



# Information Documents

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## **Cases of alleged political prisoners in Armenia and Azerbaijan**

**Addendum to the Report of the Independent Experts,  
Messrs Stefan Trechsel, Evert Alkema and Alexander Arabadjiev**

(English Only)

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Strasbourg, 16 July 2001

**Cases of alleged political prisoners  
in Armenia and Azerbaijan**

**Addendum**

**to the Report transmitted  
to the Secretary General of the Council of Europe**

**by the independent experts:**

*Messrs Stefan Trechsel,  
Evert Alkema and  
Alexander Arabadjiev\**

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- Mr. Alexander Arabadjiev, former Judge at the Constitutional Court of Bulgaria and former member of the European Commission of Human Rights. The participation of Mr. Arabadjiev as an independent expert terminated - upon his request – subsequent to his election as a member of the Bulgarian Parliament on 17 June 2001.

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## CHAPTER 1

### **Explanatory report : determination of objective criteria to identify "political prisoners" in Armenia and Azerbaijan**

#### **Outline**

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## **I. Terms of reference of the independent experts**

1. The task of the independent experts, Messrs S. Trechsel, E. Alkema, A. Arabadjiev was «to inquire into the cases of alleged political prisoners in Armenia and Azerbaijan referred to them. They were mandated to prepare a confidential opinion on the said cases indicating whether the persons in question may be defined as political prisoners on the basis of objective criteria in the light of the case-law of the European Court of Human Rights and Council of Europe standards».

2. The experts were asked to transmit their Opinion to the Secretary General by the 30 June 2001. This deadline was later extended to 16 July 2001 (see Chapter 3, part III, C: Communications made by the Secretary General to the Ministers' Deputies).

## **II. Pertinent background information**

### **A. The novelty of the term “political prisoner”**

3. The term “political prisoner” is a relatively popular expression, and is in no way extraordinary. There are many entries on the internet under this key-word. However, “political prisoner” does not seem to be a technical legal term. No international instrument, no widely publicised resolution of an inter-governmental or non-governmental organisation uses it in a clearly defined way. This study will show that a definition of a general nature cannot reasonably be imagined; all depends on the function the definition is to serve.

4. That said, there are a few precedents for a separation of political prisoners from other prisoners according to objective criteria, i.e., in proceedings that can be considered as “legal”. In fact, Professor Carl Aage Nørgaard, then President of the European Commission of Human Rights, was charged by the United Nations to operate such a division in Namibia back in 1989/1990; a similar operation was carried out during the following years in South Africa by the International Committee of the Red Cross (ICRC)<sup>1</sup>.

5. In Professor Nørgaard's operation the following criteria were used:

- (i) The motive of the offender, i.e. whether the offence was committed for a political motive (e.g. to further or oppose the aims of a political organisation, institution or body) or for a personal motive.
- (ii) The context in which the offence was committed; in particular whether it was committed in the course of or as part of a political uprising or disturbance, or in reaction thereto.
- (iii) The nature of the political objective (e.g. whether to force a change in the policy of or to overthrow [the government] or destroy the political opponent).
- (iv) The legal and factual nature of the offence, including its gravity.
- (v) The object and/or objective of the offence (e.g. whether it was committed against the political opponent or his property, or directed primarily against private individuals or property; or was committed on the assumption that a particular cause, governmental or otherwise, was being served).

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<sup>1</sup> As the ICRC generally operates under the condition of confidentiality, no official information has been published concerning this operation.

- (vi) The relationship between the offence and the political objective being pursued, e.g. the directness of proximity of the relationship, or the proportionality between the offence and the objective pursued.
- (vii) The question whether the act was committed in the execution of an order or with the approval of the organisation, institution or body concerned<sup>2</sup>.

6. A similar “definition” can be found in Article 20, paragraph 3, of the South African Promotion of National Unity and Reconciliation Act, No. 1111 of 26 July 1995<sup>3</sup>.

7. Amnesty International defines a “political prisoner” as “a person who has committed criminal offences for political motives” but, in practice, appears to apply in a more restrictive notion when asking for the liberation of “political prisoners”: it only covers “people arrested for their own political or religious convictions”<sup>4</sup>.

8. The ICRC carries out visits in places of detention where “political prisoners” are held. They follow certain criteria, but each visit is carried out as the result of negotiations between the organisation and the government of the state concerned<sup>5</sup>.

9. The notion of “political offence”, contrary to that of “political prisoners”, is well-known as a legal term. It comes from the law on extradition, and its exact meaning is often disputed<sup>6</sup>. There is a plethora of legal writing on this subject<sup>7</sup>. This issue is controversial for a number of reasons, not least because of the multitude of sources for the law of extradition, be they, bilateral and multilateral international treaties or domestic legislation.

10. However, in approaching the issue of who is a “political prisoner” it is perhaps not necessary to enter into this discussion. Rather, it is necessary to compare these two concepts and determine the possible relationship between them, if any.

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<sup>2</sup> Quoted by Peter Parker, “The Politics of Indemnities”, *Truth Telling and Reconciliation in South Africa, Ending Apartheid Without Forgetting*, *Human Rights Law Journal (HRLJ)* 17 (1996) 1, p. 5.

<sup>3</sup> Republic of South Africa Government Gazette, Vol. 361, No. 16579.

<sup>4</sup> For further details, please consult Amnesty International's Web Site: <http://www.amnesty.org>.

<sup>5</sup> Jacques Moreillon, *Le Comité International de la Croix Rouge et la protection des détenus politiques*, Genève 1973.

<sup>6</sup> See, e.g., Steven Lubet, “The Political Offence Exception”, in *International Review of Public Law/Revue Internationale de Droit Public (IRPL/RIDP)* 62 (1991), pp. 103 ss.

<sup>7</sup> See, e.g., Hans Schultz, *Das Schweizerische Auslieferungsrecht*, Basel 1953, pp. 417-461, with references to the older publications; Robert Zimmermann, “La coopération judiciaire internationale en matière pénale”, Berne 1999, pp. 295-305; Geoff Gilbert, *Aspects of Extradition Law*, Dordrecht 1991, pp. 113-165; Christine Van Den Wijngaert, “La définition du “délit politique” dans la théorie et la pratique du droit de l’extradition”, in *Mélanges P. Bouzat*, 1980, pp. 507-535; idem, “The political offence exception to extradition: how to plug the “terrorist loophole” without departing from fundamental human rights”, *IRPL/RIDP* 1991, pp. 291-310; George Levasseur, “Le problème de l’infraction politique dans le droit de l’extradition”, in *Journal de Droit International* 1990, pp. 557-588; Nicoletta Parisi, *Estradizione e diritti dell’uomo*, Milan 1993, pp. 7 -13; Rosy Baclet-Hainque, “Le Conseil d’Etat et l’extradition en matière politique”, in *Revue de droit public* 1991, pp. 197-201, 219, 248; Christopher Blakesley, “The Law of International Extradition: a Comparative Study”, in *Revue Internationale de droit pénal*, pp. 434-451; Cherif M. Bassiouni, *International terrorism and political crimes*, 1973, pp. 398-447; Torsten Stein, *Die Auslieferungsausnahme bei politischen Delikten*, Heidelberg 1983; idem, “Auslieferung und Europäische Menschenrechtskonvention. Anmerkung zur Littlejohn-Entscheidung der EMRK”, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Bd. 41 (1981), S. pp. 329-344.

## B. “Political offence” and “political prisoner”

### 1. The origin and function of the “political offence” - exception in extradition law

11. In extradition law, a political offence is one which gives a requested state, which would otherwise be obliged to extradite a person under its jurisdiction, a reason to refuse extradition. While, originally, the primary purpose of extradition was to assist other rulers in prosecuting their political enemies<sup>8</sup>, around the middle of the 19th century states started to adopt the political offence-exception in treaties on extradition<sup>9</sup>. The purpose of the exception is to practice a “hands off”-policy with regard to internal political struggles in other countries. The requested state may not at all wish to assist in the criminal prosecution of a person prosecuted for a political offence in the requesting state – in fact, its sympathy may be with the very ideology which lead to the prosecution. On the other hand, however, if the requested state were to decide case by case, for 'opportunist' reasons, whether to assist a requesting state in the prosecution of political offences, it would in fact interfere with internal affairs of the requesting state. So, with certain exceptions, e.g. terrorism<sup>10</sup>, states agree that they will, from the outset, refuse requests for extradition to the extent that they concern political offences.

12. The exact determination of what is "political" is, of course, a complex issue meriting separate analysis<sup>11</sup>.

### 2. The term “political prisoner”

13. In effect, it is impossible to compare the origin and function of the term “political offence” with that of the term “political prisoner”. As indicated above, the latter term is popular in political discussions but has no legally recognised meaning and does not serve any identifiable purpose in law.

### 3. Comparison

14. There are four areas in which the notions of “political offence” and “political prisoner” need to be distinguished: its “valuation” (value judgment), the “beneficiary”, motive and the character of the decision. In addition, there is also a procedural difference which must be taken into account.

#### (i) *Valuation*

15. As far as *valuation* is concerned, the distinction is this: political offences are a phenomenon which probably exists in every state. Every regime protects itself against its political enemies, although in very different ways, by oppressive legislation in totalitarian

<sup>8</sup> See, e.g., Michael Wilms, “Re-Examining the Traditional Exceptions to Extradition”, in IRPL/RIDP 62 (1991) 325, at 326.

<sup>9</sup> According to Gilbert, loc. cit. p. 115, it came up first in the 1834 Franco-Belgian Treaty.

<sup>10</sup> See the European Convention on the Suppression of Terrorism of 27 January 1977.

<sup>11</sup> See, eg., Van Den Wijngaert, IRPL 292; Zimmermann, loc. cit. p. 295; Gilbert, pp. 120 ss., Schultz, p. 245 ss; Van Den Wijngaert in Mélanges Bouzat p. 514 ss and Wilms, p. 326.



states or by more restrictive laws in liberal states. There is no general negative connotation associated with the existence of political offences. As such, the general perception of such offences is neutral, although there may exist disapproval in specific cases.

16. On the other hand, the term “political prisoner” is used in a clearly critical way, as the examples to be found on the internet, among others, illustrate<sup>12</sup>. A state ought not to have any political prisoners. As the term has so far not been the object of legal analysis, it is entirely “undifferentiated”. There are no different categories of political prisoners, e.g. acceptable ones and others. States may admit that they have prisoners who have been convicted of political offences, but they will usually deny that they have “political prisoners”. It seems obvious that to hold somebody as a political prisoner violates that person's human rights and, more specifically, this is considered to be incompatible with the European Convention on Human Rights (ECHR). This explains the reference to the case-law of the European Court of Human Rights (ECtHR) in the mandate of the experts.

(ii) *Beneficiary*

17. As to the *beneficiary*, this may, at first sight, be a surprising criterion. What is meant by this is: extradition law regulates relations among states. One state has the right to request the extradition of an alleged offender or a convicted person, whereas the other state has the obligation to extradite such a person unless it is allowed to refuse to do so, by, for example, invoking the exception of political offence.

18. It is true that in recent years the individual has increasingly been brought to the centre of international negotiations and/or litigation. This is evident also in the field of international mutual assistance in criminal matters<sup>13</sup>. ECHR cases such as *Soering*<sup>14</sup> and *Chahal*<sup>15</sup> are impressive examples of this development. However, the term “political prisoners” has, as yet, no role in this context. On the other hand, when there is a reference to political prisoners, the focus is on these persons, not on the state.

(iii) *Motive*

19. The *motive* of the offender is the essential element, the starting point of the definition of the political offence. The motive is also an essential element of the notion of “political prisoner”. However, while for the political offence the motive of the offender is essential, for the political prisoner it is the “motive” of the authorities which is at issue.

20. Actually, the motive of the authorities is an element which is not unknown to the ECHR. In Article 18 it says that “[t]he restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have

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<sup>12</sup> An exception must be made for the ICRC; its only concern is the prison conditions.

<sup>13</sup> See, e.g., Otto Lagodny, “Human Rights in the Field of Extradition”, in IRPL/RIDP 62 (1991) 45; Parisi, loc.cit., Stefan Trechsel, “Grundrechtsschutz bei der internationalen Zusammenarbeit in Strafsachen”, in Europäische Grundrechte Zeitschrift, 1987, pp. 69 ss.; idem, “The Role of International Organs Controlling Human Rights in the Field of International Co-operation”, in Albin Eser/Otto Lagodny (Eds.), Principles and Procedures for a New Transnational Criminal Law, Freiburg, 1992, pp. 633 ss.

<sup>14</sup> European Court of Human Rights (ECtHR), *Soering v. UK* judgment of 7 July 1989.

<sup>15</sup> ECtHR, *Chahal v. UK* judgment of 15 November 1996.

been prescribed". However, so far the case-law has not given any separate meaning to that clause<sup>16</sup>.

Hence:

***A political prisoner is a person who is deprived of his or her liberty for political rather than strictly legal and acceptable motives.***

21. This definition, however, is difficult to put into operation. In fact, once there is a reason for suspicion *vis-à-vis* a state, it will as a rule be very difficult to establish the (real and true) motives for which a person is being detained. The European Convention of Human Rights, in Article 5, enumerates six groups of situations in which a person may be deprived of his or her liberty, provided that the arrest or detention is lawful and has been operated in accordance with rules established by law. As the evaluation of the term "political prisoner" is so negative, a state will not admit to holding persons in detention for merely political reasons. A set of criteria must therefore be developed which characterise the "political prisoner".

(iv) *Decision*

22. The difference in the *decision* on the issue of "political offence" or "political prisoner" is the following: In extradition the decision will be either to extradite or not to extradite. Although the principle of speciality may limit the rights of the requesting state to prosecute, the decision is still yes or no, without any quantification. This is different with the decision of whether a person is a political prisoner. Here, an issue of proportionality may arise. In this case, a sentence of imprisonment may be partly justified. The decision will also have to give an indication of the limit beyond which it becomes disproportionate and, hence, the person concerned a political prisoner.

(v) *Observations of a procedural character*

23. The fact that this approach takes into account motives of the state or, rather, of the organ of the state which is responsible for the imprisonment, calls for a further *observation of a procedural character*. In extradition proceedings, the actors are states. It is for the requested state to decide whether it will extradite or not. The requesting state will observe critically whether the other state will respect its sovereignty. The requested state itself feels bound by comity and public international law not to interfere with the internal affairs of the requested state. As explained above, this is the main reason behind the "hands-off-policy" with regard to political offences.

24. With regard to the issue of political prisoners, the term itself implies an interference with the internal affairs of the state accused of holding such prisoners. That said, no decision of any kind is taken by a state against (or in favour of) another state. Rather, at least in the present situation concerning Armenia and Azerbaijan, the independent experts were requested to form and convey an "opinion". The experts looked objectively at actual facts and, while they were certain to encounter issues where a margin of appreciation had to be left to the state concerned, they did exactly what a requested state wanted to avoid: they passed a value judgment and formed an opinion. This was in fact the essential difference between their task

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<sup>16</sup> See ECtHR, *Bozano v. France* judgment of 23 September 1983, Series A no. 111, § 61.

and that performed by Professor Nørgaard. His services were part of a process of national reconciliation in which the existence of political prisoners was recognised. This was not the case in the present instance.

**C. Criteria relevant to the decision whether a person is a "political prisoner" - basic principles**

25. In certain cases, it may be quite evident that prisoners are held for a political offence, be it on remand or for the purpose of serving a sentence. However, there may also be prisoners held for a political offence without this need to classify them as political prisoners. This is the case, for example, for someone who carried out a "complex political offence". Finally, there can be political prisoners who are not held for a political offence<sup>17</sup>. This is the case when somebody has been prosecuted for a non-political offence, e.g. theft, for political reasons. A person is, of course, a political prisoner if he or she has not committed any offence at all or if the prosecution has selected that person for political reasons, while other persons who have committed the same type of offence are not charged, or when the person's sentence is out of proportion with respect to the crime committed.

1. Pure political offence<sup>18</sup>

(i) *The rule*

26. Pure political offences are offences which only affect the political organisation of the state, including "defamation" of its authorities and similar misdeeds. Are offenders who have committed exclusively political offences also political prisoners? It depends.

27. The test must be whether the detention would be regarded as lawful detention under the law of the ECHR. The detention is lawful to the extent, for example, that it constitutes an interference with fundamental rights which does not exceed the limits set by the Convention and the Strasbourg case-law thereunder. Such interference will often be with respect to the freedom of expression, the freedom of assembly and association, or possibly the right to vote. In this respect, the terms of reference of the experts in the present context expressly referred to the case-law of the European Court of Human Rights (ECtHR) which provides reliable guidelines in this respect.

28. Political speech which is critical, e.g., of the government or the ruling party, propaganda for the separation of a part of the country from the rest of the state, propaganda for the opposition party and similar utterances may be regarded as typically "purely political offences". As a rule, they also constitute the legitimate use of the freedom of expression guaranteed in Article 10, ECHR. Punishment for such speech (in the broad sense, including written expression, art etc.), even assuming it is in accordance both with the law and with the necessary procedural guarantees and in pursuance of one of the goals set out in paragraph 2 of Article 10, ECHR, cannot reasonably be considered as "necessary in a democratic society". In

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<sup>17</sup> See, e.g., Schultz, loc. cit. pp. 417 ss., Gilbert, loc.cit. p. 119.

<sup>18</sup> The expression "pure political offence" is used in the field of extradition law, see, e.g., Gilbert loc.cit. p. 119, quoting from Shearer, Extradition in International Law, 1971, p. 181, where it is defined as an offence "directed solely against the political order".

other words, there is no “pressing social need” to suppress such speech<sup>19</sup>. If a person serves a sentence for, or is detained on remand on suspicion of such use of the freedom of expression, that person will be a political prisoner.

29. However, it is possible that speech exceeds the limits set by the Convention. For instance, in a number of cases the ECtHR has considered that the communication at issue was designed to incite violence, for example, by supporting the PKK<sup>20</sup>. In such a case, the Court will find that the interference is justified. Generally, therefore, a person convicted in such circumstances is not - *ceteris paribus* - the victim of a violation of human rights. The law must be understood as a system without contradictions. Article 10, paragraph 2, allows for certain interference with freedom of expression; to this extent imprisonment cannot at the same time be criticised and the person concerned labelled a “political prisoner” (which, as was shown, means that the person ought not to be imprisoned).

Thus:

**A person imprisoned after conviction for, or on suspicion of having committed, a pure political offence is a political prisoner if the interference with his or her fundamental rights cannot not be justified in terms of the ECHR, as interpreted by the European Court of Human Rights.**

30. Three further specifications must be made. They relate to proportionality, to discrimination and to procedure.

(ii) *The first exception: lack of proportionality*

31. Interference with a fundamental right such as the freedom of expression, of assembly or of association may be compatible with the ECHR to the extent that it is (or rather: could reasonably be held to be) “necessary in a democratic society”, i. e. to respond to a “pressing social need”, and respect the limits of *proportionality*. This proportionality has at least two aspects. First, it must be such proportionate as to interfere with the exercise of the freedom at issue. There must be compelling reasons for any reaction from the authorities. Secondly, the severity of the interference must be proportionate to the gravity of the danger which the exercise of the liberty created with respect to one of the values listed in paragraphs 2 of Articles 10 and 11, ECHR. What is at issue in the present context is this second aspect of proportionality.

