarify certain contradictions between the factual circumstances of the case and the said judgment of the European Court on Human Rights.

The court collegium notes first of all that the European Court repeatedly ruled in its judgments that given that the national courts are in a better position with regard to assessing the evidence put forward, the factual circumstances determined by them cannot be replaced by the factual circumstances determined by the European Court (see the *X v. the United Kingdom*, 5 November 1981, Series A no. 46, pp. 19-20, § 43; and the *Klaas v. Germany*, 22 September 1993, Series A no. 269, p. 17, § 29).

In the case of *Gallardo Sanchez v. Italy* (24 March 2015, § 37), the Court reiterated that compared to the Convention bodies, the national courts are in relatively better position to decide on the legality and relevance of the applicant's arrest as a preventive measure.

In addition, the court collegium also brings to attention that in a number of the decisions the European Court did not exclude the possibility of existence of concrete and relevant facts that can support the applicant's detention.

However, even if such facts exist, they are not reflected in the relevant judicial decisions. It is not the Court's role to replace national courts and determine such facts in their stead (see *Ilijkov v. Bulgaria*, § 86, July 26, 2001; *Panchenko against Russia*, § 105, February 8, 2005; and *Giorgi Nikolaishvili vs Georgia*, § 77; *Farhad Aliyev vs. Azerbaijan*, § 192, 09 November 2010).

It follows from the the above mentioned decision of the European Court that Ilgar Mammadov applied to the Court on February 25, 2013 claiming that the pre-trial detention and arrest imposed on him as a preventive measure was groundless, that his right to presumption of innocence was violated and that his rights were restricted on the grounds that are not provided by the Convention (§ 3 of the judgment).

The main argument leading the European Court to conclude that Article 5 § 1 (c) of the Convention was breached was that the objective elements constituting “reasonable suspicion” were not adequately verified neither during the arrest and initial detention nor during its extension (§§ 90 and 94 of the judgment). However, the European Court itself repeatedly ruled that for an arrest on reasonable suspicion under Article 5 § 1 (c) to be justified it is not necessary that the police should obtain sufficient evidence to bring charges, either at the point of arrest or while the applicants are in custody (see: *Brogan and Others vs. the United Kingdom*, § 53, series A, No. 145-B, 29 November 1988; and *Erdagöz vs. Turkey*, § 51, 22 October 1997, *Farhad Aliyev vs. Azerbaijan*, § 139, 9 November 2010). The court noted that “...official documents of prosecution do not describe testimonies or other evidence that create doubt about charging or suspecting the defendant. Courts deciding on the measure of restraint did not receive such testimonies or other evidence”. For this reason, the Court found that

“...there were no specific facts or information submitted to the court that could create suspicion about the applicant’s arrest, and testimonies of R.N. and I.M. made to the court afterwards did not contain such facts or information. Moreover, the court did not have any new information or testimony during arrest and detention of the applicant with regard to this case” (§§ 96, 99 of the judgment).

While the court collegium does not intends to assess the European Court’s position described in its judgment, it notes that in the court’s collegium view illegal actions of Ilgar Mammadov and Tofiq Yagublu should be assessed in the context of events occurred in Ismailli town of the Republic of Azerbaijan on 23-24 January, 2013. Thus, the abovementioned events were the reasons and grounds for opening of a criminal investigation and launch of criminal prosecution against Ilgar Mammadov, Tofiq Yagublu and others.

As described above, on January 23-24, 2013 in Ismailli town prosecuted individuals organized and actively participated in riots committed by a large number of people spontaneously joining together which resulted in destruction of the "Chirag" hotel building and its interior, equipment and inventory as well as the personal belongings of the hotel guests and staff, also part of property was looted, 3 vehicles in the hotel yard were burned, cars and houses in the town were damaged with stones, private property of individuals that had no connection to the events was destroyed as well as harm was caused to health of individuals, including many police officers, who were protecting public order.

In connection with these events, on 23 January, 2013 the criminal case was

opened under the Articles 186.2.2, 221.2.1, 233 and 315.2 of the Criminal Code of the Republic of Azerbaijan and the investigation was carried out, 18 individuals were brought to criminal responsibility and prosecuted and over 50 people were brought to administrative responsibility, 24 individuals were recognized as injured.

During several days this criminal event occurred in Ismailli was widely covered in the Azerbaijani and international mass media. In other words, the event happened in Ismailli was an extraordinary one.