32. Even though the interference as such might be justified, the person concerned becomes a political prisoner if and to the extent that the term of imprisonment to which he or she is submitted appears to be out of proportion to the offence which he or she has (or is suspected of having) committed. Such "disproportion" can reside in the sentence actually imposed and

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<sup>19</sup> There is an important number of judgments of the Court regarding Turkey which illustrate this point, e.g. *Geger* case, *Karatas* case and *Sürek* and *Özdemir* case, ECtHR judgments of 8 July 1999, www.echr.coe.int. See also *Castells v. Spain*, ECtHR judgment of 23 April 1992, Series A no. 236 and *Lingens v. Austria*, ECtHR Judgment of 8 July 1986, Series A no. 103.

<sup>20</sup> Again, an impressive illustration of such cases can be found in the Court’s case-law concerning Turkey, e.g., *Zana* case, ECtHR judgment of 25 November 1997, Reports 1997-VII, *Sürek* case (No.1) and *Sürek* case (No. 3), ECtHR judgments of 8 July 1999, www.echr.coe.int.

being served by the prisoner, but also in the length of detention on remand. This length, however, is to be measured according to different standards than those applied in the context of Article 5, paragraph 3, ECHR. The question is not whether the proceedings were carried out with the necessary expediency but, whether the overall length of deprivation of liberty is proportionate to the offence the prisoner is suspected of having committed.

33. Thus, the experts were faced with a very delicate task. What standards were they to apply in order to come to a conclusion whether a specific penalty was acceptable or out of proportion? The national legislation could not be a valid guide-line because it might not have been compatible, at least in spirit, with the Convention. They could certainly not embark upon a hypothetical sentencing procedure and then compare the result with the actual punishment. Here, a certain, even quite a considerable margin of appreciation had to be left to the state concerned. It was not possible for the experts to embark upon an in-depth-study of sentencing in the member States of the Council of Europe to find out what a "normal" sanction for a specific political offence would be. The fact that they came from different European 'legal families', coupled with their respective professional experience, avoided any extreme standards from being applied. Only in cases of clear disproportion was there a determination of political imprisonment.

34. Usually the issue of proportionality is a merely quantitative one. It should not be excluded from the outset, however, that it might also be found in the area of quality. For example, a non-violent offender may be placed in a high security prison only because of her or his political attitude; other criteria may be the refusal of access to information or the refusal of transfer to a hospital when health problems arise.

Thus:

**A person imprisoned in connection with a pure political offence which as such constitutes a justified interference with his or her fundamental liberties is nevertheless a political prisoner where the length of the imprisonment or its conditions are clearly disproportionate to the offence invoked to justify such treatment.**

*(iii) The second exception: discrimination*

35. A justified conviction tied to what is considered a proportionate sentence may still lead to the person concerned being a political prisoner if the criminal law was applied in a clearly discriminatory way. This would be the case, for example, if there was an unlawful demonstration against the policy of the government in which socialists, unions and communists took part, and only communists, but not socialists and union members, would be prosecuted.

Thus:

**A person imprisoned in connection with a pure political offence is a political prisoner if his or her imprisonment is the result of discrimination based primarily on political considerations.**

(iv) *The third exception: unfair trial*

36. By introducing considerations of the *procedure* in which a sentence of imprisonment has been passed, reference must be made to an issue which is also invoked in the context of the political offence-exception in extradition law: the exception is also motivated by the assumption that the person extradited would not *have a fair trial in the requesting state*<sup>21</sup>.

37. This does not mean that the experts were expected to look at cases of alleged political prisoners to decide whether proceedings brought against such persons were fully in accordance with Article 6 ECHR. Again, the control had to be limited to clear cases. The proceedings had to have been unfair to such a degree that the conviction appeared to be an act of persecution for political reasons. This was the case, for example, if the tribunal could not be regarded as independent and impartial, if the right to defence was denied, where the court refused to hear witnesses who were likely to give reliable evidence for the defendant or disregarded the presumption of innocence in some other way.

Thus:

**Even if the sentence passed against a person does not constitute an unjustified interference with fundamental rights, is proportionate to the offence and is not discriminatory, a person may still be considered to be a political prisoner if the proceedings in which he or she was tried clearly disregarded the fundamental elements of a fair trial within the meaning of Article 6 of the ECHR, as interpreted by the European Court of Human Rights.**

## 2. Other political offences

38. As far as the law of extradition is concerned, difficulties begin with those offences which are - possibly - also considered political offences, although they encompass elements of "normal" offences. Different groups are distinguished according to various criteria and with varying results. It is not necessary, in this context, to dwell on details. The essential element is that in these cases the author acts with political motivation but the offence does not exclusively damage the interests of the state but also the interests of other individuals. There are exceptions, even if in principle the existence of a political offence could otherwise be accepted, for various reasons, such as, for example, attacks on the Head of State – the so-called "Belgian clause"<sup>22</sup> - or acts of terrorism<sup>23</sup> which are typical instances of offences where the exception is rejected<sup>24</sup>.

39. It could hardly be contested that the state under whose jurisdiction such acts were committed had not only the power but also a duty<sup>25</sup> to prosecute such offences. No state was obliged to refrain from enforcing its own criminal legislation for the simple reason that the

<sup>21</sup> See, e.g., Van den Wijngaert, IRPL/RIDP p. 292, pp. 304 ss.

<sup>22</sup> Parisi, loc. cit, p. 9, fn. 23; Schultz, loc.cit. p. 423.

<sup>23</sup> European Convention on the Suppression of Terrorism of 27 January 1977, Ilse Lacoste, Die Europäische Terrorismus-Konvention, Zurich 1982, pp. 73 ss.

<sup>24</sup> For further examples see Parisi, loc. cit. p. 9 ss.

<sup>25</sup> At least under certain circumstances, cf. *X. and Y. v. The Netherlands* judgment of 25 March 1985.

author of an offence had acted with a political motive or that the offence was connected with or meant to support political aims.

Thus:

***Persons who are serving a sentence for what may be considered as not a pure political offence, or who are detained on remand of suspicion for having committed such an offence, were not political prisoners. Again, however, the exceptions referred to with regard to pure political offences apply, which meant that:***

40. Such persons could nevertheless be political prisoners if the sentence was grossly disproportionate, if it was passed in a discriminatory way or if the proceedings against them were clearly unfair.

41. A further observation is necessary in this context. It is particularly delicate and will only fall to be considered under exceptional circumstances: it has just been explained that no state is obliged to refrain from enforcing its own criminal legislation. There may, however, be an exception to this rule in cases where a state is ruled by a totalitarian regime to the extent that the government is devoid of democratic credentials, ie., of any democratically enacted legislation, human rights are systematically violated, the opposition is brutally oppressed and the rule of law is non-existent. In such cases, extradition would certainly have to be refused, if only for what Van Den Wijngaert calls "humanitarian considerations"<sup>26</sup>. In fact, the requested state would have to assume that the proceedings in the requesting state would be blatantly unfair. This might also be a reason why the person could be considered as a political prisoner. However, in such a situation, there is an additional argument: the offender might be considered to be acting out of a state of necessity<sup>27</sup>. He or she might be a political prisoner because the offence committed could be considered as an element in a struggle to overcome an illegitimate totalitarian regime with a view to restoring democracy, the rule of law and respect for human rights. One might also think of the struggle of members of a minority for recognition or autonomy. An argument *a contrario* could be drawn from Article 17, ECHR: there it is said that the Convention can never give a right "to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth [t]herein ...". Conversely, a person imprisoned for having committed an act aimed at the restoration of the rights set out in the Convention is not legitimately detained and must therefore be considered to be a political prisoner. Again, a limitation must be added. In accordance with the Swiss approach<sup>28</sup> and the general rules applying to the defence of necessity, there must be a relationship of proportionality between the act committed and the goal pursued<sup>29</sup>.

42. While, in a general perspective, the above considerations are of great importance and might be further elaborated upon, in the present context of alleged political prisoners in Armenia and Azerbaijan it did not seem justified to pursue this line of reasoning any further. In fact, both of these countries have been admitted to the Council of Europe. It is common knowledge that this decision was made with some hesitation. This decision cannot be regarded as evidence of the existence, at present, of a spotless democracy with the full respect of human rights and the rule of law in both countries. Reservations have been expressed, *inter*

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<sup>26</sup> Van Den Wijngaert, IRPL/RIDP, p. 304.

<sup>27</sup> Cf. Schultz, loc. cit., p. 434.

<sup>28</sup> Schultz, loc.cit., p. 447.

<sup>29</sup> This idea has been adopted in the "Nørgaard" criterion (vi).

*alia*, by the “eminent lawyers” in their respective Reports on the conformity of the legal systems of both countries with the standards of the Council of Europe<sup>30</sup> and by the Parliamentary Assembly<sup>31</sup>. Still, it is safe to maintain the assumption that neither of these countries fall to be considered as actually being under a totalitarian regime which could create such a state of necessity so as to justify non pure political offences.

### 3. Non-political offences

***Persons imprisoned in connection with non-political offences are, as a rule, not political prisoners.***

43. However, there are also exceptions to this rule. In fact, while the term political prisoner - to the extent that such a comparison is at all possible - is partly more restrictive than that of political offence, in that not all persons imprisoned for a political offence can be regarded as political prisoners, it is also broader to the extent that persons who have neither been charged nor convicted and sentenced for a political offence may nevertheless be regarded as political prisoners.

44. In order for this to be the case, it must first be shown that there was a political motive - even if it was not the only one - to imprison the person concerned. In other words, the person concerned must be a political opponent to the ruling forces and there must be a connection between this fact and the imprisonment.

45. In addition, one or the other of the two characteristics already mentioned with regard to the exclusive political offence must be present, i.e., the sentence must be totally out of proportion or the proceedings must have been clearly unfair. The most obvious example is the case where an innocent person is accused of, or convicted and sentenced for, an offence for political purposes, be it an attempt to sanction political behaviour which is not appreciated by those in power, or to prevent such a person from further political activities. The same applies to persons detained in psychiatric institutions - and, in effect, persecuted, - as had been the case in many instances in the former Soviet Union.

### 4. The onus of proof

46. It is obvious that it may be very difficult to determine whether the above-referred to conditions are fulfilled. It is in the first place for those alleging that a specific person is a political prisoner to present a *prima facie* case. This material must then be brought before the state concerned which will, in turn, have the opportunity to present evidence refuting the allegation. Unless the respondent state succeeds in establishing that the person concerned is detained in full conformity with ECHR requirements as interpreted by the European Court of Human Rights, as far as the merits are concerned, that the requirement of proportionality has been respected and that the deprivation of liberty is the result of fair proceedings, the person concerned will have to be regarded as a political prisoner.

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<sup>30</sup> For Armenia: Jerzy Makarczyk and Daniel Šváby, AS/Bur/Armenia (1997)1, pp. 23 ss.; for Azerbaijan: Rudolf Bernhardt and Marek A. Nowicki, AS/Bur/Azerbaijan (1997)1, p. 46.

<sup>31</sup> Opinions No. 221 and 222 (2000); in paragraph 6 we find identical wording: “The Assembly considers that [Armenia] [Azerbaijan] is moving towards a democratic, pluralist society, in which human rights and the rule of law are respected ...”, loc. cit.



#### **D. The fate of political prisoners**

47. What should happen to persons identified as being political prisoners? This is a question which had not been put to the independent experts in the case of Armenia and Azerbaijan. It is clearly outside their mandate to address it. Nevertheless, this matter merited brief consideration.

48. The first reaction tended to be: political prisoners must be released immediately. This was certainly correct for those imprisoned with respect to pure political offences. The same reasoning had also to be applied in those cases where a deprivation of liberty was partly unlawful due to a breach of the principle of proportionality.

49. The same conclusion was not necessarily so evident where proceedings were clearly unfair. Here, what seemed to be the correct answer was that there ought to be a new trial. It is true that Article 4, paragraph 1, of the 7<sup>th</sup> Protocol to the ECHR provides that “[n]o one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State”. However, in the case referred to here, the conviction would *not* have been in accordance with a procedure prescribed by law in the state concerned. There was, then, no obstacle for a re-trial. What had to be required, with respect to such a re-trial, was that the sentence should in no circumstances be more severe than in the first (clearly unfair) trial. And the re-trial itself had to be fair in accordance with criteria set out in Article 6, ECHR and Strasbourg case-law thereunder.

50. Are political prisoners entitled to compensation? The answer must be affirmative. In fact, such persons have suffered, *ex hypothesis*, an unlawful deprivation of liberty. Even if the finding is not directly based on Article 5, paragraphs 1 - 4, and is not the result, strictly speaking, of judicial proceedings, it would still appear that Article 5, paragraph 5, of the ECHR must apply.

51. It ought to be stressed that the comments made in the last four paragraphs are the experts' considerations provided as an *obiter dictum*.

### **III. Conclusions**

52. The following criteria must therefore be examined with a view to deciding whether a person deprived of his or her liberty is to be regarded as a “political prisoner”:

i. In general terms, a political prisoner is a person who is deprived of his or her liberty for political rather than legally accepted and acceptable reasons.

ii. A person imprisoned after conviction for, or on suspicion of having committed, a “pure political offence” is a political prisoner if the interference with his or her fundamental rights cannot be justified in terms of the European Convention on Human Rights (ECHR), as interpreted by the European Court of Human Rights.

iii. A person imprisoned in connection with a “pure political offence” which *a priori* constitutes a justified interference with his or her fundamental liberties is

nevertheless a political prisoner where the length of the imprisonment or its conditions are clearly disproportionate to the offence invoked to justify the said imprisonment.

iv. A person imprisoned in connection with a pure political offence is a political prisoner if his or her imprisonment is the result of discrimination based primarily on political considerations.

v. Even if the sentence passed against a person does not constitute an unjustified interference with fundamental rights, is proportionate to the offence and is not discriminatory, a person may still be considered to be a political prisoner if the proceedings in which he or she was tried clearly disregarded the fundamental elements of a fair trial within the meaning of Article 6 of the ECHR, as interpreted by the European Court of Human Rights.

vi. Persons who are serving a sentence for what may be considered as not a pure political offence, or who are detained on remand on suspicion of having committed such an offence, are not political prisoners. Such persons can nevertheless be political prisoners if the sentence is grossly disproportionate or discriminatory, or if the proceedings against them were clearly unfair.

vii. Persons imprisoned in connection with non-political offences are, as a rule, not political prisoners. Such persons are, however, to be regarded as political prisoners if, for political motives, they are imprisoned for a length of time which is grossly disproportionate to the offence in question or where the proceedings against them were clearly unfair.

viii. At the outset, those alleging that a person is being held as a political prisoner must present a *prima facie* case for their allegation; the state against which such an allegation is made must thereafter prove that the person concerned is detained for reasons which are lawful in the light of the ECHR with due regard to the case-law of the European Court of Human Rights; if that fails, the person concerned will be regarded as a political prisoner.

53. These criteria show how limited the importance of the notion of "political offence" is for the elaboration of criteria to determine the notion of "political prisoner". For practical purposes, they can in fact be simplified as follows:

54. A person deprived of his or her personal liberty falls to be regarded as a "political prisoner" :

- a. if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols (ECHR), in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association;
- b. if the detention has been imposed for purely political reasons without connection to any offence;

- c. if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of;
- d. if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or,
- e. if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities.

55. The allegation that a person is a “political prisoner” must be supported by *prima facie* evidence; it is then for the detaining State to prove that the detention is in full conformity with requirements of the ECHR as interpreted by the European Court of Human Rights in so far as the merits are concerned, that the requirements of proportionality and non-discrimination have been respected and that the deprivation of liberty is the result of fair proceedings.

## CHAPTER 2

### Cases analysed : Nos. 1 to 25

#### I. Introduction

Despite several requests that the cases submitted to the Secretary General contain specific information (full name of prisoner, date of arrest, legal status of prisoner, offence for which person is charged or has been convicted, reasons for which person could be regarded as a political prisoner), only a few cases were presented to the experts with the required information within the agreed time schedule.

They examined a total of 25 cases which were referred to them: two cases of alleged political prisoners in Armenia and 23 specific cases concerning Azerbaijan; for an explanation see paragraphs 13 to 17 of the Report. Relevant information obtained in each specific case, as well as the reasoning, which led the experts to their conclusions on whether the person could be defined as a political prisoner are provided below.

As concerns Point 6 in each case (Reasons advanced for which the person concerned could be regarded as a political prisoner), the experts had at their disposal information from various sources, *inter alia*, the prisoners themselves, relatives and lawyers of detained persons, NGOs (both written material and oral communications) and generally accessible sources including Internet.

Cases were submitted for comments and observations to the authorities of both countries concerned. In the absence of substantive observations from the authorities, the experts had to rely on plausible allegations provided by and from other sources.

Information provided to the experts had been analysed in depth. However, the experts were faced with many difficulties. As already mentioned above, only a few cases were presented to them with the required information within the agreed time schedule. Furthermore, in the vast majority of instances, they obtained the English-language versions of judgments very late, during or after their visit to the countries concerned. In many cases, it was very difficult to understand the judgments due to the poor quality of the translation and, in some cases, no judgment had been provided or it was provided after the agreed deadline.

In the cases presented hereafter, the experts have used the following abbreviations :

- PCRAr : Penal Code of the Republic of Armenia, dated 7 March 1961;
- PCRAz : Penal Code of the Republic of Azerbaijan, dated 8 december 1960;
- PCRAz 2000 : Penal Code of the Republic of Azerbaijan, in force since 1 September 2000;
- ECHR : European Convention on Human Rights (and its Protocols);
- ECtHR : European Court of Human Rights.

## II. Armenia : Cases Nos. 4 and 6

### Case No. 4 : Ashot BLEYAN

#### 1. Personal data:

Ashot BLEYAN. Born in 1955, former Minister of Education (1994-1995), leader of the opposition party “New Way”, candidate for the 1998 presidential elections.

#### 2. Date of arrest:

14 or 15 May 1999.

#### 3. Legal status of the prisoner:

Mr. BLEYAN is serving his sentence in the Remand Centre of Noubarashen after his conviction on 15 December 2000.

On 18 May 2001, the Court of Appeal (Second instance) issued a Decision, modifying the indictment and the sentence.

#### 4. Offences for which the person has been convicted:

- On 15 December 2000:
  - Misappropriating state property: embezzlement of public funds intended for the purchase of textbooks (Art 90, part 4, PCRAr);
  - Abuse of power in connexion with the running of the Mkhitar Sebastatzi Educational Complex (Art 182, part 2, PCRAr);
  - Negligence (Art 184, PCRAr);
  - Official forgery (Art. 187, PCRAr).
  
- On 18 May 2001 (Decision of the Court of Appeal):
  - Attempt of embezzlement (instead of embezzlement);
  - Other indictments (Abuse of power, negligence and official forgery) were not changed.

#### 5. Length of the sentence:

- On 15 December 2000: Mr. BLEYAN was sentenced to seven years’ imprisonment.
  
- On 18 May 2001: the sentence was reduced to five years’s imprisonment.

## **6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- Mr. BLEYAN is a former Minister and an ally of former President Ter-Petrosian. He had been a high-profile opponent of current President Kocharian; in particular, he tried, in 1998, to appeal to the Constitutional Court of Armenia a court decision ‘legitimising’ the registration of then presidential candidate Robert Kocharyan.
- He also took a high-profile in the early moves to try to settle the Nagorno-Karabakh dispute, visiting Baku in 1992.
- Mr. BLEYAN’s lawyer had indicated twice, in 1999 and 2000, that his client had been physically abused while in detention and kept in harsh conditions in an attempt to force him to make a confession.
- The Court, so it is alleged, did not apply the law correctly.
- The issue is not so much whether Mr. BLEYAN was guilty as whether he was treated with undue harshness. The general perception is that others have been allowed to get away with misappropriation on a much larger scale.