With regard to these events and Ilgar Mammadov's participation, criminal actions and evidence thereto the court collegium needs to note the following again:

Although Ilgar Mammadov said that he arrived in the town of Ismailli on 24 Jan 2013 at 15:46 and left before 17:00, analysis of his incoming and outgoing mobile calls as well as his posts in the Internet blog saying “Yesterday I was in Ismailli a little more than two hours together with another member of REAL movement and a media coordinator” prove that he stayed in the town on January 24, 2013 from 15:46 till 18:00.

Ilgar Mammadov insists that during his trip to the town of Ismailli there were no riots or unrest. But the case materials completely refute this testimony.

So the injured persons Rashad Shakir Akhmedov, Fakhtiyev Khamis Yunis, Aliyev Elmir Sahib, Khalafov Bekir Khatir, Sultanov Taleh Valeh, Mirzayev Vusal Adilshah, Azizova Vafa Javanshir gizi, witnesses Veliyev Nijat Ikram, Novruzov Anar Mehdi, Mehdiyev Gahraman Israfil, Ruslan Dmitrievich Budenko, Maharramov Vahid Bagi, Jafarov Elzade Firdovsi, Karimov Shohrat Yolchu and Agayev Akif Azay stated in both the police investigation and the court of first instance that on January 24, 2013 throughout the day, including between 16:00-18:00 riots continued, the people gathered in front of the Executive Power office and stoned policemen. They also testified that Ilgar Mammadov and Tofiq Yagublu stood separately from each other, gesticulated and talked to people surrounding them saying “don't be afraid, enter the executive power office, stone police officers”. Instigated by them, a group of individuals started moving toward the local government office together with Tofiq Yagublu and Ilgar Mammadov. Police wanted to isolate Ilgar Mammadov and Tofiq Yagublu from the crowd but they disobeyed and moved to the back of the crowd.

Also it should be noted that Valiyev Nijat Ikram, Maharramov Vahid Bagi testified on 28 January 2013 and Novruzov Rovshan Mehdi, Mehdiyev Gahraman Israfil testified on 2 February 2013, i.e. before the date of Ilgar Mammadov's arrest.

Rovshan Novruzov and Israfil Mehdiyev also confirmed their testimonies at the face-to-face interrogation with Ilgar Mammadov.

Also the criminal case includes the issue of “Yeni Musavat Online” newspaper dated 25 January, 2013 which reads “the newspaper's correspondent Elshan Mammadaliyev is in Ismailli and reports that “the people are in the streets, armed police arrived in the region; black masked are among them; arrests are

ongoing; the tension does not abate... At 16:00-17:00 (on January 24) crowd around the local government offices is growing. The tensions continue. The rumor says that at night the protest will continue in the downtown”.

At the same time, in connection with the events, Ilgar Mammadov wrote on his Facebook page on January 24: “we arrived in the town. Heavy police presence and it’s getting even heavier. The protesters gather every 1-2 hours. We are in front of the executive authorities’ office. There are about 500 police officers in the area”.

According to official information from the Ismailli court, on 24 January, 2013 at 16:00-19.00 up to 9 people were brought to administrative responsibility for breaching procedures for organization and conduct of gatherings and disobedience to legal demands of police.

The above mentioned incidents show that on 24 January, 2013 events were unfolding in Ismailli during the trip of Ilgar Mammadov and Tofiq Yagublu, crowd attacked Executive Power office and committed acts of violence against police.

The European Court on Human Rights ruled that with regard to Ilgar Mammadov the Article 5.4 of the Convention was violated and supported the judgment with the arguments described above and with the following justification: “...the national courts did not verify reasons for suspicion for the arrest of the applicant and did not respond to the applicant’s motions about it” (§ 116 of the judgment).

In the court collegium’s view, in the current situation, there is no longer legal ground for any commentary on Ilgar Mammadov’s arrest and extension of his arrest under the Article 5.4 of the Convention and it is, therefore, necessary to focus, in general, on is assessment of whether Ilgar Mammadov is guilty or not.

Ilgar Mammadov indicated in his testimony that he traveled to Ismailli town on 24 January 2013 to get first-hand information on the events unfolding there. But Ilgar Mammadov repeatedly could not explain how that statement on getting “first hand information” could relate to his disobedience-provoking Facebook posts. Ilgar Mammadov tried to create an image of a person indicted at the politically motivated trial by providing vague and irrational answers to specific questions.

The court collegium concluded that wide media coverage of these events both in Azerbaijan and abroad, as well as the testimonies of “Zerkalo” newspaper correspondent Malikov Nijat Samad, who was in Ismailli since early morning on 24.01.2013 to report on the events in the city center, and of the several calls he received during that time from Ilgar Mammadov and even made calls to the latter to update him on the ongoing events prove that Ilgar Mammadov’s claim for getting “first hand” information as the purpose of the trip is not trustworthy.