## **7. Proceedings:**

On 6 March 2001, the Armenian authorities were requested to provide the independent experts with an English-language version of the PCRAr, or at least with relevant extracts therefrom.

In a letter dated 4 April 2001, the Armenian authorities were requested to submit, by 18 April 2001 at the very latest, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also requested to provide an English-language version of the judgment.

The Armenian authorities transmitted their comments concerning this case on 18 April 2001.

On 30 April 2001, the experts received an English-language version of the judgment of the Yerevan City Malatya-Sebastya Community First Instance Court, dated 15 December 2000, as well as an English-language version of the relevant provisions of the PCRAr.

The experts met Mr. BLEYAN in the presence of his lawyer, Mr. GRIGORIAN, at the Remand Centre of Noubarashen on 5 May 2001.

## **8. Experts’ opinion:**

Mr. BLEYAN was tried and convicted for purely non-political offences (embezzlement re-qualified into an attempt of embezzlement) and sentenced to seven years’ imprisonment. The sentence was reduced to five years’ imprisonment by a judgment of the Court of Appeal on 18 May 2001.

This case raises the issue of possible discriminatory treatment in the light of the general situation in the country, characterised by a high level of corruption and in which others may

have been allowed to get away with misappropriation on an even larger scale. In the light of the fact that Mr. BLEYAN had a high-profile as early as 1992 when he visited Baku in a move to try to settle the Nagorno-Karabakh dispute and the fact that, in 1998, he disputed the registration of the then presidential candidate Robert Kocharyan (who is the actual President) the suspicion that he was treated in a discriminatory manner for purely political reasons may arise.

However, the first-instance court's judgment is a carefully reasoned judicial act. In addition, it would appear that the Court of Appeal, which re-qualified the conviction of embezzlement and reduced the sentence, also acted on purely legal grounds. The allegation that the courts did not apply the law correctly is not substantiated and can not lead to the conclusion that Mr. BLEYAN was tried in a discriminatory manner for political motives.

Hence,

the experts conclude that Mr. Ashot BLEYAN is not to be regarded as a political prisoner.

**Case No. 6 : Arkady VARDANIAN (Arkadij VARTANIAN)****1. Personal data:**

Arkady VARDANIAN. Founder of the NGO “XXI century”, Moscow-based Armenian businessman who is a Russian citizen (Armenian law does not allow dual nationality).

**2. Date of arrest:**

Mr. VARDANIAN was arrested on 30 October 2000.

**3. Legal status of the prisoner:**

After his arrest, Mr. VARDANIAN was placed in pre-trial detention, but was authorized to leave prison on 22 February 2001 because of his state of health.

According to the Armenian authorities, the preliminary inquiry concerning Mr. VARDANIAN’s penal case has been suspended until Mr. VARDANIAN recovers. No date limit has been fixed, as it will be up to the investigating judge to decide, on the basis of the medical expertise, when the inquiry can be resumed.

**4. Offences for which the person has been convicted<sup>32</sup>:**

Mr. VARDANIAN organized an (authorized) demonstration on 30 October 2000 in central Yerevan, to protest against the policies of President Kocharian. The demonstration was followed by an (unauthorized) march on the Presidential Palace.

Mr. VARDANIAN is charged with:

- calling for the forcible overthrow or change of the State and Public system (Art. 65(2), PCRAr);
- preparing a violent overthrow of constitutional order;
- seeking and advocating the overthrow of the Government by using violent means.

**5. Length of the sentence:**

After the demonstration, Mr. VARDANIAN was sentenced to:

11 days detention, on the charge that he had a permit for a demonstration but not for a march and/or 10 days administrative arrest (contradictory information).

As concerns the sentence for the call for a forcible overthrow or change of the State and Public system, Mr. VARDANIAN has not yet been tried.

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<sup>32</sup> Definition of crimes differs depending on source consulted.



**6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- Mr. VARDANIAN is charged under an article used by the former USSR authorities to suppress dissent.
- Before the demonstration of 30 October 2000, the NGO "XXI century" had already organized several rallies, where it expressed concern about the good governance of the country and accused various high-level authorities of corruption.
- The march on the Presidential Palace, which involved only a small number of the initial demonstrators, was contained by the police without difficulty.
- There has been considerable speculation in the Armenian press about possible connections between Mr. VARDANIAN and various political circles in Russia. In a letter released to the press by his wife on 9 January 2001, Mr. VARDANIAN made a number of accusations against President Kocharian and Defence Minister Sarkissian, in particular accusing Mr. Sarkissian of turning away from Russia as an ally in favour of NATO.

**7. Proceedings:**

On 6 March 2001, the Armenian authorities were requested to provide the independent experts with an English-language version of the PCRAr, or at least with relevant extracts therefrom.

In a letter dated 18 April 2001, the Armenian authorities were requested to submit, by the end of April 2001, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also reminded about the request to provide the experts with an English-language version of the PCRAr, or at least with relevant extracts from it.

On 30 April 2001, the Armenian authorities provided an English-language version of pertinent extracts from the PCRAr and on 2 May 2001, the address at which Mr. VARDANIAN could be contacted in Yerevan (given that he has been released).

The attempts of the secretariat to contact Mr. VARDANIAN before the experts' visit (4-5 May 2001) were unsuccessful.

During their visit to Yerevan, the experts were informed by the Armenian authorities, various international institutions and NGOs that Mr. VARDANIAN had fled from Armenia.

**8. Experts' opinion:**

Mr. Arkady VARDANIAN, according to the information gathered by the experts, is not at present deprived of his liberty under the jurisdiction of Armenia. Most interlocutors with whom the experts spoke indicated that he is presently in Russia.

Hence,

as he is no longer detained under the jurisdiction of Armenia, the experts conclude that Mr. Arkady VARDANIAN is not to be regarded as a (political) prisoner.

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**Additional remarks:**

- Mr. VARDANIAN suffers from a serious heart disease.
- While in detention, he had been seen by his wife and his lawyer. The Russian Embassy in Yerevan had been given consular access. The OSCE Office had also tried to obtain access, without success.
- About twenty persons, including Mr. VARDANIAN's lawyer, Mr. Karapetyan, were arrested at the same time as Mr. VARDANIAN and sentenced to administrative arrest from four to ten days or fined, for violation of public order. His lawyer was released after having served his sentence. According to the Armenian authorities, Mr. VARDANIAN's acquaintances are not subjected to any penal measures.

### **III. Azerbaijan**

#### **Case No. 1 : Iskander GAMIDOV (Isgander Medjid oglu HAMIDOV)**

##### **1. Personal data:**

Iskander GAMIDOV. Born in 1948, lawyer, former Minister of Interior (1992-1993, during the Popular Front Government); former member of Parliament (1990-1995), leader of the National Democratic Party of Azerbaijan (former "Boz Qurd Party").

##### **2. Date of arrest:**

Mr. GAMIDOV was arrested on 17 March 1995.

##### **3. Legal status of the prisoner:**

Mr. GAMIDOV is currently serving his sentence, after conviction, in Gobustan strict regime Prison.

##### **4. Offences for which the person has been convicted:**

- Abuse of power: misuse of duty for illegal liberation of 701 criminals (Art. 255 "b", PCRAz);
- Large-scale misappropriation of a substantial amount of state property: 400.000 US dollars (Art. 88, part 1, PCRAz).

After his conviction on 15 September 1995, he was kept in detention for 15 months pending trial in the Prison of the Ministry of National Security from where he was transferred to Special Colony No. 9. He was then sentenced for having violated internal regulations and transferred to Gobustan Prison (a closed category prison), on 16 October 1997 for three years. In October 2000, he was again transferred to Colony No. 9. In February 2001, following a determination by the colony administration concerning Mr. GAMIDOV's violation of the internal rules of the colony, the Court of Azizbekov district decided that Mr. GAMIDOV should serve two years in Gobustan Prison. Consequently, Mr. GAMIDOV was again transferred to Gobustan Prison on 8 February 2001.

##### **5. Length of the sentence:**

14 years' imprisonment.

## **6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- There are strong indications that political considerations played a major role in his arrest, pre-trial treatment, procedures leading up to trial (*inter alia* duration of pre-trial detention) and in the determination of the sentence.
- Official propaganda accuses Mr. GAMIDOV of being one of the persons principally responsible for the military ‘debâcle’ in Karabakh, for instigating violations of human rights by police during the period of the Popular Front of Azerbaijan Government, etc... Many times, so it is alleged, high-rank law-enforcement officials have groundlessly accused his party “Boz Qurd” of participating in the March 1995 events.
- In January 1997, the Chairman of the Azeri Parliamentary Commission on Human Rights, Mr. Safiyar Musayev, made the following statement: “They all must understand that forcible methods cannot be used for coming to power. Otherwise they will be punished like Iskander GAMIDOV, Rahim Gaziyeu and others who had sold our territories.”
- Before, the end of the investigation, his lawyer Ramiz Zeynalov was arrested on 3 August 1995. He was accused of resisting policemen during the opposition meeting in September 1994 and released in June 1996, following an amnesty.
- Some defence documents were allegedly not taken into consideration by the Court, in particular letters of the former President of Azerbaijan, Mr. Elchibey, confirming that funds were not embezzled but spent for official State purposes.
- After his conviction, Mr. GAMIDOV was, so it is alleged, illegally detained for 15 months in detention pending trial in the Prison of the Ministry of National Security. (See Point 4. Offenses for which the person has been convicted, above).
- In general, it would appear that key personalities (ministers) of previous governments have been prosecuted. At least ten former ministers have been imprisoned since 1993. Four of the said ministers are still in detention, three of whom are serving life sentences.
- His ill brother Sardar Gamidov was also arrested in 1997. According to human rights defenders, this arrest is related to the campaign for the liberation of Mr. Iskander GAMIDOV.
- Mr. GAMIDOV is expressly referred to as a “political prisoner” in the Opinion No. 222 (2000) of the Parliamentary Assembly on Azerbaijan’s application for membership of the Council of Europe, adopted on 28 June 2000 (paragraph 14, iv, b).

## **7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAZ, or at least with relevant extracts therefrom.

In a letter dated 4 April 2001, the Azerbaijan authorities were requested to submit, by 18 April 2001 at the very latest, any comments they may have with regard to the provisional version of the case which was attached to the letter. They were also requested to provide an English-language version of the judgment.

On 7 May 2001, in Baku, the experts received an English-language version of the judgment of the Supreme Court of the Republic of Azerbaijan, dated 15 September 1995.

The experts met Mr. GAMIDOV in the presence of his lawyer, Mr. Iaver HÜSEYN, at Gobustan Prison on 8 May 2001.

On 9 May 2001, the authorities provided extracts from the PCRAz and a list of indictments concerning the cases submitted to them for comments.

### **8. Experts' opinion:**

Mr. GAMIDOV was tried and convicted by the "First degree court colloque on criminal proceedings of the Supreme Court of Azerbaijan". This judgment is dated 15 September 1995 and states that it is final and not open to cassation. The prisoner has been convicted for embezzlement of state or public property (Art. 88-1, PCRAz) and for abuse and negligence in using public power with serious effects (Art. 255, sub b, PCRAz). He was sentenced to 14 years detention (to be released on 18 May 2009) and his property seized.

In view of the offences for which he was charged and given that there is no allegation that violence had been used, the sentence seems to be disproportionate and gives a clear indication that Mr. GAMIDOV is a political prisoner.

The experts observe that according to the judgment it has been proved that the prisoner had an altercation and a fight with some persons. Apparently, the Court does not qualify this as a common law offence but as an abuse of public power. Furthermore, the embezzlement of public funds is considered to be proven, yet some of the defence's documents confirm that the funds were not embezzled but spent for official State purposes. The latter was not taken into account. Neither does the Court consider that some of these expenditures were decided upon collectively and not solely by the prisoner. These are strong indications that the judgment is biased.

These indications are sufficiently confirmed by the following facts surrounding the prisoner's arrest, investigation and detention. Being a member of Parliament, Mr. GAMIDOV was arrested in the absence of a prior consent from the Parliament. Before the end of the investigations one of his lawyers, Mr. Zeynalov, was arrested. After his conviction the prisoner was kept for 25 months in the insulator of the Ministry of National Security. Furthermore, the frequent transfer of the prisoner from one place to another appears vexatious. From the documents produced it is clear that these transfers have been imposed in disciplinary proceedings for often futile misdemeanours such as lying "on the bed without taking off his clothes". In this context, it is to be noted that the prisoner is reported to be suffering from an "ulcer in the remission stage and the neurocircular dystonic hypertonia" (medical statement dated 4 November 1998 and medical control of the medical-sanitary department of the Gobustan jail). The experts accept that political motives lie behind this treatment.

Hence,

the experts conclude that Mr. Iskander GAMIDOV is to be regarded as a political prisoner.

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**Additional remarks:**

- Mr. GAMIDOV's case is under consideration by the Commission on Pardons.
- His state of health is a cause for concern.

**Case No. 2 : Alikram GUMBATOV (Alakram Alekber oglu HUMMATOV)****1. Personal data:**

Alikram GUMBATOV. Born in 1948, mechanical engineer, Colonel in the National Army, former Vice-Minister of Defence, member of the Talysh minority.

**2. Date of arrest:**

Mr. GUMBATOV was first arrested on 9 December 1993. On 22 September 1994, he “escaped” from the prison of the Ministry of National Security together with Rahim Gaziyev, former Defence Minister, and two other prisoners. Mr. GUMBATOV was arrested again on 3 August 1995.

**3. Legal status of the prisoner:**

Currently serving a sentence after conviction.

On 5 January 2001, Mr. GUMBATOV was transferred from Bayil Prison, Baku, to the Gobustan strict regime Prison, where he is currently serving his sentence.

**4. Offences for which the person has been convicted<sup>33</sup>:**

- High treason (Art. 57, PCRAz);
- Usurpation of power, by proclaiming the “Talysh-Mugan Autonomous Republic” (“TMAR”, referred to initially as “TMMR.”), (Art. 192, part 2, PCRAz): on June 21, 1993, Mr. GUMBATOV overthrew the local authorities, organized the “congress” of the “TMAR” population and the “election” of “TMAR” leaders. He became the “President of the TMAR”;
- Illegal deprivation of liberty (Art. 120, part 2, PCRAz);
- Illegal possession of weapons (Art. 220, parts 2 and 3, PCRAz);
- Escape from detention (Art. 185, part 2, PCRAz);
- Illegal formation of armed units or groupings (Art. 70-2, part 3, PCRAz).

Mr. GUMBATOV was convicted for treason for what can be considered as armed mutiny in time of war: in August 1993 (at the time of the Nagorno-Karabakh conflict), he led troops, under his command, to take control of the city of Lenkaran and proclaimed the “Talysh-Mugan Autonomous Republic” (the region was primarily inhabited by the Talysh minority).

**5. Length of the sentence:**

On 12 February 1996, Mr. GUMBATOV was sentenced to death; the sentence was subsequently commuted to life imprisonment.

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<sup>33</sup> Crimes are qualified differently in various documents provided by the Azerbaijan authorities: provisions of the PCRAz other than those mentioned in the judgement are referred to in the list of indictments that were submitted to the experts on 9 May 2001.

## **6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- There are strong indications that political considerations play a major role in his arrest, pre-trial treatment, procedures leading up to trial (*inter alia* duration of pre-trial detention) and in the determination of the sentence.
- The nature of the acts and offences for which Mr. GUMBATOV was initially sentenced (in particular: high treason, usurpation of power by proclaiming the “TMAR”).
- Ill-treatment in detention; in August 1996 he was severely beaten in the “death wing” of Bayil Prison; in the Gobustan strict regime Prison, where he is currently being kept, prisoners were deprived of the use of the mass media (periodical press, radio, television). Therefore, some prisoners, including Mr. GUMBATOV, undertook a hunger-strike in February 2001.
- Two of his brothers were arrested in 1995 and pardoned in 2000. Two of his wife’s brothers were also imprisoned.
- Mr. GUMBATOV’s wife and two children presently live in the Netherlands, where they have been granted asylum.
- When the death penalty was abolished, he illegally remained, so it is alleged, in the former death row 5<sup>th</sup> wing of Bayil Prison until 5 January 2001.
- In general, it would appear that key personalities (ministers) of previous governments have been prosecuted. At least ten former ministers have been imprisoned since 1993. Four of the said ministers are still in detention, three of whom are serving life sentences.
- Mr. GUMBATOV is expressly referred to as a “political prisoner” in the Opinion No. 222 (2000) of the Parliamentary Assembly on Azerbaijan’s application for membership to the Council of Europe, adopted on 28 June 2000 (paragraph 14, iv, b).

## **7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAZ, or at least with relevant extracts therefrom.

In a letter dated 4 April 2001, the Azerbaijan authorities were requested to submit, by 18 April 2001 at the very latest, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also requested to provide an English-language version of the judgment.

On 7 May 2001, in Baku, the experts received an English-language version of the judgment of the “Military Collogue of Azerbaijan Republic”, dated 12 February 1996.



The experts met Mr. GUMBATOV in the presence of his lawyer, Mr. Elchin GAMBAROV, at Gobustan Prison on 8 May 2001.

On 9 May 2001, the authorities provided extracts from the PCRAz and a list of indictments concerning the cases submitted to them for comments.

### **8. Experts' opinion:**

Mr. GUMBATOV was involved in the incident concerning the minority of the Talysh-Mugan region of Azerbaijan. He was accused and convicted for having taken power in that region with a view to separating the area from the Republic of Azerbaijan.

In the judgment of the "Military Collogue of Azerbaijan Republic" of 12 February 1996 he was convicted of high treason (Art. 57, PCRAz) and a number of other offences. He had also been charged with premeditated murder (Art. 94, PCRAz). The court "dismissed" this charge (p. 17). In the operative part of the judgment, however, it is passed under silence.

The experts note that it is very difficult to understand the judgment due to the poor quality of the English-language translation.

Although Mr. GUMBATOV certainly acted against the powers of the Republic of Azerbaijan and used force in the sense that he had armed military personnel under his command, his action was only marginally violent. As the charge of murder was dismissed, it must be assumed that the prisoner is not being held responsible for the shots that were fired. Apparently a number of officials of the Lerik region were deprived of their liberty, but only for a short time (two and a half hours).

In view of these facts capital punishment, even as commuted to life imprisonment, appears to be clearly excessive.

Furthermore, there are doubts as to whether the presumption of innocence was duly respected. It is true that Mr. GUMBATOV's arguments, who declared himself not guilty of high treason, are reported in the judgment. However, there was no discussion of this matter nor any effort to refute these statements. On page 12 we find an interesting phrase: "A. Gumbatov's saying is not proved ...". Such language betrays a violation of the right to be presumed innocent.

The fact that a number of his relatives were also arrested tends to support the allegation that Mr. GUMBATOV ought to be regarded as a political prisoner. Two of his brothers were arrested in 1995 and released after having been pardoned in 2000, two of his wife's brothers were also imprisoned and his wife escaped from Azerbaijan. This allegation has not yet been refuted by the Government.

The fact that the prisoner was tried by a military tribunal, however, does not, as such, make him a political prisoner. In fact, at the time of the events he was a high ranking officer in the army.