Also Ilgar Mammadov’s posts on his blog at <http://ilgarmammadov.livejournal.com> and his Facebook page dated 24.01.2013 confirm once again that his actions were aimed at organizing mass riots and provoking local residents to commit acts of violence and resist to local authorities in Ismailli. The posts also defy Ilgar Mammadov’s statements during police

investigation that he went to Ismailli to observe and analyze situation there and did not speak to local residents. He posted a message on his blog at <http://ilgarmammadov.livejournal.com/> on 25.01.2013 at 10:39, which reads: "it's an unrest situation". Another post was made on 25.01.2013 at 23:05: "Yesterday afternoon, I spent a little more than two hours in Ismailli with the Movement's Executive Secretary Natig Jafarli and media coordinator Nijat Malikov. Heavy police presence and it's getting even heavier. The protesters gather every 1-2 hours. We are in front of the building of the executive authorities. Police in the area are around 500 officers. We talk to locals. Ivanovka's Russians are also fed up, they were arriving for support but the road was closed and they had to turn back. Everybody is preparing for the night. As I posted in the evening, "everybody's waiting for the night". The people there say, "Tonight we will show them something, we made shopping (that is, gasoline for Molotov cocktails). People are angry. There are also the indifferent and fearful but the fearless are really angry and will continue actions at night". Search on his Facebook page revealed the following posts relevant for the criminal case: 24.01.2013, 01:47 - "the situation in the country is flammable in all social strata, communities, social groups". 24.01.2013, 01:07 - "have demands of Guba events been satisfied so that Ismailli residents will not rise?" These posts show again that I. E. Mammadov intended to support mass riots before he went to Ismailli and then fulfilled his plan when arrived in the town.

Case circumstances undoubtedly prove that Ilgar Mammadov and Tofiq Yagublu travelled to Ismailli town on January 24, 2013 and organized and actively participated in mass riots resulted in an attack of the local government office at about 17:00 committed by local residents Ismailli Elshan Samad, Abdullayev Mirkazim Mirazim and others and acts of violence and harm to health of police officers Azizov Faraj Yusif, Ahmadov Rashad Shakir, Fakhtiyev Khamis Yunis, Nuriyev Taleh Valeh, Mirzayev Vusal Adilshah, including the unit commander Khalafov Bekir Khatir.

The court collegium notes that Ilgar Mammadov and Tofiq Yagublu arrived from Baku and managed to convert spontaneous rallies into organized mass riots within two hours; though in normal circumstances this could look odd but the situation was strained, local residents condemned the head of Executive Power N. Alekperov and were excited and as Ilgar Mammadov noted "situation was flammable." Ilgar Mammadov and Tofiq Yagublu took advantage of these factors and using anti-governmental slogans attracted crowd's attention, made emotions high and committed criminal acts described above.

The court collegium points out to the procedural grounds for arrest of Ilgar Mammadov and notes that according to the Article 154.1 of the Criminal Procedure Code of the Republic of Azerbaijan, measures of restraint are aimed at preventing illegal behavior of the suspect or the accused person and ensuring execution of the court verdict under provisions of the Article 155.1 of the Criminal

Procedure Code.

According to the Article 155.1 of the Criminal Procedure Code, measures of restraint may be applied by the relevant preliminary investigator, investigator, prosecutor in charge of the procedural aspects of the investigation or court when the material in the prosecution file gives sufficient grounds to suppose that the suspect or accused has, hidden from the prosecuting authority, obstructed the normal course of the investigation or court proceedings by illegally influencing parties to the criminal proceedings, hiding material significant to the prosecution or engaging in falsification, committed a further act provided for in criminal law or created a public threat, failed to comply with a summons from the prosecuting authority, without good reason, or otherwise evaded criminal responsibility or punishment, prevented execution of a court judgment.

In accordance with Article 155.2 of the Code, when deciding on specific measure of restraint, investigator, prosecutor or court consider gravity, nature and circumstances of the crime, personality, age and health condition, employment status, marital and social status of the suspect or defendant including availability of spouses and place of residence, criminal track of records and other relevant factors as his personality, age, health and occupation and his family, financial and social positions, including whether he has dependents and a permanent residence, whether he has committed a previous offence, the previous choice of restrictive measure and other significant facts.