Hence,

The experts conclude that Mr. Alikram GUMBATOV is to be regarded as a political prisoner.

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**Additional remarks:**

- In addition to his heart problem (he has had two heart attacks), Mr. GUMBATOV got tuberculosis while in detention and now suffers from an aggravated form of this illness.
- His case is under consideration by the Commission on Pardons.
- On 15 June 2001, Mr. GUMBATOV started a hunger strike. According to his lawyer, he was protesting against “unbearable and inhuman conditions adopted and applied in his prison premises”. Mr. GUMBATOV stopped his hunger strike on 20 June 2001, subsequent to a specific request by the experts to this effect.

**Case No. 3 : Raqim GAZIYEV (Rahim Hasan oglu QAZIYEV)****1. Personal data:**

Raqim GAZIYEV. Born in 1943, one of the founders and leaders of the Popular Front of Azerbaijan (1989-1993), former member of Parliament (1990-1993), former Minister of Defence during the Popular Front Government (1992-1993).

**2. Date of arrest:**

Mr. GAZIYEV was first arrested on 22 November 1993.

On 22 September 1994, together with 4 other prisoners, he “escaped” from the Investigation Prison of the Ministry of National Security and made his way to Moscow.

He was arrested in Moscow on 14 April 1996, and extradited to Azerbaijan on 16 April 1996.

**3. Legal status of the prisoner:**

Serving sentence after conviction.

On 5 January 2001, Mr. GAZIYEV was transferred from Bayil Prison, Baku, to the Gobustan strict regime Prison, where he is currently serving a life sentence.

**4. Offences for which the person has been convicted:**

- Abuse of power, exceeding authority and negligent attitude in time of war: failing to adequately defend two towns (Shusha and Lachin) in May 1992 in the disputed enclave of Nagorno-Karabakh (Art. 255, para.V, PCRAz); Mr. GAZIYEV was held responsible, together with other persons, for the surrender of the Shusha Region to the Armenians in May 1992, during the Nagorno-Karabakh conflict;
- Large-scale misappropriation (embezzlement) of state property: 25.000.000 rubles and 500.000 US dollars (Art. 88, part 1, PCRAz);
- Illegal possession of weapons (Art. 220, part 2, PCRAz).

Mr. GAZIYEV was sentenced *in absentia* on 12 May 1995.

**5. Length of the sentence:**

Death penalty, commuted to life imprisonment.

**6. Reasons advanced for which the person concerned could be considered as a political prisoner:**

- There are strong indications that political considerations played a major role in his arrest, pre-trial treatment, procedures leading up to trial (*inter alia* duration of pre-trial detention) and in the determination of the sentence.
- Mr. GAZIYEV was one of the founders of the Popular Front of Azerbaijan (PFA), and, for a while, one of its leaders. However, he was later considered as a supporter of ex-President A. Mutallibov and of Colonel S. Huseynov’s “military” opposition. According

to the sentence, one of the factors that led to the occupation of Shusha and Lachin district by the Armenian forces was that Mr. GAZIYEV intended to use the political situation created by the occupation of Shusha and Lachin to strengthen his own position and to bring to power former President Mutallibov.

- He was also presented as a “pro-Russian politician” because of his exile in Moscow, where he was one of the main organizers of the opposition “Civic Association”.
- He was blamed for participation in the so-called “Ganja events” in 1994, and later for supporting a separatist movement in the South Region (the so-called “Talysh-Mugan Autonomous Republic”).
- He was also presented as one of the main organisers of the unsuccessful “Generals Coup” in the summer of 1995.
- He was sentenced *in absentia*. He was extradited from Russia to Azerbaijan in two days, without -allegedly- any court procedure or formal verification of the indictment.
- Some prisoners, including Mr. GAZIYEV, undertook a hunger-strike in February 2001 because they were deprived of the use of the mass media (periodical press, radio, television).
- At least four of his relatives have, allegedly, been ‘repressed’ in connexion to this case.
- Mr. GAZIYEV is expressly referred to as a “political prisoner” in the Opinion No. 222 (2000) of the Parliamentary Assembly on Azerbaijan’s application for membership to the Council of Europe, adopted on 28 June 2000 (paragraph 14, iv, b).

## **7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAZ, or at least with relevant extracts therefrom.

In a letter dated 4 April 2001, the Azerbaijan authorities were requested to submit, by 18 April 2001 at the very latest, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also requested to provide an English-language version of the judgment.

On 7 May 2001, in Baku, the experts received an English-version of the judgment of the Supreme Court of the Republic of Azerbaijan, dated 12 May 1995.

The experts met Mr. GAZIYEV in the presence of his lawyer, Mr. Elchin GAMBAROV, at Gobustan Prison on 8 May 2001.

On 9 May 2001, the authorities provided extracts from the PCRAZ and a list of indictments concerning the cases submitted to them for comments.

**8. Experts' opinion:**

The experts have at their disposal the Supreme Court's judgment submitted by the Government and translated into English. However, this translation is linguistically defective and often hard to understand; it is (wrongly) dated 12 May 1994. The indictment, as summarised in the judgment, consists of three counts concerning:

- Abuse of power (Art. 255, para.v, PCRAz);
- Misappropriation of public property in large amounts (Art. 88 part 1, PCRAz);
- Holding, selling and purchasing of firearms and ammunition without permission (Art. 220 part 2, PCRAz).

It should be observed from the outset that the principle of a fair trial had been violated during the proceedings. On 22 September 1994 the prisoner "escaped" with three other prisoners from the prison of the Ministry of National Security. According to the information received from several sources, it would appear that the "escape" of the prisoners had been staged by the authorities. As a consequence, the prisoner was sentenced to death *in absentia*. Such a trial *in absentia* is clearly not compatible with Article 6 of the ECHR.

Hence,

the experts conclude that that Mr. Raqim GAZIYEV is to be regarded as a political prisoner.

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**Additional remarks:**

Mr. GAZIYEV's case is under consideration by the Commission on Pardons. He is seeking a retrial. It should also be noted that he suffers from a serious heart disease.

**Case No. 5 : Elchin Samed oglu AMIRASLANOV****1. Personal data:**

Elchin Samed oglu AMIRASLANOV. Born in 1961, former Commander of the 8th Detachment of the Police Regiment for Special Purposes (Riots' Police – OPON).

**2. Date of arrest:**

Mr. AMIRASLANOV was arrested on 10 December 1996.

**3. Legal status of the prisoner:**

Currently, Mr. AMIRASLANOV is serving a life sentence in the Bayil Prison, Baku.

**4. Offences for which the person has been convicted:**

Mr. AMIRASLANOV was one of the active participants of the so-called “March events”(of 1995), which were considered as an uprising of several units of Riots' police (OPON). He was indicted within the so-called “case of 30” (alleged organisers of the attempted “coup d'Etat”).

He has been convicted for :

- Illegal detention of weapons and stealing of weapons (Art. 220, part 2, PCRAz);
- Premeditated murder (Art. 95, PCRAz);
- Smuggling (Art. 71, PCRAz).

**5. Length of the sentence:**

13 years' imprisonment.

**6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- Initially, the action of the Police Regiment for Special Purposes (Riot Police) took place in Baku and in two other regions of Azerbaijan and it was aimed at “changing” a number of key persons of the political establishment. The attempted “coup d'Etat” was suppressed by the armed forces and the number of those arrested exceeded 600 persons.
- Mr. AMIRASLANOV and all the “fighters” of the Police Regiment for Special Purposes (as Mr. KAZIMOV, case No. 15) were allegedly tortured in pre-trial detention in the Department for Fight against Gangsterism and Terrorism and the prisoner was at the time suffering from a head wound (open cranial-cerebral trauma with contusion of the brain).
- He was allegedly deprived of the assistance of a lawyer before and during the trial and detained in the Department for Fight against Gangsterism and Terrorism for several months while detention should not have exceeded 10 days.

- Close relatives (Mr. Ilgar Amiraslanov, Mr. Mubariz Kazimov, Mr. Arif Kazimov, Mr. Shahin Mustafayev, Mr. Jeyhun Mustafayev) were also arrested. Mr. Ilgar Amiraslanov (his brother) was extradited from Moldova and Mr. Mubariz Kazimov (his sister's husband) was extradited from Ukraine. Both were sentenced to 12 years' imprisonment in colonies of strict regime. Other members of his family were harassed. During the investigation, Mr. AMIRASLANOV's younger sister, Mrs Elgunara Amiraslanova, was beaten at home by the police and, as a result, suffered from brain concussion.
- When the death penalty was abolished, Mr. AMIRASLANOV remained, so it is alleged, illegally in the former death row 5<sup>th</sup> wing of Bayil Prison until 5 January 2001.

## **7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAZ, or at least with relevant extracts therefrom.

In a letter dated 4 April 2001, the Azerbaijan authorities were requested to submit, by 18 April 2001 at the very latest, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also requested to provide an English-language version of the judgment.

On 7 May 2001, in Baku, the experts received an English-language version of the judgment of the Supreme Court of the Republic of Azerbaijan, dated 28 November 1997.

On 9 May 2001, the authorities provided extracts from the PCRAZ and a list of indictments concerning the cases submitted to them for comments.

## **8. Experts' opinion:**

Mr. AMIRASLANOV was sentenced in a large trial concerning 30 defendants, all accused of participating in the "1995 events". It appears that he was involved in violent activities. The sentence of 13 years does not seem to be so excessive that this element could lead to the conclusion that he should be regarded as a political prisoner. However, there are serious doubts as to whether the proceedings can be regarded as being fair and appropriate.

The experts are in possession of the judgment in this case. It has been translated into English, but the quality of the translation is very bad; often it is hardly understandable. It is also difficult to find a structure in this judgment.

There are passages in the judgment which cast doubts as to the respect of the presumption of innocence. Unacceptable language is used, such as "... did another terrible crime".

There is, however, one specific and clearly established element which raises even more serious doubts about the fairness of the proceedings. This concerns the independence and impartiality of the court. In fact, the competent chamber of the Supreme Court was presided over by Mr. M.Z. Ibayev, a member of the Supreme Court; however, as "peoples' assessors" sat "Colonel Lieutenant Mr. Y. Memmadov" and "Major R. Guliyev". This brings to mind the judgment of the ECtHR of 9 June 1998, *Inçal v. Turkey* (Reports 1998 - IV 1547). In this case the Court had to assess whether the Turkish National Security Court could be regarded as

independent and impartial despite the fact that a military judge was sitting on that court. The ECtHR clearly came to a negative result:

"Firstly, they are servicemen who still belong to the army, which in turn takes its orders from the executive. Secondly, they remain subject to military discipline and assessment reports are compiled on them by the army for that purpose" (extract from paragraph 68).

Consequently, the Court cannot be regarded as an independent and impartial tribunal in the sense of Article 6 (1) ECHR.

In the case *Inçal v. Turkey*, the ECtHR also came to the conclusion that, once it had determined the lack of independence and impartiality, it was not necessary to examine other complaints regarding the fairness of proceedings.

Hence,

the experts conclude that Mr. Elchin Samed oglu AMIRASLANOV is to be regarded as a political prisoner.

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**Additional remarks:**

Mr. AMIRASLANOV's case is under consideration by the Commission on Pardons. It has been reported that his health is very poor.



**Case No. 7 : Natig Islam oglu EFENDIYEV****1. Personal data:**

Natig Islam oglu EFENDIYEV. Born in 1957, former Chief of the Police in Ganja (5 October 1994 – 19 September 1996).

**2. Date of arrest:**

Mr. EFENDIYEV was arrested on 1 January 2000 in Istanbul (Turkey) with help from “Interpol”, and then extradited to Azerbaijan.

**3. Legal status of the prisoner:**

According to information provided on 4 July 2000, Mr. EFENDIYEV was detained in the Pre-trial Detention Centre of the Ministry of State Security in Baku.

**4. Offences for which the person has been convicted:**

Mr. EFENDIYEV was accused of an attempted “Coup d’Etat” inspired by Mr. Rasul Guliyev, former Speaker of the Parliament.

According to the judgment of the “Azerbaijan Republic Court Martial for Grave Crimes”, dated 11 January 2001, “in connection with the enactment of new criminal legislation, the Court considers that the defendants’ actions should be referred to applicable articles of the Azerbaijan Republic Criminal Code valid since 1 September 2000 [PCRAz 2000]. If the reference of the action aggravates their condition, then the defendants will be brought to criminal liability in conformity with applicable articles of the Azerbaijan Republic Penal Code valid before 1 September 2000.”

On 11 January 2001, Mr. EFENDIYEV was convicted for :

- Exceeding of competences (Art. 168, part 2, PCRAz);
- Official falsification of documents (Art. 172, PCRAz);
- Intentional destruction or damage of property (Art. 93-9, part 2, PCRAz);
- Forced appropriation of power (Art. 278, PCRAz 2000);
- Preparation for the creation of illegal armed units (Art. 28, 279-2, PCRAz 2000);
- Illegal possession, transfer of weapons (Art. 228-1, PCRAz 2000 );
- Bribery (Art. 311-3-1, 311-3-3, 311-3-4, PCRAz 2000);
- Illegal detention, arrest or detention in custody (Art. 292-1, PCRAz 2000).

**5. Length of the sentence:**

Life imprisonment.

## **6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- In 1997 Mr. EFENDIYEV established the National Committee of Support for R. Guliyev, the ex-Speaker of the Parliament, and organised a petition in his favour.
- He only obtained access to his lawyer 25 days after his arrest.
- Mr. EFENDIYEV's family believes that the reasons behind his prosecution are connected with the critical comments that he made on Radio Liberty concerning the authorities, and his close relationship with Rasul Guliyev.
- Interpol was, so it is alleged, misinformed by Azerbaijan authorities since initial accusations were of less importance than the crimes for which he was subsequently tried. After his arrest, he was accused of high treason in connection with the alleged attempted coup d'Etat in Ganja.
- Members of Mr. EFENDIYEV's family were harrassed even before his arrest. One brother was arrested, a second died from a heart attack as, so it is alleged, a result of harrassment. Mr. EFENDIYEV's son and daughter were granted political asylum in the United States.

## **7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAz, or at least with relevant extracts therefrom.

In a letter dated 18 April 2001, the Azerbaijan authorities were requested to submit, by the end of April 2001, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also reminded about the request to provide the experts with an English-language version of the PCRAz, or at least relevant extracts from it, by the end of April 2001.

On 9 May 2001, the authorities provided extracts from the PCRAz and a list of indictments concerning the cases submitted to them for comments.

On 12 June 2001, the experts received an English-language version of the judgment of the "Azerbaijan Republic Court Martial for Grave Crimes", dated 11 January 2001.

## **8. Experts' opinion:**

The Azerbaijan Republic Court Martial for Grave Crimes passed judgment on the prisoner and six other persons on 11 January 2001. The judgment could have been appealed within 20 days. No such appeal has been reported as of yet.

The prisoner has been indicted and tried both under the former Penal Code (PCRAz) as well as under the new one, which entered into force on 1 September 2000 (PCRAz 2000). He has been

convicted for forced appropriation of power (Art. 278, PCRAz 2000), preparation for formation of illegal armed units (Art. 28 and 279, PCRAz 2000), illegal bearing, transfer of firearms and or explosives (Art. 228 para. 1, PCRAz 2000), bribery (Art. 311.3.1, 311.3.3 and 311.3.4, PCRAz 2000), illegal detention, arrest or keeping in custody (Art. 292 para. 1, PCRAz 2000), exceeding of power or official authority (Art. 168, PCRAz), intentional demolition of property (Art. 93 para. 9 (2), PCRAz) and official falsification (Art. 172, PCRAz).

Although the prisoner has been indicted for both common law and political offenses, there is strong evidence to the effect that the prosecution and the trial were politically motivated. The events allegedly connected with the accusation of high treason (apparently converted in the conviction into "forced appropriation of power") merely consist of the prisoner contacting other persons by telephone or by other conversations while staying in Turkey. No material result of this allegedly planned *coup d'état* is referred to in the judgment. Typically, the count under Art. 220, PCRAz (the illegal possession of arms) - though included in the indictment - has not been substantiated nor is it mentioned as an item in the paragraph which refers to the prisoner's sentence.

Moreover, the sentence itself, life imprisonment, is clearly excessive. In addition to this it should be noted that the prisoner has been indicted for high treason but that in the Azerbaijan authorities' request to INTERPOL for his arrest leading up to his extradition by Turkey only non-political crimes were listed. This casts doubt as to whether the principle of speciality was respected. The detention of the prisoner is therefore unlawful and is in violation of the ECHR.

Furthermore, it is alleged that family members were persecuted even before Mr. EFENDIYEV's arrest; *inter alia* one brother was arrested; his two children - a son and a daughter - have obtained political asylum in the USA.

Hence,

the experts conclude that Mr. Natig Islam oglu EFENDIYEV is to be regarded as a political prisoner.

**Case No. 8 : Adil Khanbaba HADJIYEV****1. Personal data:**

Adil Khanbaba HADJIYEV. Born in 1932, former member of Parliament (1990-1995), former advisor to President A. Mutallibov (1991-1992).

**2. Date of arrest:**

Mr. HADJIYEV was arrested - despite parliamentary immunity as a former MP - on 4 February 1996 in Russia, and extradited to Azerbaijan on 14 February 1996. The Parliament provided the authorisation for his arrest on 23 February 1996 (19 days after he was arrested).

**3. Legal status of the prisoner:**

Mr. HADJIYEV was first detained in a Pre-trial Detention Centre of the Baku Police Department, then in a prison hospital. On 2 September 2000, he was transferred to the Gobustan strict regime Prison.

**4. Offences for which the person has been convicted:**

Mr. HADJIYEV was accused of attempting a “coup d’Etat” in March 1995. He was also accused of involvement in alleged criminal activities attributed to Mr. Mutallibov (former President and leader of the Communist Party) and two Turkish citizens.

He has been convicted for:

- High treason (Art. 17 and 57, PCRAz);
- Use of armed forces against the people of Azerbaijan or constitutional organs of the Republic of Azerbaijan (Art. 57-1 part 2, PCRAz);
- Illegal possession of weapons (Art. 220 part 1, PCRAz).

**5. Length of the sentence:**

Mr. HADJIYEV was sentenced to 14 years’ imprisonment (pardon dated 19 May 2000 reduced the unserved part of his sentence to half).

**6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- Mr. HADJIYEV was accused of having meetings with the ex-President A. Mutallibov and E. Amiraslanov, Commander of the Riots’ Police regiment (OPON): they allegedly plotted and attempted to overthrow the government of Azerbaijan and to create an unconstitutional “State Council”.
- Procedural violations relating to Mr. HADJIYEV’s arrest in Russia and his extradition. The extradition took place when he had parliamentary immunity; its suspension

occurred 20 days after his arrest in Russia and 10 days after his extradition to Azerbaijan. Initially, he was accused of stealing weapons. However, after extradition, he has also been accused of high treason.

## **7. Proceedings**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAz, or at least with relevant extracts therefrom.

In a letter dated 18 April 2001, the Azerbaijan authorities were requested to submit, by the end of April 2001, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also reminded about the request to provide the experts with an English-language version of the PCRAz, or at least relevant extracts from it, by the end of April 2001.

On 9 May 2001, the authorities provided extracts from the PCRAz and a list of indictments concerning the cases submitted to them for comments.

On 19 June 2001, the experts received an English-language version of a judgment of this case by “The Full Court on Criminal Cases of First Grade of the Supreme Court of the Republic of Azerbaijan”, dated 5 September 1996.