According to provisions of Article 155.3.1 of CCP, imprisonment and alternative measures of restraint may be applied to a person charged with an offence punishable by deprivation of liberty for a period of more than two

The court ruled to arrest Ilgar Mammadov and extend his arrest due to classification of the crime (Article 15 of the Criminal Code of the Republic of Azerbaijan) he committed (Article 220.1 of the Criminal Code of the Republic of Azerbaijan) as Grave crime and considering his ability to influence people being the leader of REAL movement, his ability to escape and hide from the law enforcement body abroad due to his work experience with international NGOs, ability to cause illegal impact on the participants of the judicial process, ability to undermine police investigation and judicial process, possibility of repeated crime, concluding on possibility of not duly responding to the invitation of the court.

With regard to not inquiring criminal case materials by the court (§ 96 of the Verdict) the court collegium notes that according to the § 9 of the Decision No. 2 of Plenary Session of the Supreme Court of the Republic of Azerbaijan dated 3 November, 2009 on Law Enforcement Practices for Review of Requests for the Arrest of Indictes, the request for the arrest should contain brief description of the committed crime, definition of that crime in the criminal law, justification for choosing arrest as the preventive measure.

The request should include copies of necessary materials, for example, decisions on opening of the criminal case, the detention of the suspect,

determination of his defendant status, protocol of interrogation, identification documents. According to Article 447.5 of CCP, the judge has the right to inquire documents collected during police investigation (e.g., testimonies, protocols of confrontation) and physical evidence to verify reasons of requests.

The arrest warrant issued by Nasimi District Court on February 4, 2013 against Ilgar Mammadov shows that the request included all necessary supporting documents, which were reviews by the court in issuing its ruling.

The court collegium also notes that Ilgar Mammadov was under custody based on decision of preliminary session of the Sheki Grave Crimes Court held on November 4 and 5, 2013 and decision of preliminary session of the Sheki Appeal Court dated May 20, 2014 announced in presence of the indicted, their attorneys and based on the collected evidence and the decisions came into force immediately. The decision did not prescribe grounds for changing preventive measure for Ilgar Mammadov. He was under arrest before ruling of the European Court on Human Rights on his application took effect, i.e. until October 13, 2014.

While the defendant's attorney Fuad Agayev submitted a motion requesting the release of Ilgar Mammadov from custody, as noted above, as details specified in the judgment of the European Court on Human Rights did not retain their legal relevance and there are sufficient grounds for upholding the preventive measure in force, the motion was not satisfied.

Thus, the evidence of this case prove that Mammadov Ilgar Eldar and Yagublu Tofiq Rashid arrived in town of Ismailli on January 24, 2013 at 16:00 and with active participation of others took advantage of possible feelings and provoked local residents Ismailli Elshan Samad, Abdullayev Mirkazim Mirazim who gathered in mass at Nariman Narimanov street of the town in the area between the regional Executive Power office and the regional Education Department Office, publicly articulated illegal slogans, complicated car traffic and pedestrians movement in front of the Ismailli Executive Power office, which is the authorized representative of the executive branch of the Republic of Azerbaijan, and did not obey to lawful demands of the representatives of the local authorities who tried to prevent acts of violence and illegal behavior. They used various objects, applied force and resisted to the police officers in uniform responsible for public safety and thus posed threat to their life and health, ruthlessly violated public order and stayed in the area for a long time, undermined normal operation of the Ismailli Region Executive Power, state-owned enterprises, public, trade and services facilities, closed the central avenue and Nariman Narimanov street, stopped traffic and organized mass riots. In Ismailli town the group of individuals consisting of Ismailli Elshan Samad, Abdullayev Mirkazim Mirazim and others at 17:00 conducted mass riot towards the Ismailli Region Chief Executive's Office building and acted violently against Ismailli region police post-patrol service unit commander Khalafov Bakir Khatir and police patrol officers Azizov Faraj Yusif, Ahmadov Rashad Shakir, Fakhtiyev Yunis Khamis, Soltanzadeh Valeh Taleh,

Mirzayev Vusal Adilshah posing threat to their life and health.

Organization of and participation in mass riots accompanied with acts of violence, robberies, destruction of property, use of firearms and explosives or armed resistance to representatives of authorities constitute corpus delicti of Article 220.1 of the Criminal Code and cause of harm to health of representatives of authorities or their close relatives through acts of violence constitute corpus delicti of the Article 315.2 of the Criminal Code which describes resistance to or act of violence against representative of authorities.

The court collegium concluded that in compliance with provisions of the Articles 143-146 of CCP, sufficient evidence was collected and assessed comprehensively and objectively at the court of first instance and Articles 220.1 and 315.2 of the Criminal Code of the Republic of Azerbaijan were correctly applied to the indictees Yagublu Tofiq Rashid and Mammadov Ilgar Eldar. Therefore, the court collegium finds evidence of attorneys of Yagublu Tofiq Rashid and Mammadov Ilgar Eldar groundless.