## **8. Experts’ opinion:**

The experts have received only an extract of the judgment from the Azerbaijan authorities. From this information it appears that the prisoner was indicted and sentenced for (complicity in) high treason (Arts. 17 and 57, PCRAz): an attempted *coup d'état* and for illegal possession of arms (Art. 220 para.1, PCRAz): one pistol and four cartridges.

The experts note that these offences have a principally political character, that the prisoner has not been involved in violence and that he had no previous criminal record. He was sentenced to 14 years of imprisonment. The sentence has been reduced to approximately nine years by a pardon dated 19 May 2000. The summary of the judgment provided by the authorities states that the date of the sentence commenced on 24 February 1996 and will expire 6 April 2005. The sentence appears to be rather harsh.

It is alleged that the arrest and ensuing extradition of the prisoner were irregular. The prisoner was apprehended on 4 February 1996 during a stay in Russia for medical reasons and extradited on 13 February. It was only on 23 February that the Parliament gave the necessary authorisation to suspend Mr. HADJIYEV's immunity as a former member of Parliament. In addition to this, it should be noted that the prisoner has been indicted for high treason while the request for extradition listed only non-political crimes. This is contrary to the internationally recognised principle of speciality prevailing in matters of extradition and renders the extradition illegal. The detention of the prisoner is therefore unlawful and is in violation of the ECHR.

Hence,

the experts conclude that Mr. Adil Khanbaba HADJIYEV is to be regarded as a political prisoner.

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**Additional remarks:**

Mr. HADJIYEV suffers from serious diabetes and from a cardiovascular disease. His gall bladder has been removed. In the correctional labour colony, he has been “classified” as a 2<sup>nd</sup> category invalid. He lives, so it is alleged, with the permanent fear that his insulin injections might be refused. Moreover, he is to serve his sentence until 2005, the year in which he will reach the age of 73.

**Case No. 9 : Siyavush Firudin oglu MUSTAFAYEV****1. Personal data:**

Siyavush Firudin oglu MUSTAFAYEV. Born in 1966, First Deputy Minister for Internal Affairs of the Autonomous Republic of Nakhichevan, one of the leaders of the Popular Front of Azerbaijan in this region.

**2. Date of arrest:**

Mr. MUSTAFAYEV was arrested on 18 November 1993.

**3. Legal status of the prisoner:**

Mr. MUSTAFAYEV was detained in Gobustan Prison until September 1999. He was then transferred to the Colony No. 9. On 10 September 2000, he returned to Gobustan Prison, where he is apparently now serving his sentence.

**4. Offences for which the person has been convicted:**

- Mr. MUSTAFAYEV was accused of organising mass riots during a rally in Nakhichevan on 29 October 1993. He was convicted on 25 May 1994 for mass riots with assault on public institutions (Art. 72, PCRAz).

- He was convicted and sentenced a second time on 4 May 1995 for actively taking part in the formation of armed groups not stipulated by the legislation, for providing these groups with ammunition and combat material, for the organising and participation in an armed assault and capture of an administrative building of the Ministry of Internal Affairs and administrative building of the Television and Broadcasting Committee (Art. 70-2, part 2, PCRAz).

- He was convicted and sentenced a third time for bribing a prison guard (50 thousand manats = 13 \$) on 16 June 1998 (bribery: Art. 171, part 1, PCRAz).

- In September 2000, he was again sanctioned for violations of internal rules of Colony No. 9.

**5. Length of the sentence:**

Mr. MUSTAFAYEV was sentenced the first time to four years' imprisonment, the second time, to eight years' imprisonment, the third time, to three and a half years' imprisonment and the fourth time to three years.

**6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- The penalties inflicted upon Mr. MUSTAFAYEV seem to be out of proportion of the crimes he has allegedly committed.

- The convictions may suggest that his prosecution was discriminatory.
- He was a prominent opposition leader in the Autonomous Republic of Nakhichevan. The Minister of Interior of the Autonomous Republic of Nakhichevan, Mr. Usubov, was appointed Minister of Interior of Azerbaijan, for, so it is alleged, successfully combatting the opposition in the Autonomous Republic of Nakhichevan.

## **7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAZ, or at least with relevant extracts therefrom.

In a letter dated 18 April 2001, the Azerbaijan authorities were requested to submit, by the end of April 2001, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also reminded about the request to provide the experts with an English-language version of the PCRAZ, or at least relevant extracts from it, by the end of April 2001.

On 9 May 2001, the authorities provided extracts from the PCRAZ and a list of indictments concerning the cases submitted to them for comments.

On 7 and 14 June 2001, the experts received English-language versions of the judgments of the “Judicial Board of the First Degree of Jurisdiction on Criminal Cases of the Supreme Court of Azerbaijan Republic”, dated 25 May 1994 and 4 May 1995, as well as a judgment of the “Court of the Garadagh District”, dated 16 June 1998.

## **8. Experts’ opinion:**

Two of the four judgments passed against the prisoner have been submitted to the experts : the judgment of the Supreme Court of 4 May 1995 and the judgment of the “Court of the Garadagh District” of 16 June 1998.

Mr. MUSTAFAYEV was appointed Minister of the Interior of the Nakhichevan Autonomous Republic by the Minister of Internal Affairs of the Republic of Azerbaijan. This was allegedly illegal – the judgment refers to the fact that Mr. MUSTAFAYEV had no higher legal education and no political experience. No legal arguments for the illegality of the appointment are provided in the judgment. Apparently, the Minister (to be) replaced and the population were not pleased with this decision and refused to accept its implementation. Thereupon, a “Defence Committee” was set-up under the leadership of Mr. Gurbanov, a co-accused. Mr. MUSTAFAYEV then assumed the post of Minister with the assistance of armed units of the said “Defence Committee”.

The prisoner’s deeds are of an essentially political character. Although armed forces were created and engaged, there seems to have been very little violence and the judgment does not establish a clear link between such violence and the prisoner’s personal behaviour. What raises serious doubts is Mr. MUSTAFAYEV’s allegedly illegal nomination to the post of Minister in Nakhichevan. It seems, in fact, that the nomination was not approved by Ali Majlis, the Parliament of the Nakhichevan Autonomous Republic in accordance with Article 139 section 5, of the Constitution of the Azerbaijan Republic. Still, there certainly existed



acute political tension at the time of the events. This is not taken into account in the judgment. The Court appears to be rather biased in this respect; it does not admit the slightest doubt about the illegality of the nomination and about the action of the defendants. It also does not sufficiently take into account the fact that, although the defendant had acted together with armed groups, the level of force actually used had been negligible.

Furthermore, there was a public protest in front of the Ministry and the TV station which was quelled by armoured cars under the command of Mr. MUSTAFAYEV. During the riots a man was held for some time by a dog. But no bloodshed is mentioned in the judgment with the exception of a broken tooth and a superficial wound.

As concerns the trial, the judgment specifies: “The defendants S. Mustafayev and ... being questioned at the beginning of the trial, have refused from testimonies *without any grounded reasons*” (emphasis added). According to information provided by the Supreme Court, this means that he refused to testify. However, at a later stage of the trial, the prisoner did make a statement. Nevertheless, it appears that the right to silence was not respected throughout the proceedings, which raises doubts about the fairness of the proceedings. A defendant does not have to give (or even have) any reasons for refusing to answer any questions put to him. (See ECtHR, *Funke v. France*, judgment of 25 February 1993, Series A no. 256-A).

In addition, the defendants had apparently made confessions during the investigation and subsequently withdrew them during the public trial. The Court observed in this respect, that the defendants “understood the grave responsibility of their criminal deeds” - a rather suspicious interpretation.

In fixing the sentence, the Court vaguely refers to attenuating circumstances which, however, are not made quite clear. It appears that the sentence of eight years replaces the previous sentence of four years. Due to the circumstances of the case, the sentence of eight years is disproportionate.

Hence,

the experts conclude that Mr. Siyavush Firudin oglu MUSTAFAYEV is to be regarded as a political prisoner.

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**Additional remark:**

Mr. MUSTAFAYEV’s left kidney has been removed and the right one is reported to be in a very bad condition.

**Case No. 10 : Fahmin Ahmedpasha oglu HADJIYEV****1. Personal data:**

Fahmin Ahmedpasha oglu HADJIYEV. Born in 1959, former Commander of Interior Troops of the Ministry for Internal Affairs of the Republic of Azerbaijan (1992-1993).

**2. Date of arrest:**

Mr. HADJIYEV was arrested in 1995.

**3. Legal status of the prisoner:**

In July 1997, Mr. HADJIYEV was transferred from Bayil Prison to the Gobustan strict regime Prison. In September 1999, he was transferred to Colony No. 9 and in September 2000, he was again transferred to the Gobustan strict regime Prison, where he is currently serving his sentence.

**4. Offences for which the person has been convicted:**

Mr. HADJIYEV was reportedly an active participant of the so-called “coup d’Etat” in Ganja (more than 200 persons were arrested). Following the trial, which started in July 1995, the Military Chamber of the Supreme Court convicted and sentenced Mr. HADJIYEV on 7 August 1995 on the basis of following indictments:

- Loss of military weapon (Art. 245 d, PCRAz);
- Abuse of power: by stealing with the use of force, trying to have a person brought before him by force and beating two military persons, (Art. 255 a, PCRAz);
- Misuse of power: by losing a gun taken by force, (Art. 255-1 a, PCRZa);
- Insult and assault (Art. 238, PCRAz);
- Abuse of power causing serious results: shooting from close distance at a military person causing perilous injuries (Art. 255 b, 15 and 95, PCRAz).

During custody, Mr. HADJIYEV was accused, within the context of another penal case, of surrendering the city of Khodjala to Armenian troops. Subsequently, Mr. HADJIYEV was convicted and sentenced additionally, on 26 June 1996, on the accusations of:

- Negligent attitude towards (military) service which led to grave consequences (omitting to save the population of Khodjaly where 335 persons were killed and 421 wounded by Armenian troops (Art. 255 c, PCRAz).

**5. Length of the sentence:**

On 7 August 1995, following the first trial, Mr. HADJIYEV was sentenced to 10 years’ imprisonment; following the second trial, on 26 June 1996, he was sentenced to 15 years’ imprisonment. The sentences run concurrently (Art. 38, PCRAz).

## **6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- The prosecution in Mr. HADJIYEV's case had an allegedly political motivation on the part of Azerbaijan officials.
- He was accused, *inter alia*, of attempted murder of a soldier who refused to go into combat during the conflict with Armenia. The court did not uphold the accusation of murder.
- While in detention pending trial, he was reportedly ill-treated. In custody following a trial, he was punished 11 times for infringements of internal prison rules and transferred to the strict regime Gobustan Prison.
- The surrendering of the city of Khodjala is described as a political event, which resulted in the dismissal of President Mutallibov.

## **7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAZ, or at least with relevant extracts therefrom.

In a letter dated 18 April 2001, the Azerbaijan authorities were requested to submit, by the end of April 2001, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also reminded about the request to provide the experts with an English-language version of the PCRAZ, or at least relevant extracts from it, by the end of April 2001.

The experts met Mr. HADJIYEV in the presence of his lawyer, Mr. Iaver HÜSEYN, at Gobustan Prison on 8 May 2001.

On 9 May 2001, in Baku, the experts received a summary, in English, of the judgment of the Supreme Court of the Republic of Azerbaijan of 26 June 1996, extracts from the PCRAZ and a list of indictments concerning the cases submitted to them for comments.

On 31 May 2001, the experts received an English-language version of the undated judgment of the "Military Board at the Supreme Court of Azerbaijan Republic on Instance" and an English-language version of the judgment of the "Military Board at the Supreme Court of Azerbaijan Republic on Instance", dated 26 June 1996.

## **8. Experts' opinion:**

In 1996 Mr. HADJIYEV was convicted for a number of offences, many of which were connected to violence. In particular, he shot from a very short distance at a soldier, apparently in the mistaken belief that the soldier had refused to serve on the front. This he did principally in order to demonstrate his authority and to intimidate many other soldiers present at the time of the incident. This offence has no political character. The sentence of 10 years does not appear to be excessive – the injuries caused were very serious.

Nor are there any indications that the Court proceedings were unfair. It is true that he was tried by the “Military Board at the Supreme Court” which was composed of military officers. However, this is not as such incompatible with the ECHR (cf., e.g., the Commission’s decision on admissibility of 11 July 1979 in the case of *Sutter v. Switzerland*, Application No. 8209/78; the finding in ECtHR, *Findlay v. UK*, judgment of 25 February 1997, Reports 1997 - I 263 at 281 ss., according to which the court martial in this case was not in conformity with Article 6 ECHR, does not contradict the Commission’s finding as it is based on the special role of the “convening officer”; no similar features are alleged in the present case). The allegation that Mr. HADJIYEV was tortured is not in any way substantiated.

The conviction of 1997 concerns a purely military offence. The prisoner was convicted on the grounds that he had omitted to take the necessary action to defend the town of Khodjaly and save its population. Again, no political motives can be detected in this criminal law case. In view of the very serious consequences of the offence for which the prisoner was convicted, the sentence of 15 years imprisonment cannot be regarded as excessive. There are no indications which would permit the conclusion that the proceedings against him were clearly unfair.

Hence,

the experts conclude that Mr. Fahmin Ahmedpasha oglu HADJIYEV is not to be regarded as a political prisoner.

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#### **Additional information**

Mr. HADJIYEV started a hunger strike on 24 April 2001. He requested :

- the end of the violation of his rights
- a re-trial with the participation of international observers
- to meet his lawyer, local human rights activists and journalists.

He put an end to his hunger strike on 4 May 2001.

**Case No. 11 : Habib ABUYEV****1. Personal data:**

Habib ABUYEV. Born in 1962, Resident of the region of Gusar, of Lezghi origin, alleged member of the Lezghin National Movement “Sadval”.

**2. Date of arrest:**

Mr. ABUYEV was arrested in 1997.

**3. Legal status of the prisoner:**

Mr. ABUYEV is serving his sentence. No information on the place of detention has been provided despite several requests.

**4. Offences for which the person has been convicted:**

Mr. ABUYEV was accused of trying to institute the “Republic of Lezghistan” on the territories of three regions of Azerbaijan. In particular, he was accused of attempting to take by force a border post on the Russian-Azeri border (from the Daghestan area side). He was a member of a group of eight persons found guilty of the murder of a lieutenant and wounding two other soldiers.

He has been convicted for:

- Gangsterism (Art. 70, PCRAz);
- Premeditated murder (Art. 94, paras. 3 and 4, PCRAz).

**5. Length of the sentence:**

Mr. ABUYEV was sentenced, on 6 April 1998, to 13 years’ imprisonment.

**6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- The crimes were allegedly politically motivated – nationalistic and separatist movement to create the “Republic of Lezghistan”.
- Allegedly, there was a much higher level of secrecy surrounding this case, than for other similar cases. Information concerning this case was only published in the media before the trial.
- Mr. ABUYEV is an alleged member of a separatist organisation considered as criminal; this organisation is said to be strongly persecuted.
- No independent media and human rights activists were able to observe this case; this has led to certain doubts as to the fairness of the investigation and of the court proceedings.

## **7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAz, or at least with relevant extracts therefrom.

In a letter dated 18 April 2001, the Azerbaijan authorities were requested to submit, by the end of April 2001, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also reminded about the request to provide the experts with an English-language version of the PCRAz, or at least with relevant extracts from it, by the end of April 2001.

On 9 May 2001, the authorities provided extracts from the PCRAz and a list of indictments concerning the cases submitted to them for comments.

On 2 June 2001, the experts received an English-language version of the judgment of the "Judicial Board of the First Degree of Jurisdiction (Instance) on Criminal Cases of the Supreme Court of Azerbaijan Republic", dated 6 April 1998.

## **8. Experts' opinion:**

The judgment of the "Judicial Board of the First Degree of Jurisdiction (Instance) on Criminal Cases of the Supreme Court" indicates that Mr. ABUYEV was born in Lezghin. He had been indicted for taking part in an attack by eight persons at a border post in which automatic weapons and grenades had been used. In this incident one person was killed and two others were wounded. The attack was an action of "Sadval", a Lezghin nationalist and separatist organisation. Mr. ABUYEV was convicted of gangsterism (Art. 70, PCRAz) and premeditated murder (Art. 94, PCRAz) and sentenced to 13 years and to forfeiture of his estate.

While the activities of "Sandval" could be qualified as "political", it is very doubtful whether the assault could be regarded as a political offence; it is hard to see how it could reasonably serve a political cause. Neither can it be inferred from the judgment that the sentence was imposed in a discriminatory manner.

As far as the proportionality of the sanction is concerned, the experts note that the prisoner had described his role as a subordinate one. The court, however, came to a different conclusion. Still, it found that the accused had not acted "with special cruelty or by means dangerous for the lives of several persons" in the sense of Art. 94 par. 6, PCRAz. This shows that it was prepared to hear arguments from the defence. Although the sentence might appear to be high - 13 years imprisonment whereas the maximum sentence under Art. 94, PCRAz is 15 years - it cannot be said to be clearly excessive.

Finally, there are no elements which would justify the conclusion that the proceedings were clearly unfair.

Hence,

The experts conclude that Mr. Habib ABUYEV is not to be regarded as a political prisoner.

**Case No. 12 : Avaz RAMAZANOV****1. Personal data:**

Avaz RAMAZANOV. Born in 1966, Commander of the so-called “Presidential Guard of the Talysh-Mugan Autonomous Republic (TMAR)”.

**2. Date of arrest:**

Mr. RAMAZANOV was arrested in 1993.

**3. Legal status of the prisoner:**

Mr. RAMAZANOV is currently serving his sentence in Gobustan Prison.

**4. Offences for which the person has been convicted:**

Mr. RAMAZANOV was sentenced three times: on 23 April 1997 for participation in “TMAR”, on 1 June 1998 for alleged preparation of terrorist acts and on March 2000 for participation in a riot in Gobustan Prison that took place in January 1999.

Mr. RAMAZANOV was apparently convicted in 1998 for the attempt to kill the “supreme chiefs” of the Republic of Azerbaijan.

He was convicted for:

- High treason (Art. 57, part 1, PCRAz);
- Attempted terrorist acts (Art. 15 and 59, part 1, PCRAz);
- Misuse of power (Art. 244 “a”, PCRAz);
- Use of violence against a superior (Art. 237 “a”, PCRAz);
- Forcing a superior to violate his official duties (Art. 235 “b”, PCRAz);
- Hooliganism (Art. 207, part 3, PCRAz);
- Resistance to a police officer (Art. 189-1, part 2, PCRAz);
- Organisation of acts resulting in violation of public order (Art. 188-3, PCRAz);
- Intentional illegal arrest (Art. 176, PCRAz);
- Violation of inviolability of the home of a citizen (Art. 132, PCRAz);
- Illegal deprivation of liberty (Art. 120, PCRAz);
- Formation of armed units (Art. 70-2, part 3, PCRAz);
- Illegal purchase and use of official documents (Art. 194, part 1, PCRAz).

**5. Length of the sentence:**

Mr. RAMAZANOV was sentenced on 23 April 1997, to 14 years’ imprisonment, on 1 June 1998, to 14 years’, seven months and 18 days imprisonment and on 29 March 2000 to 15 years (Total : 15 years).