Considering provisions of Articles 8, 41.2, 58.3 of the Criminal Code of the Republic of Azerbaijan, nature and degree of threat of the committed crime to public safety, personalities of the indictees, as well as extenuating circumstances, potential impact of the imposed punishment on correctional re-education of the indictees and on their family members, the court collegium finds punishment imposed on the indictees by the court of first instance lawful and justified.

With regard to the motions of defense party made at the court of first instance about video and audio recording of the litigation, exclusion of inadmissible evidences, submission of new evidences, termination of injured party status for those who did not have any injuries, carry out of search on the same day content of web-sites of APA and Trend news agencies, inquiring Ministry of National Security and Ministry of Interior for their operations records' files, the court collegium notes that at the current hearings in response to the motions filed by Fuad Agayev, attorney of indictee Ilgar Mammadov, witnesses Gasimli Azer Agakerim and Goyushov Altay Rashid were questioned and at previous hearings mass media materials and video records of surveillance cameras for 24.01.2013 installed in "Unibank" ATM, which overlook the street from the administrative building of the Education Department and toward M.Akhundov street in Ismaili town were checked.

In addition, Tofiq Yagublu, Ilgar Mammadov and their attorneys expressed their opinions on inviting the former police chief of Ismaili N.Gojaev to testify as witness, requesting details of incoming and outgoing calls made on January 24, 2013 from/to Tofiq Yagublu's mobile phone numbers 051 944 58 67 and 070 544 10 43, inquiring Ministry of National Security and Ministry of Interior to submit their video records made in Ismaili on January 24, 2013. Indictees and their attorneys said that there are sufficient evidence in the criminal case file, they do not trust N.Gojaev telling truth as he was the civil servant and withdrew their

motions for detailed printout of incoming and outgoing calls on mobile phone, questioning of witness Ismailov Zohrab Neyman since he was abroad, also withdrew motions for getting copies of video records made by Ministry of National Security and the Ministry of Interior in Ismailli on January 24, 2013 as they believed they were not needed.

The court collegium reviewed motions of Fuad Agayev, attorney of the accused Ilgar Mammadov to exclude inadmissible evidence and terminate injured party status of the non-injured and concluded that the evidences contained in the motion are groundless and there is no justification for excluding submitted evidences and terminating injured party status.

With regard to the joint report of the General Prosecutor's Office and Ministry of Interior of the Republic of Azerbaijan dated January 29, 2013, the court collegium notes that the purpose of that report was to inform the general public about investigation of Ismailli events, and in particular, about the intention of investigation to assess the level of involvement of the indictees in those events.

With regard to appeal on impossibility to read protocols of judicial hearings the court collegium notes that the attorneys had sufficient time to read them.

The court collegium draws attention to the case Van de Hark vs. the Netherlands (19.04.1994) (§ 51.b) of the European Court on Human Rights, which, requires justification of the court verdict to ensure the indictee's right to fair trial. But this does not mean every argument of the parties should be provided with a detailed response.

Overall, the court collegium concludes that the appeal of attorneys Agayev Arif Arif and Bagirov Khalid Zakir of the accused Mammadov Ilgar Eldar and the appeal of attorney Kerimli Nemat Aga of the accused Yagublu Tofiq Rashid are groundless and shall not be granted and the verdict of the Sheki Grave Crimes Court dated March 17, 2014 should remain in force with regard to those indictees.

According to the Article 398.1.1 of the Code of Criminal Procedure of the Republic of Azerbaijan, as a result of its examination of the complaint or appeal, the court of appeal shall have the right decide to maintain the judgment or decision of the court of first instance unchanged without granting the appeal.

Based on the abovementioned review and guided with Articles 394, 397, 398, 407 and 410 of the Code of Criminal Procedure of the Republic of Azerbaijan, the court collegium

decided

the appeal of attorneys Agayev Arif Arif and Bagirov Khalid Zakir of the indictee Mammadov Ilgar Eldar and the appeal of attorney Kerimli Nemat Aga of the indictee Yagublu Tofiq Rashid shall not be granted.

the verdict of the Sheki Grave Crimes Court dated March 17, 2014 should be upheld without changes with regard to indictees Mammadov Ilgar Eldar and Yagublu Tofiq Rashid.

In accordance with Article 410 of the Code of Criminal Procedure of the Republic of Azerbaijan, cassation complaint and cassation protest can be lodged against the present ruling.

Presiding judge:
signature

Judges: signature
correct
Judge

Humbat Salimov