## **6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- Mr. RAMAZANOV's prosecution is linked, so it is alleged, with his active role in the establishment of the so-called "Talysh-Mugan Autonomous Republic", where he had been given the function of "Chief of the Presidential Guard".
- He has allegedly been tortured during the investigation of his case.
- According to the Talysh Human Rights Project, Mr. RAMAZANOV is currently ill-treated in Gobustan Prison and his health is a source of concern.
- In 2000, following the riot in Gobustan Prison, he was accused of high treason for the second time and is therefore, so it is alleged, considered as an "especially dangerous recidivist".

## **7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAz, or at least with relevant extracts therefrom.

In a letter dated 18 April 2001, the Azerbaijan authorities were requested to submit, by the end of April 2001, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also reminded about the request to provide an English-language version of the PCRAz, or at least relevant extracts from it, by the end of April 2001.

On 9 May 2001, the authorities provided extracts from the PCRAz and a list of indictments concerning the cases submitted to them for comments.

On 28 June 2001, the experts received an English-language version of the judgment of the Military Board of the Supreme Court of the Republic of Azerbaijan, dated 23 April 1997, as well as an English-language version of the judgment of the "First Grade Board of Court on Criminal Cases of Azerbaijan Republic's Supreme Court", dated 29 March 2000. However, they were submitted 13 days after the deadline of 15 June 2001.

## **8. Experts' opinion:**

As the Azerbaijan authorities submitted the English-language version of the judgments after the deadline of 15 June 2001, this information could not be taken into account. Consequently, due to the lack of information, this case was struck off the list of cases examined.



**Case No. 13 : Ajdar Mammed oglu QURBANOV****1. Personal data:**

Ajdar Mammed oglu QURBANOV. Born in 1962, captain of Military Unit 740; supporter of the so-called “Talysh-Mugan Autonomous Republic”.

**2. Date of arrest:**

Mr. QURBANOV was arrested in 1993.

**3. Legal status of the prisoner:**

According to the authorities of Azerbaijan, Mr. QURBANOV was released by virtue of Article 42, PCRAz: See Point 8 below.

**4. Offences for which the person has been convicted:**

- Creation of illegal military formations (Art.70-2, part 2, PCRAz);
- Abuse of power (Art. 255, part A, PCRAz);
- Usurpation of function or power (Art. 192, part 2, PCRAz).

**5. Length of the sentence:**

Mr. QURBANOV’s trial started on 6 February 1995. He was sentenced to eight years of imprisonment (end of the sentence on 25 August 2001) and was released.

**6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- Accusations against Mr. QURBANOV were allegedly politically motivated – suppression of nationalistic and separatist movement “Talysh-Mugan Autonomous Republic (TMAR)”.
- The Committee for the Protection of Rights of defendants in the “TMAR case” claimed that all arrested people were tortured.
- The official media coverage of the case was, so it is alleged, openly biased.

**7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAz, or at least with relevant extracts therefrom.

In a letter dated 18 April 2001, the Azerbaijan authorities were requested to submit, by the end of April 2001, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also reminded about the request to

provide the experts with an English-language version of the PCRAz, or at least relevant extracts from it, by the end of April 2001.

On 9 May 2001, in Baku, the experts received a summary, in English, of the judgment of the Supreme Court of the Republic of Azerbaijan of 15 December 1995, extracts from the PCRAz and a list of indictments concerning the cases submitted to them for comments.

On 8 June 2001, the experts were informed that Mr. Qurbanov was released.

#### **8. Experts' opinion:**

On 8 June 2001, the authorities of Azerbaijan informed the experts that "Article 42 of the Criminal Code (to delay the penal execution of a sentence of a military competent person during war period or at war conditions) has been applied in this case. So, A. Qurbanov was released and serves now in one of the military units of National Army".

Hence,

The experts conclude that Mr. Ajdar Mammed oglu QURBANOV is not to be regarded as a (political) prisoner.

**Case No. 14 : Nariman Shamo oglu IMRANOV****1. Personal data:**

Nariman Shamo oglu IMRANOV. Born in 1944, General-Major, former Minister of State Security.

**2. Date of arrest:**

Mr. IMRANOV was arrested in 1994.

**3. Legal status of the prisoner:**

Mr. IMRANOV is currently serving his sentence in Gobustan Prison.

**4. Offences for which the person has been convicted:**

Mr. IMRANOV reportedly aided a group of four “State criminals” to escape from a pre-trial detention centre. This group included, in particular, Mr. Gumbatov, ex-Defence-Minister and “President of Talysh-Mugan Autonomous Republic” (Case No. 2) and Mr. Gaziyeu, ex-Deputy Defence Minister (Case No. 3).

Mr. IMRANOV has been convicted for :

- High treason (Art. 57, PCRAz);
- Exceeding of authority in time of war (Art. 255, para. “v”, PCRAz).

**5. Length of the sentence:**

Mr. IMRANOV was sentenced to death, commuted to life imprisonment.

**6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- The sentence may be considered to be disproportionate.
- When the death penalty was abolished, Mr. IMRANOV remained, so it is alleged, illegally in the former death row 5<sup>th</sup> wing of Bayil Prison until 5 January 2001.
- Some officers who participated in the “escape” were recently liberated while the sentence of Mr. IMRANOV, former member of Government, was not varied.
- According to a number of prisoners, the so-called “escape” was “organised” by the authorities, who later advertised it as a part of the preparation of a *coup d’Etat*.

**7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAz, or at least with relevant extracts therefrom.

In a letter dated 18 April 2001, the Azerbaijan authorities were requested to submit, by the end of April 2001, any comments that they may have with regard to the provisional case which was attached to the letter. They were also reminded about the request to provide the experts with an English-language version of the PCRAz, or at least relevant extracts from it, by the end of April 2001.

The experts met Mr. IMRANOV at Gobustan Prison on 8 May 2001.

On 7 May 2001, the experts received an English-language version of the judgment of the "Military Colloque [of the Supreme Court] of Azerbaijan Republic", dated 12 February 1996.

On 9 May 2001, in Baku, the experts also received a summary, in English of this judgment, extracts from the PCRAz and a list of indictments concerning the cases submitted to them for comments.

### **8. Experts' opinion:**

Mr. IMRANOV - then Minister of Defense - was involved in the incident concerning the minority of the Talysh-Mugan region of Azerbaijan and in the allegedly attempted separation of that region from the Republic.

The prisoner has been convicted for high treason (Art. 57, PCRAz) and abuse of power and non-use of power (Art. 255, PCRAz). The indictment, however, refers to *inter alia* organizing the escape from prison of Mr. Gumbatov and other persons accused of grave crimes, and to providing prisoners with objects forbidden in prison. These and other counts of the indictment were expressly dismissed by the court.

The experts note that the prisoner was as a Minister - and hence tried in his capacity as a civilian - by the Supreme Court which included two judges who were military men. This brings to mind the judgment of the ECtHR of 9 June 1998, *Inçal v. Turkey* (Reports 1998 - IV 1547). In this case the Court had to assess whether the Turkish National Security Court could be regarded as independent and impartial despite the fact that a military judge was sitting on that court. The ECtHR clearly came to a negative result:

"Firstly, they are servicemen who still belong to the army, which in turn takes its orders from the executive. Secondly, they remain subject to military discipline and assessment reports are compiled on them by the army for that purpose" (extract from paragraph 68).

Consequently, the Court cannot be regarded as an independent and impartial tribunal in the sense of Article 6 (1) ECHR.

In the case *Inçal v. Turkey*, the ECtHR also came to the conclusion that, once it had determined the lack of independence and impartiality, it was not necessary to examine other complaints regarding the fairness of proceedings.

Furthermore, during his meeting with the experts, the prisoner stated *inter alia*:

- that during 43 days he had been subjected to torture consisting of the soles of his feet being beaten and electro shocks;
- also connected to the prisoner's arrest was the detention of his brother for one day; several of his relatives had been dismissed from their employment.

The experts also note that the prisoner has not been indicted nor convicted for any act of violence. Although he is accused of using force in the sense that he had military personnel under his command, his action was only marginally violent. He has not been held responsible for the shots that were fired. Apparently a number of officials of the Lerik region were deprived of their liberty, but only for a short time i.e. two and a half hours. Furthermore, the counts of his indictment were either of a principally political nature or related to alleged aiding and abetting of persons considered as 'political personalities'.

In view of these facts capital punishment, even if commuted to life imprisonment, appears to be clearly excessive.

Hence,

the experts conclude that Mr. Nariman Shamo oglu IMRANOV is to be regarded as a political prisoner.

**Case No. 15 : Arif Nazir oglu KAZYMOV****1. Personal data:**

Arif Nazir oglu KAZYMOV. Born in 1974, member of the Police Regiment for Special Purposes (Riots' Police – OPON), member of the Democratic Union of Azeri Youth.

**2. Date of arrest:**

Mr. KAZYMOV was arrested on 10 December 1996 in Baku.

**3. Legal status of the prisoner:**

Mr. KAZYMOV is currently serving his sentence in the Bayil Prison.

**4. Offences for which the person has been convicted:**

Mr. KAZYMOV was allegedly involved in the uprising of the Riot Police in 1995 and was then accused within the framework of the “case of 30 persons” (case of E. Amiraslanov and others) for terrorist activities. Additionally, Mr. KAZYMOV’s indictment included the attempts on the life of a group of officials from the region of Kazakh.

He has been convicted for High treason (Art. 57, PCRAz).

**5. Length of the sentence:**

Mr. KAZYMOV was sentenced to capital punishment, commuted to life imprisonment.

**6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- Mr. KAZYMOV was allegedly mistreated and tortured at the Directorate for Organised Crime of the Ministry for Internal Affairs. He was left, so it is alleged, for a certain time without any medical assistance.
- Mr. KAZYMOV’s relatives were, allegedly, persecuted.
- When the death penalty was abolished, he illegally remained, so it is alleged, in the former death row 5<sup>th</sup> wing of Bayil Prison until 5 January 2001.
- He was allegedly mistreated in Bayil Prison.

**7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAz, or at least with relevant extracts therefrom.

In a letter dated 18 April 2001, the Azerbaijan authorities were requested to submit, by the end of April 2001, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also reminded about the request to provide the experts with an English-language version of the PCRAZ, or at least relevant extracts from it, by the end of April 2001.

On 7 May 2001, in Baku, the experts received an English-language version of the judgment of the "Supreme Court's First Rank Court Bar on Criminal Cases of the Azerbaijan Republic", dated 28 November 1997.

On 9 May 2001, the experts also received a summary, in English, of the judgment of the Supreme Court of the Republic of Azerbaijan dated 12 February 1996, extracts from the PCRAZ and a list of indictments concerning the cases submitted to them for comments.

### **8. Experts' opinion:**

Mr. KAZYMOV was sentenced in a large trial concerning 30 defendants, all accused of participating in the "1995 events". The experts are in possession of the judgment in this case. It has been translated into English, but the quality of the translation is very bad, and often it is hardly understandable. It is also difficult to find a structure in this judgment.

It appears that Mr. KAZYMOV was involved in violent activities. The sentence of 15 years does not appear to be so excessive that this element could lead to his being regarded as a political prisoner.

However, there are serious doubts whether the proceedings against the prisoner can be regarded as fair.

There are allegations that the prisoner has been tortured during the investigation. No evidence of this allegation has been presented. In several places, the judgment refers however to confessions made during the investigation and later retracted. This might be explained by the fact that confessions were first made under physical pressure.

There are passages in the judgment which cast doubt as to the respect of the presumption of innocence. Unacceptable language is used, such as "... did another terrible crime".

There is, however, one specific and clearly established element which raises even more serious doubts about the fairness of the proceedings. This concerns the independence and impartiality of the court. In fact, the competent chamber of the Supreme Court was presided over by Mr. M.Z. Ibayev, a member of the Supreme Court; however, as "peoples' assessors" there sat "Colonel Lieutenant Mr. Y. Memmadov" and "Major R. Guliyev". This brings to mind the judgment of the ECtHR of 9 June 1998, *Inçal v. Turkey*, (Reports 1998 - IV 1547). In this case the Court had to assess whether the Turkish National Security Court could be regarded as independent and impartial despite the fact that a military judge was sitting on that court. The ECtHR clearly came to a negative result:

"Firstly, they are servicemen who still belong to the army, which in turn takes its orders from the executive. Secondly, they remain subject to military discipline and assessment reports are compiled on them by the army for that purpose" (extract from paragraph 68)

Consequently, the court cannot be regarded as an independent and impartial tribunal in the sense of Article 6 (1) ECHR.

In the case *Inçal v. Turkey*, the ECtHR also came to the conclusion that, once it had determined the lack of independence and impartiality, it was not necessary to examine other complaints regarding the fairness of proceedings.

Hence,

the experts conclude that Mr. Arif Nazir oglu KAZYMOV is to be regarded as a political prisoner.



**Case No. 16 : Qalib Jamal oglu ABDULLAYEV****1. Personal data:**

Qalib Jamal oglu ABDULLAYEV. Born in 1963, Commander of Battalion of the Riots' Police (OPON).

**2. Date of arrest:**

Mr. ABDULLAYEV was arrested on 13 March 1996 in Ukraine and extradited to Azerbaijan.

**3. Legal status of the prisoner:**

Mr. ABDULLAYEV is currently serving his sentence. No information on the place of detention has been provided despite several requests.

**4. Offences for which the person has been convicted:**

Mr. ABDULLAYEV was reportedly accused of participation in a "coup d'Etat" in March 1995.

He was convicted for:

- High treason (Art. 57, PCRAz);
- Illegal formation of armed units or groupings (Art. 70-2, PCRAZ);
- Illegal possession of weapons (Art. 220, PCRAz).

**5. Length of the sentence:**

Mr. ABDULLAYEV was sentenced to 13 years' imprisonment.

**6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- Mr. ABDULLAYEV was informed about the reasons of his arrest in an arrest warrant dated 15 March 1995 (he was arrested on 13 March 1995).
- The extradition request was allegedly dealt within a few days despite the fact that in two articles of the bill of accusation, the death penalty could have been imposed.
- Mr. ABDULLAYEV was, so it is alleged, subjected to threats, insults, beatings and torture while in detention.
- His state of health has reportedly worsened due to the aggravation of war wounds subsequent to injuries allegedly inflicted upon him in prison; he is allegedly in need of medical help.
- His lawyer was not allowed to meet with him and, therefore, his services were declined by the accused.

## **7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAz, or at least with relevant extracts therefrom.

In a letter dated 18 April 2001, the Azerbaijan authorities were requested to submit, by the end of April 2001, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also reminded about the request to provide the experts with an English-language version of the PCRAz, or at least relevant extracts from it, by the end of April 2001.

On 9 May 2001, the authorities provided extracts from the PCRAz and a list of indictments concerning the cases submitted to them for comments.

On 14 June 2001, the experts received an English-language version of the Judgment of the “Azerbaijan Republic Supreme Court’s first ranked Military Chamber of Judges”, dated 1997.

## **8. Experts’ opinion:**

Mr. ABDULAYEV’s case belongs to the category of those accused and sentenced for organising of and participating in military coups, mutinies and uprisings.

The experts are in possession of a translation of the judgment of the “Azerbaijan Republic Supreme Court’s first ranked Military Chamber of Judges”, dated 1997.

The experts note that the present case raises doubts as to the fairness of the proceedings. It appears that Mr. ABDULAYEV refused the services of his lawyer because he was not allowed to meet with him. It might be argued that the prisoner thereby waived his right to be assisted by counsel. However, the experts accept that an effective defense activity is not possible without free and confidential contacts between the accused and his lawyer. The prisoner cannot therefore be regarded as having forfeited his rights under Art. 6 (3) (c) ECHR. As a consequence, the proceedings against him appear to have been clearly unfair.

Hence,

the experts conclude that Mr. Qalib Jamal oglu ABDULLAYEV is to be regarded as a political prisoner.

**Case No. 17 : Suret Davud oglu GUSEYNOV (Suret HUSEYNOV)****1. Personal data:**

Suret Davud oglu GUSEYNOV. Born in 1954, Colonel in the National Army, former Prime-Minister.

**2. Date of arrest:**

Mr. GUSEYNOV was arrested on 21 March 1997 in Moscow, then extradited on 27 March 1997 to Azerbaijan.

**3. Legal status of the prisoner:**

On 5 January 2001, Mr. GUSEYNOV was transferred from Bayil Prison to the Gobustan strict regime Prison, where he is currently serving his sentence.

**4. Offences for which the person has been convicted:**

Mr. GUSEYNOV's supporters reportedly tried a "coup d'Etat" in Ganja, as well as in Mingechivir, Yevlax and Dashkesan, in October 1994. The number of persons arrested in the context of these events exceeded 200.

The indictment included:

- High treason and preparation to use armed forces against the people of Azerbaijan and constitutional bodies (Art. 57, part 1, 57-1, parts 1, 2, Art. 15, 57-1, part 1, PCRAz);
- Preparation for a terrorist act (Art. 15 and 59, part 1, PCRAz);
- Preparation of premeditated murder (Art. 15 and 94, parts 3, 4, 6, 7, PCRAz);
- Complicity in robbery (Art. 17 and 145, part 2, paras. 1, 2, 6, PCRAz);
- Premeditated group assault with the purpose of a large-scale misappropriation of state property (Art. 88-1, PCRAz);
- Illegal possession of weapons, stealing of weapons (Art. 220, parts 1 and 2 and Art. 220-1, part 3, PCRAz);
- Illegal formation of armed units or groupings (Art. 70-2, parts 1, 2, 3 and Art. 15, 70-2, part 2, PCRAz);
- Illegal purchase, detention and selling of drugs (Art. 226, part 2, PCRAz);
- Creation of illegal places for the consumption of drugs, production of drugs (Art. 226-3 and 226-4, part 2, PCRAz);
- Exceeding of competences in time of war (Art. 17 and 255, part "b", "v", PCRAz);
- Illegal deprivation of liberty (Art. 120, part 2, PCRAz);
- Preparation for and attempt of sabotage (Art. 15 and 61, PCRAz);
- Theft, fraud, damage of and intentional destruction of property (Art. 93-3, part 4, 93-7, part 4, Art. 15, 93-9, part 3, PCRAz);
- Complicity in blackmail with use of threat (Art. 17 and 146, PCRAz);
- Abuse of power (Art. 167, parts 1, 2, PCRAz);
- Official falsification (Art. 172, PCRAz);
- Complicity in escape from a place of detention (Art. 17 and 185, part 2, PCRAz);
- Assault of the President of the Republic of Azerbaijan (Art. 188, 6 part 2, PCRAz);

- Stealing and elimination of official documents, stamps, forms (Art. 193, part 2, PCRAz);
- Illegal use of official documents (Art. 194, part 2, PCRAz);

### **5. Length of the sentence:**

Mr. GUSEYNOV was sentenced to life imprisonment.

### **6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- When Mr. GUSEYNOV was in Russia, the extradition request from the Azerbaijan authorities concerned such indictments as misappropriation of property, illegal detention of weapons, creation of illegal military formations. Nevertheless, after his extradition from Russia to Azerbaijan, Mr. GUSEYNOV was accused of a series of more serious crimes, including high treason.
- After his extradition, he was allegedly tortured.
- During his trial, more than 30 persons claimed that their confessions had been extracted from them by the use of torture. These allegations were, so it is alleged, ignored by the court.
- When the death penalty was abolished, Mr. GUSEYNOV remained, so it is alleged, illegally in the former death row 5<sup>th</sup> wing of Bayil Prison until 5 January 2001.
- Many of his relatives were also arrested.

### **7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAz, or at least with relevant extracts therefrom.

In a letter dated 18 April 2001, the Azerbaijan authorities were requested to submit, by the end of April 2001, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also reminded about the request to provide the experts with an English-language version of the PCRAz, or at least extracts from it, by the end of April 2001.

The experts met Mr. GUSEYNOV in the infirmary of Gobustan Prison, on 8 May 2001, in the presence of his lawyer, Mr. Arif Ibrahim oglu Shammedov. Mr. GUSEYNOV was recovering from a heart attack.

On 9 May 2001, in Baku, the experts received a summary, in English, of the judgment of the Supreme Court of the Republic of Azerbaijan of 10 February 1999, extracts from the PCRAz and a list of indictments concerning the cases submitted to them for comments.

On 12 May 2001, the Azerbaijan authorities agreed to provide the experts with an English-language version of the missing judgment. However no judgment was provided before the deadline of 15 June 2001.

### **8. Experts' opinion:**

The prisoner, a former Prime-Minister, has been sentenced to life imprisonment for his allegedly initiating of and participating in the 1994 *coup d'état* in Ganja.

The experts were informed that “translators refused to work” on the text of the judgment because the quality of the original was “very poor”. Subsequently, on 9 July 2001, the experts were informed that “better copies” of the judgment had been found; however, a translation of this new version was not provided in time.

It is to be noted that during their visit to Azerbaijan the experts interviewed the prisoner in Gobustan prison infirmary, where he was recovering from a recent heart attack (one in a long series) from which he was apparently still suffering both physically and mentally.

The prisoner informed the experts that his extradition from Russia had been illegal. He was indicted for high treason (Art. 57, PCRAz) and attempt of terrorist acts (Art. 59, PCRAz) while the request for extradition listed non-political crimes. This is contrary to the internationally recognised principle of speciality prevailing in matters of extradition and renders the extradition illegal. The detention of the prisoner is therefore unlawful and is in violation of the ECHR.

In addition, he mentioned that in connection to his prosecution, his relatives, including his 72 year old mother, had been intimidated and that his brother had also been imprisoned.

Furthermore, the experts have been informed that the prisoner, after his extradition from Russia had been detained for a period of time in the prison of Baku City Main Police Administration, where he had been allegedly tortured; traces of the wounds were visible on his head. Also, during the trial more than 30 persons publicly retracted confessions they had initially made, claiming that they had been obtained under torture. However, the Court ignored these allegations.

Hence,

the experts conclude that Mr. Suret Davud oglu GUSEYNOV is to be regarded as a political prisoner.

**Case No. 18 : Ilgar SAFIKHANOV (Ilgar Aziz oglu SAFIKHANOV)****1. Personal data:**

Ilgar SAFIKHANOV. Born in 1957; Appointed as the Head of the Azerbaijan National Bureau of Interpol by Suret Guseyov, a former Prime Minister (sentenced to life imprisonment).

**2. Date of arrest:**

Mr. SAFIKHANOV was arrested in Moscow on 2 November 1995, and then extradited to Baku on 22 or 23 November 1995.

**3. Legal status of the prisoner:**

Mr. SAFIKHANOV is currently serving his sentence in Correctional Colony No.11 or Colony No.15 (contradictory information).

Additional information: after his conviction on 28 January 1997, Mr. SAFIKHANOV was kept in Gobustan Prison; in 1998, after completion of the term, he was transferred to Correctional Colony No.9; on 9 January 2000, he was allegedly, illegally transferred to the Correctional Colony No.11.

**4. Offences for which the person has been convicted:**

Mr. SAFIKHANOV was accused of participating in an “attempted coup arranged by Suret Guseynov in October 1994”.

He has been convicted for:

- High treason (Art. 57, part 1, PCRAz);
- Use of the army against the people and constitutional institutions (Art. 57-1, part 2, PCRAz);
- Illegal formation of armed units or groupings (Art. 70-2, parts 1, 3, PCRAz);
- Illegal possession of weapons (Art. 220, part 2, PCRAz);
- Use of falsified documents; “violation” of passport regime (Art.194, part 2, PCRAz).

**5. Length of the sentence:**

15 years’ imprisonment, of which three of them are to be spent in a prison of a closed category.

**6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- During preliminary investigations, Mr. SAFIKHANOV had been kept for a period of 15 months in the basement of the Directorate of the Administration of the President, where he was allegedly tortured.

- It was reported that his relatives were persecuted: one of his brothers was destituted from his position as a prosecuting official, another was fired and imprisoned; his father was also dismissed from his employment.

## **7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAz, or at least with relevant extracts therefrom.

In a letter dated 18 April 2001, the Azerbaijan authorities were requested to submit, by the end of April 2001, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also reminded about the request to provide the experts with an English-language version of the PCRAz, or at least relevant extracts from it, by the end of April 2001.

On 7 May 2001, in Baku, the experts received a summary, in English, of the judgment of the Supreme Court of the Republic of Azerbaijan dated 28 January 1997.

On 9 May 2001, the authorities provided extracts from the PCRAz and a list of indictments concerning the cases submitted to them for comments.

## **8. Experts' opinion:**

In this case, the experts were not provided with a judgment. Mr. SAFIKHANOV was convicted and sentenced to 15 years' imprisonment by judgment dated 28 January 1997 by the Supreme Court. From a document purporting to be the "SENTENCE" in this case, it is not possible to determine whether any evidence was presented to support the indictment. The charge concerned the Ganja uprising. The prisoner apparently had no intention of committing unlawful acts but wanted to restore order.

It appears that the proceedings clearly violated the right to be presumed innocent set out in Article 6 (2) ECHR.

There also exist other serious allegations regarding the proceedings against the prisoner. He was apparently held for 15 months in the cellar of the "Special Administration of the President", which was unlawful; furthermore, he is said to have been tortured. Members of his family were also persecuted.

Hence,

the experts conclude that Mr. Ilgar SAFIKHANOV is to be regarded as a political prisoner.

**Case No. 19: Ruhulla AKHUNDOV (Rasula AKHUNDOV)****1. Personal data:**

Ruhulla AKHUNDOV. Born in 1955, Chairman of the Astarin Regional Committee of the Islamic Party of Azerbaijan.

**2. Date of arrest:**

Mr. AKHUNDOV was arrested on 28 June 2000.

**3. Legal status of the prisoner:**

Mr. AKHUNDOV was brought to Remand Centre No.1 of the Penal Execution Chief Department of the Ministry of Justice on 10 July 2000. On 28 July 2000, he was transferred to the Astara Region Police Station. On 10 March 2001, he was released following the withdrawal of the criminal charges brought against him.

**4. Offences for which the person has been convicted:**

In this case, there was no conviction; Mr. AKHUNDOV was accused of fraud while selling his private house (Art. 93-7, part 3, PCRAz).

**5. Length of the sentence:**

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**6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

The arrest was allegedly linked to the fact that Mr. AKHUNDOV has been critical of the use of arbitrary power by the authorities in his region.

The proceedings took place in the Astara region, at a substantial distance from Baku, thereby hampering the media and human rights defenders to monitor the case.

**7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAz, or at least with relevant extracts therefrom.

In a letter dated 18 April 2001, the Azerbaijan authorities were requested to submit, by the end of April 2001, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also reminded about the request to provide the experts with an English-language version of the PCRAz, or at least with relevant extracts from it, by the end of April 2001.

On 7 May 2001, in Baku, the experts received a brief note in English on the said case, in which it was indicated that Mr. AKHUNDOV had been released.



**8. Experts' opinion:**

During their visit to Azerbaijan, the experts received information from the authorities that Mr. AKHUNDOV, held in pre-trial detention since 6 June 2000, had been released “by cancellation of his criminal case on 10 March 2001 because of the absence of *corpus delicti*.”

Hence,

the experts conclude that Mr. Ruhulla AKHUNDOV is not to be regarded as a (political) prisoner.

**Case No. 20 : Israyl Isa oglu AKBEROV (Israyl Isa oglu AKPEROV)****1. Personal data:**

Israyl Isa oglu AKBEROV. Born in 1958, resident of the region of Sharur (Nakhichevan Autonomous Republic).

**2. Date of arrest:**

Mr. AKBEROV was arrested in September 1994.

**3. Legal status of the prisoner:**

Mr. AKBEROV is serving his sentence. No information on the place of detention has been provided despite several requests.

**4. Offences for which the person has been convicted:**

Mr. AKBEROV took part, on 28 August 1994, in the so-called "Sharur events", where the police of Azerbaijan had clashes with armed groups of the Popular Front of Azerbaijan.

He was convicted for the creation of illegal formation of armed units or groupings, which led to homicide or other grave consequences (Article 70-2, part 3, PCRAz).

**5. Length of the sentence:**

Mr. AKBEROV was sentenced to 13 years' imprisonment.

**6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- Major clashes with the authorities were connected to the political activities of the Popular Front of Azerbaijan.
- During the investigation, the defendants in the "Sharur case" were allegedly tortured and ill-treated in the Nakhichevan police prison.
- Preliminary investigations and the trial lasted, allegedly, 17 months instead of the authorized period of nine months.
- The key witness in the case, a leader of the paramilitary formation, Shahmardan Djafarov, was, so it is alleged, "killed" in detention, several months after the events: it has been suggested that his death was linked to the authorities' refusal to provide him with medical assistance.

## **7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAZ, or at least with relevant extracts therefrom.

In a letter dated 18 April 2001, the Azerbaijan authorities were requested to submit, by the end of April 2001, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also reminded about the request to provide the experts with an English-language version of the PCRAZ, or at least relevant extracts from it, by the end of April 2001.

On 7 May 2001, in Baku, the experts received a summary, in English, of the judgment of the Supreme Court of the Autonomous Republic of Nakhichevan dated 22 January 1996.

On 9 May 2001, the authorities provided extracts from the PCRAZ and a list of indictments concerning the cases submitted to them for comments.

On 11 June 2001, the experts received an English-language version of the judgment “by name of the Republic of Azerbaijan” of “the Full Court on Criminal Cases of First Degree of the Supreme Court of the Republic of Nakhichevan”, dated 22 January 1996.

## **8. Experts’ opinion:**

Mr. AKBEROV was tried and convicted by the Full Court of Criminal Cases of First Degree of the Supreme Court of the Republic of Nakhichevan dated 22 January 1996.

He was one of 21 defendants. He was indicted for having organised with other persons an armed group 'Alov-25', in violation of Art. 70-2 (item 3) PCRAZ. This armed group allegedly clashed with policemen on 28 August 1994. During this incident one policeman was killed and another seriously wounded.

The prisoner was sentenced to 13 years’ imprisonment.

According to the translation of the PCRAZ, the maximum penalty to be inflicted by virtue of Art. 70-2 is eight years. The prisoner's sentence of 13 years is not compatible with this provision. Consequently, it is illegal and thereby out of proportion. This fact indicates that political motives rather than a correct application of the law led to Mr. AKBEROV’s sentence.

Furthermore, it is difficult to establish from the present judgment whether the trial had been fair, since the prisoner's (individual) role is not clearly discernable in this collective judgment of the 21 accused persons.

So, for example, a sheet with information separately submitted by the authorities – providing data concerning the prisoner – mentioned as the *'corpus delicti'* the prisoner’s ordering of persons to fire at policemen, whereas in the judgment itself no such order is mentioned. The judgment only states that the prisoner and other defendants denied assault on the policemen. The court rejects these denials, pointing out *inter alia* to evidence collected during the preliminary investigation and confirmed at the time by the defendants. This, however, cannot be

verified. The judgment also notes that no physical pressure had been exercised on the defendants and that no complaints either by the defendants or their relatives had been made.

However, since the judgment hardly differentiates among the defendants, the sentence appears to be arbitrary.

Hence,

the experts conclude that Mr. Israyl Isa oglu AKBEROV is to be regarded as a political prisoner.

**Case No. 21 : Sadiq SAMEDOV****1. Personal data:**

Sadiq SAMEDOV. Born in 1955 or 1973 (contradictory information). Resident of the Sheki Region.

**2. Date of arrest:**

Mr. SAMEDOV was arrested on 28 November 2000.

**3. Legal status of the prisoner:**

Since 6 December 2000, Mr. SAMEDOV is in Remand Centre No. 2 in the town of Ganja. His case is pending.

**4. Offences for which the person has been convicted:**

According to information provided to the experts, it would appear that Mr. SAMEDOV has not yet been convicted.

He is accused of having taken part in mass riots in the Sheki and the Vahdat Regions.

The bill of accusation includes :

- Organisation of actions resulting in public disorder or active participation in these actions (Art. 233, PCRAz);
- Resistance or use of violence against official representatives (Art. 315, PCRAz);
- Intentional destruction or damaging of property (Art. 186-2, PCRAz).

Apparently, the trial commenced on 15 May 2001.

**5. Length of the sentence:**

Mr. SAMEDOV is held in pre-trial detention.

**6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

Mr. SAMEDOV took part in mass riots in the Sheki and the Vahdat Regions in November 2000, which were interpreted as an attempted "Coup" organised by Rasul Guliyev, the ex-Speaker of the Parliament, now in exile.

**7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAz, or at least with relevant extracts therefrom.

In a letter dated 18 April 2001, the Azerbaijan authorities were requested to submit, by the end of April 2001, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also reminded about the request to provide the experts with an English-language version of the PCRAz, or at least extracts from it, by the end of April 2001.

On 7 May 2001 and on 14 June 2001, the experts received brief notes, in English, on this case. On 9 May 2001, the authorities provided extracts from the PCRAz and a list of indictments concerning the cases submitted to them for comments.

### **8. Experts' opinion:**

This prisoner is actually being held on remand. He is suspected of having taken part in riots for which there is hardly any information. At the present time the detention on remand has lasted for a little over half a year. While this seems rather long, there is no information which would suggest that it is excessive. Mass riots *per definitionem* involve a number of persons and the proceedings may be complex.

Hence,

on the basis of the information available, the experts conclude that Mr. Sadiq SAMEDOV is not to be regarded as a political prisoner.<sup>34</sup>

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<sup>34</sup> Secretariat note: The experts' opinion was formulated before the end of Mr Samedov's trial in which he was sentenced to six years imprisonment (the trial began on 17 May 2001 and finished on 11 July 2001).

**Case No. 22 : Anatoliy SISOYEV (Anatoly Evgheniyevich SYSOYEV)****1. Personal data:**

Anatoliy SISOYEV. Born in 1949 in Tbilisi, former Colonel in the Azeri National Army, citizen of Ukraine.

**2. Date of arrest:**

Mr. SISOYEV was arrested for the first time in August 1995 and detained for one month. He was arrested again on 18 November 1995.

**3. Legal status of the prisoner:**

Mr. SISOYEV is currently serving his sentence in Correctional Colony No. 9, near Baku.

**4. Offences for which the person has been convicted:**

Mr. SISOYEV's conviction is related to the so-called "Plot of Generals" of 1995. According to the judgment of the "Azerbaijan Republic Supreme Court Panel of Judges for Grave Crimes", dated 1997, he was convicted for complicity to high treason (Art. 17 and 57-1, PCRAz).

**5. Length of the sentence:**

10 years' imprisonment.

**6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- The Ambassador of Ukraine was not informed about Mr. SISOYEV's arrest. Mr. SISOYEV's lawyer requested that the Ambassador of Ukraine be informed of his arrest but this demand was rejected on 15 November 1996.
- During investigations, Mr. SISOYEV was, so it is alleged, subjected to torture such as beatings, cigarettes burns, etc... These allegations were never investigated.
- Accusations were not always supported by substantive evidence, but based exclusively on the confessions allegedly obtained under torture and rebutted by Mr. SISOYEV during the trial.
- He was deprived of the assistance of a lawyer during a period of four and a half months and was not given the opportunity of consulting the court transcript. He met his lawyer for the first time on 1 April 1996.
- Mr. SISOYEV was deprived the assistance of an interpreter during his trial.

- It is alleged that indictments against Mr. SISOYEV have been modified several times during the investigations, and became more serious, in order to prevent him from benefiting from any form of amnesty.
- During the summer of 1997, a new criminal case was brought against him: he was accused of loosing arms, allegedly in order to prevent his transfer to Ukraine, where he was supposed to serve his sentence.

## **7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAz, or at least with relevant extracts therefrom.

In a letter dated 18 April 2001, the Azerbaijan authorities were requested to submit, by the end of April 2001, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also reminded about the request to provide the experts with an English-language version of the PCRAz, or at least relevant extracts from it, by the end of April 2001.

The experts met Mr. SISOYEV, in Colony No. 9 on 8 May 2001.

On 9 May 2001, the authorities provided extracts from the Penal Code of the PCRAz and a list of indictments concerning the cases submitted to them for comments.

On 7 June 2001, the experts received an English-language version of the judgment of the “Azerbaijan Republic Supreme Court Panel of Judges for Grave Crimes”, dated 1997.

## **8. Experts’ opinion:**

Mr. SISOYEV was tried and sentenced by the Azerbaijan Republic Supreme Court Panel of Judges for Grave Crimes, together with 20 other accused (including Elkhan Pasha oglu Abbasov (case No. 23), Rafik Agayev (case No. 24) and Guseynbala Guseynov (Case No. 25). The judgment, which is dated 1997, was probably delivered on 27 January 1997. It is noteworthy that it mentions only 19 sentences but no acquittals, while the original list mentions 21 defendants (and 8 lawyers).

There is one specific and clearly established element which raises serious doubts about the fairness of the proceedings. It concerns the independence and impartiality of the court. In fact, the competent chamber of the Supreme Court was presided over by Mr. M.Z. Ibayev, a member of the Supreme Court and furthermore composed of “Colonel G. O. Garayev” and “Captain A. K. Hashimov”. Although this was not a military court, it was composed, in its majority, of army officers. This brings to mind the judgment of the ECtHR dated 9 June 1998, *Inçal v. Turkey* (Reports 1998 - IV 1547). In this case the Court had to assess whether the Turkish National Security Court could be regarded as independent and impartial despite the fact that a military judge was sitting on this court. The ECtHR clearly came to a negative result:



"Firstly, they are servicemen who still belong to the army, which in turn takes its orders from the executive. Secondly, they remain subject to military discipline and assessment reports are compiled on them by the army for that purpose" (extract from paragraph 68).

Consequently, the court cannot be regarded as an independent and impartial tribunal in the sense of Article 6 (1) ECHR.

In the case *Inçal v. Turkey*, the ECtHR also came to the conclusion that, once it has determined the lack of independence and impartiality, it was not necessary to examine other complaints regarding the fairness of proceedings.

Furthermore, the experts note that Mr. SISOYEV is a Ukrainian citizen and his lawyer's request that the Ambassador of Ukraine be informed of his arrest was not complied with. According to the judgment provided by the authorities, Mr. SISOYEV was convicted for complicity (Art.17, PCRAz) to high treason (Art. 57, PCRAz) in spite of the fact that according to Art. 57 PCRAz, this offence can only be committed by a "citizen of the Republic of Azerbaijan".

Hence,

the experts conclude that Mr. Anatoliy SISOYEV is to be regarded as a political prisoner.

**Case No. 23 : Elhan ABBASOV (Elkhan Pasha oglu ABBASOV)****1. Personal data:**

Elhan ABBASOV. Born on 9 December 1950 or 1957 (contradictory information); deputy-director of the Dairy Combined Industry Complex in Baku and owner of café “Gandjlik”. Member of the Azerbaijan Labour Party.

**2. Date of arrest:**

Mr. ABBASOV was arrested on 9 August 1995.

**3. Legal status of the prisoner:**

Mr. ABBASOV is serving his sentence in Correctional Colony No.11, of a closed type, after his conviction on 27 January 1997.

**4. Offences for which the person has been convicted:**

- High treason (Art. 57, part 1, PCRAz); this conviction was related to the “Plot of Generals” (attempted terrorist act against President Aliyev in August 1995);
- Assistance in the escape of four state criminals, including Rahim Gaziyev and Alikram Gumbatov, from the prison of the Ministry of National Security (Art.17 and 185, part 2, PCRAz).

**5. Length of the sentence:**

11 years’ imprisonment.

**6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- Mr. ABBASOV was, so it is alleged, sentenced for being the director of a cafe called “Gandjlik”, frequented by people who intended to commit a coup.
- He was reportedly condemned just because he was a good acquaintance of Alikram Gumbatov, the “leader of Talysh Mugan Autonomous Republic”.
- He was a defendant in the case of the “Plot of Generals”.
- He was known as a member of a political party, with close ties to former President Mutallibov.
- After his arrest, he was kept for more than three months in the Police Department in Baku, although according to the legislation in force, detention in an isolation ward should not last more than 10 days.
- During the investigations, he was allegedly exposed to torture (carried out, so it has been specified, by staff members of Mamed Mikailov, Head of the Criminal

Investigation Department); he allegedly signed confessions under physical pressure. He subsequently refuted those confessions during his trial. The judge, Mr. Mansur IBAYEV, allegedly ignored allegations of torture.

- Although the prosecutor required only 5 years' imprisonment against him for non-denunciation of state crimes (Art. 82-1, PCRAz), Mr. ABBASOV was sentenced to 11 years' imprisonment by the Supreme Court for high treason.
- The witnesses who testified against him declared at the trial, so it is alleged, that they had done so under physical pressure.

## **7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAz, or at least with relevant extracts therefrom.

In a letter dated 18 April 2001, the Azerbaijan authorities were requested to submit, by the end of April 2001, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also reminded about the request to provide the experts with an English-language version of the PCRAz, or at least relevant extracts from it, by the end of April 2001.

On 9 May 2001, the authorities provided extracts from the PCRAz and a list of indictments concerning the cases submitted to them for comments.

On 7 June 2001, the experts received an English-language version of the judgment of the "Azerbaijan Republic Supreme Court Panel of Judges for Grave Crimes", dated 1997.

## **8. Experts' opinion:**

Mr. ABBASOV was tried and sentenced by the Azerbaijan Republic Supreme Court Panel of Judges for Grave Crimes, together with 20 other accused persons (including Anatoly Yevgeniyevich Sisoyev (case No. 22), Rafik Agayev (case No. 24) and Guseynbala Guseynov (Case No. 25). The judgment, which is dated 1997, was probably delivered on 27 January 1977. It is noteworthy that it mentions only 19 sentences but no acquittals, while the original list mentions 21 defendants (and 8 lawyers).

Mr. ABBASOV was indicted for high treason (Art. 57, PCRAz) and complicity to escape from prison or custody (Art. 185, PCRAz). He was convicted on both these counts and sentenced to 11 years of imprisonment with property sequestration.

There is one specific and clearly established element which raises serious doubts about the fairness of the proceedings. It concerns the independence and impartiality of the court. In fact, the competent chamber of the Supreme Court was presided over by Mr. M.Z. Ibayev, a member of the Supreme Court and furthermore composed of "Colonel G. O. Garayev" and "Captain A. K. Hashimov". Although this was not a military court, it was composed, in its majority, of army officers. This brings in mind the judgment of the ECtHR dated 9 June 1998, *Inçal v. Turkey* (Reports 1998 - IV 1547). In this case the Court had to assess whether the Turkish National Security Court could be regarded as independent and impartial despite the

fact that a military judge was sitting on this court. The ECtHR clearly came to a negative result:

"Firstly, they are servicemen who still belong to the army, which in turn takes its orders from the executive. Secondly, they remain subject to military discipline and assessment reports are compiled on them by the army for that purpose" (extract from paragraph 68).

Consequently, the court cannot be regarded as an independent and impartial tribunal in the sense of Article 6 (1) ECHR.

In the case *Inçal v. Turkey*, the ECtHR also came to the conclusion that, once it had determined the lack of independence and impartiality, it was not necessary to examine other complaints regarding the fairness of proceedings.

Furthermore, the experts consider that the sentence is clearly out of proportion. The judgment only deals with activities such as the prisoner driving his co-defendants and hiding their relatives. It has not been established that he played a leading or substantial role in what has been called 'the Plot of the Generals'.

Hence,

the experts conclude that Mr. Elhan ABBASOV is to be regarded as a political prisoner.

**Case No. 24 : Rafik AGAYEV****1. Personal data:**

Rafik AGAYEV. Born in 1950, former Commander of the 2<sup>nd</sup> Army Corps, former General, citizen of Russia, arrived in Azerbaijan in 1992.

**2. Date of arrest:**

Mr. AGAYEV was arrested on 18 August 1995.

**3. Legal status of the prisoner:**

Mr. AGAYEV is currently serving his sentence in correctional colony No. 9, near Baku.

**4. Offences for which the person has been convicted:**

Mr. AGAYEV's arrest was related to the so-called "Plot of Generals" of 1995. He was convicted for:

- Complicity to high treason (Art. 17 and 57, part 1, PCRAz);
- Illegal arm detention (Art. 220, part 2, PCRAz);
- Stealing or losing weapons (Art. 220-1, part 2, PCRAz).

**5. Length of the sentence:**

On 27 January 1997, Mr. AGAYEV was sentenced to 11 years' imprisonment.

**6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- Preliminary investigations and trial lasted, allegedly, 17 months instead of the authorized maximum period of nine months.
- During investigations, Mr. AGAYEV was allegedly tortured. These allegations were, apparently, never investigated.
- Accusations were not always supported by substantive evidence, but based exclusively on the confessions allegedly obtained under torture and rebutted by Mr. AGAYEV during the trial.
- In spite of multiple requests, the authorities refused his transfer to Russia so that he could serve his sentence there, in - so it would appear - contradiction with a mutual agreement to this effect with Russia.

**7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAz, or at least with relevant extracts therefrom.

In a letter dated 18 April 2001, the Azerbaijan authorities were requested to submit, by the end of April 2001, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also reminded about the request to provide the experts with an English-language version of the PCRAz, or at least relevant extracts from it, by the end of April 2001.

The experts met Mr. AGAYEV, in Colony No. 9 on 8 May 2001.

On 9 May 2001, the authorities provided extracts from the PCRAz and a list of indictments concerning the cases submitted to them for comments.

On 7 June 2001, the experts received an English-language version of the judgment of the “Azerbaijan Republic Supreme Court Panel of Judges for Grave Crimes”, dated 1997.

### **8. Experts’ opinion:**

Mr. AGAYEV has been tried and sentenced by the Azerbaijan Republic Supreme Court Panel of Judges for Grave Crimes, together with 20 other accused (including Anatoly Yevgeniyevich Sisoyev (case No. 22), Elkhan Pasha oglu Abbasov (case No. 23) and Guseynbala Guseynov (Case No. 25). The judgment, which is dated 1997, was probably delivered on 27 January 1977. It is noteworthy that it mentions only 19 sentences but no acquittals, while the original list mentions 21 defendants (and 8 lawyers).

There is one specific and clearly established element which raises serious doubts about the fairness of the proceedings. This concerns the independence and impartiality of the court. In fact, the competent chamber of the Supreme Court was presided over by Mr. M.Z. Ibayev, a member of the Supreme Court and furthermore composed of “Colonel G. O. Garayev” and “Captain A. K. Hashimov”. Although *prima facie*, the court could be considered as independent and impartial, it was composed, in its majority, of army officers, despite the fact that it was not a military court. This brings to mind the judgment of the ECtHR dated 9 June 1998, *Inçal v. Turkey* (Reports 1998 - IV 1547). In this case the Court had to assess whether the Turkish National Security Court could be regarded as independent and impartial despite the fact that a military judge was sitting on this court. The ECtHR clearly came to a negative result:

"Firstly, they are servicemen who still belong to the army, which in turn takes its orders from the executive. Secondly, they remain subject to military discipline and assessment reports are compiled on them by the army for that purpose" (extract from paragraph 68).

Consequently, the court cannot be regarded as an independent and impartial tribunal in the sense of Article 6 (1) ECHR.

In the case *Inçal v. Turkey*, the ECtHR also came to the conclusion that, once it had determined the lack of independence and impartiality, it was not necessary to examine other complaints regarding the fairness of proceedings.

Furthermore, the experts note that Mr. AGAYEV is a Russian citizen. According to the judgment provided by the authorities, he was convicted for complicity (Art.17, PCRAz) to high treason (Article 57, PCRAz) in spite of the fact that according to Article 57 PCRAz, this offence can only be committed by a “citizen of the Republic of Azerbaijan”.

Hence,

the experts conclude that Mr. Rafik AGAYEV is to be regarded as a political prisoner.

**Case No. 25: Guseynbala GUSEYNOV (Huseynbala HUSEYNOV)****1. Personal data:**

Guseynbala GUSEYNOV. Born on 17 July 1958; lieutenant in the National Army.

**2. Date of arrest:**

Mr. GUSEYNOV was arrested on 10 November 1995.

**3. Legal status of the prisoner:**

Mr. GUSEYNOV is currently serving his sentence in correctional colony No. 11, after his conviction on 27 January 1997.

**4. Offences for which the person has been convicted :**

Mr. GUSEYNOV's conviction was related to the "Coup of Generals": he was accused of having participated in an attempt on Mr. Aliyev's life, in August 1995.

He was convicted for :

- Complicity to high treason (Art. 17 and 57-1, PCRAz);
- Terrorist act (Art.15 and 59 part 1, PCRAz);
- Attempt of premeditated destruction of State property (Art. 15, 91, parts 2,3, PCRAZ);
- Attempt of premeditated murder with aggravating circumstances (Art. 15 and 94 part 4, PCRAz);
- Illegal purchase and detention of weapons (Art. 220, part 1, PCRAz).

**5. Length of the sentence:**

11 years' imprisonment.

**6. Reasons advanced for which the person concerned could be regarded as a political prisoner:**

- Mr. GUSEYNOV is, so it has been indicated, a member of the Azerbaijan Labour Party.
- He did not give any written testimonies, because he can neither read nor write. His testimonies (in which he admitted his participation in the plot) were written by an investigator without the participation of Mr. GUSEYNOV's lawyer.
- The assistance of a lawyer was authorized only four months after his arrest.
- During investigations, Mr. GUSEYNOV was, so it is alleged, exposed to physical pressure. He was kept in the basement of a building without sanitary norms, where his state of health worsened; at the trial, he rebutted the testimonies made previously under torture.



## **7. Proceedings:**

On 6 March 2001, the Azerbaijan authorities were requested to provide the independent experts with an English-language version of the PCRAz, or at least with relevant extracts therefrom.

In a letter dated 18 April 2001, the Azerbaijan authorities were requested to submit, by the end of April 2001, any comments that they may have with regard to the provisional version of the case which was attached to the letter. They were also reminded about the request to provide the experts with an English-language version of the PCRAz, or at least relevant extracts from it, by the end of April 2001.

On 9 May 2001, the authorities provided extracts from the PCRAz and a list of indictments concerning the cases submitted to them for comments.

On 7 June 2001, the experts received an English-language version of the judgment of the "Azerbaijan Republic Supreme Court Panel of Judges for Grave Crimes", dated 1997.

## **8. Experts' opinion:**

The prisoner was tried and sentenced by the Azerbaijan Republic Supreme Court Panel of Judges for Grave Crimes, together with 20 other accused (including Anatoli Sisoyev (case No. 22), Elkhan Pasha oglu Abbasov (case No. 23) and Rafik Agayev (case No. 24). The judgment, which is dated 1997, has probably been delivered on 27 January. It is noteworthy that it mentions only 19 sentences but no acquittals, while the original list mentions 21 defendants (and 8 lawyers).

The prisoner was indicted of high treason (Art. 57, PCRAz), attempts (Art. 15, PCRAz) to commit a terrorist act (Art. 59, PCRAz) and to premeditated murder (Art. 94, PCRAz); of intentional destruction of state property (Art. 91, PCRAZ) and of illegal possession of weapons (Art. 220, PCRAz). He was convicted on all these counts and sentenced to 11 years' imprisonment with property sequestration.

There is one specific and clearly established element which raises serious doubts about the fairness of the proceedings. This concerns the independence and impartiality of the court. In fact, the competent chamber of the Supreme Court was presided over by Mr. M.Z. Ibayev, a member of the Supreme Court and furthermore composed of "Colonel G. O. Garayev" and "Captain A. K. Hashimov". Although this was not a military court, it was composed, in its majority, of army officers. This brings to mind the judgment of the ECtHR dated 9 June 1998, *Inçal v. Turkey*, Reports 1998 - IV 1547. In this case the Court had to assess whether the Turkish National Security Court could be regarded as independent and impartial despite the fact that a military judge was sitting on this court. The ECtHR clearly came to a negative result:

"Firstly, they are servicemen who still belong to the army, which in turn takes its orders from the executive. Secondly, they remain subject to military discipline and assessment reports are compiled on them by the army for that purpose" (extract from paragraph 68).

Consequently, the court cannot be regarded as an independent and impartial tribunal in the sense of Article 6 (1) ECHR.

In the case *Inçal v. Turkey*, the ECtHR also came to the conclusion that, once it had determined the lack of independence and impartiality, it was not necessary to examine other complaints regarding the fairness of proceedings.

Hence,

the experts conclude that Mr. Guseynbala GUSEYNOV is to be regarded as a political prisoner.

## CHAPTER 3

### Background information

#### I. Introductory note

On 28 June 2001, the Parliamentary Assembly of the Council of Europe adopted the Opinions 221 (2000) and 222 (2000) on Armenia's and Azerbaijan's applications for membership to the Council of Europe. In November 2000, the Committee of Ministers adopted Resolutions (2000) 13 and (2000) 14 inviting simultaneously Armenia and Azerbaijan to become members of the Council of Europe, to be confirmed when the date of the accession of the ceremony was fixed. It also decided to monitor, on a regular basis, democratic development of both countries.

Armenia and Azerbaijan joined the Council of Europe on 25 January 2001.

On 31 January 2001, the Ministers' Deputies decided that, in the context of the post-accession monitoring procedures with respect to Armenia and Azerbaijan, cases of alleged political prisoners in these countries should be transmitted to the Secretary General by Delegations of member States to the Committee of Ministers before 28 February 2001.

On 31 January 2001, the Ministers' Deputies also approved the initiative of the Secretary General to refer these cases to a group of three independent experts mandated to prepare a confidential opinion which would indicate whether the persons in question may be defined as political prisoners on the basis of objective criteria in the light of the case-law of the European Court of Human Rights and Council of Europe standards. The experts would transmit their Opinion to the Secretary General.

The Secretary General appointed the three independent experts on 15 February 2001. He informed the Ministers' Deputies that cases of alleged political prisoners referred to him should contain specific information necessary to examine the said cases, in particular the full name of the prisoner, the date of arrest, the legal status of the prisoner, the offence for which the person is charged or has been convicted and the reasons for which the person could be regarded as a political prisoner.

By 28 February 2001, the Secretary General had received communications from several Delegations of member States, two of which made reference to a list of alleged political prisoners transmitted by the Secretary General of the Parliamentary Assembly. However, only a few cases were presented to the experts with the required details within the agreed time-limit.

Consequently, on 7 March 2001, the Secretary General suggested - again - that Delegations be given the opportunity to provide him with the additional information required - with respect to the names appearing on these lists - by 31 March 2001. He added that the "experts would have no choice but to reject the consideration of cases which do not fulfil the said requirements."

The work of the experts was carried out between February and mid-July 2001. They held a total of four meetings in Strasbourg. They also visited Armenia from 4 to 5 May 2001 and

Azerbaijan from 7 to 12 May 2001, where they met a number of allegedly political prisoners and their lawyers, state officials, representative of other international institutions, as well as NGOs.

The experts examined the two cases of allegedly political prisoners in Armenia submitted to them.

As concerns Azerbaijan, given the amount of cases submitted, the time-frame within which the experts had to work and the difficulties encountered in obtaining the necessary information, they felt compelled to limit their attention to a restricted number of cases. Also, preference had to be given to cases for which some information was initially made available to them. This decision was taken and the selection of cases was made on the assumption that the experts conclusions would apply, *mutatis mutandis*, to the other cases. Thus, if the examination of specific cases led to the conclusion that persons concerned were political prisoners, it follows that other persons held in the same or in similar circumstances are also to be regarded as political prisoners. This finding constitutes *prima facie* evidence that other persons on the list are also political prisoners. It is then for the detaining State, if it so wishes, to prove that the detention is in full conformity with requirements of the ECHR (see Chapter I).

In addition to the three persons mentioned in Opinion No. 222 (2000) of the Parliamentary Assembly on Azerbaijan's application for membership to the Council of Europe, adopted on 28 June 2000<sup>35</sup>, the experts chose, as "pilot cases", typical cases linked to specific historical events. In fact, such events led to the arrest of a considerable number of persons.

On 4 and 18 April 2001, respectively, requests for information and observations concerning the "pilot cases" were submitted to the authorities of the two countries concerned as well as to the Delegations that had referred the said cases to the Secretary General.

The authorities were also requested to provide the experts with English-language versions of the (at the time applicable) penal codes of both countries, or at least with relevant extracts therefrom, as well as with English-language versions of the judgments of the cases submitted to them for comments.

Due to the difficulties in obtaining English-language translations of a number of judgments within the proposed time-limit, the Secretary General extended the deadline for the transmission of the experts Opinion from 30 June to 16 July 2001.

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<sup>35</sup> Azerbaijan undertook "to release or to grant a new trial to those prisoners who are regarded as "political prisoners" by human rights protection organisations, especially Mr Iskander Gamidov, Mr Alikram Gumbatov and Mr Raqim Gaziyeu" (paragraph 14 iv b).

**II. Decision of the Ministers' Deputies concerning the Secretary General's proposal to carry out an expert study of cases of alleged political prisoners in Armenia and Azerbaijan and terms of reference thereof [738<sup>th</sup> meeting – 31 January 2001, Item 2.1b ] :**

“The Deputies

1. decided that, in the context of the specific monitoring procedure for Armenia and Azerbaijan, cases of alleged political prisoners in these countries be transmitted to the Secretary General by Delegations to the Committee of Ministers before 28 February 2001;
2. approved, in this context, the Secretary General's initiative to refer these cases to a group of independent experts whose terms of reference appear at Appendix 7 to the present volume of Decisions;
3. requested that the Secretary General submit on a confidential basis the experts' opinion on the referred cases, as soon as available, to the monitoring group GT-SUIVI.AGO.

[.....]

Appendix 7

**Terms of reference given to a group of independent experts to inquire into cases of alleged political prisoners in Armenia and Azerbaijan**

1. The Secretary General, in the context of the specific monitoring procedure for Armenia and Azerbaijan, instructs three independent experts to inquire into the cases of alleged political prisoners in Armenia and Azerbaijan referred to them.
2. The experts shall prepare a confidential opinion on the said cases indicating whether the persons in question may be defined as political prisoners on the basis of objective criteria in the light of the case-law of the European Court of Human Rights and Council of Europe standards.
3. The experts shall transmit their opinion to the Secretary General by the 30 June 2001 [subsequently extended to 16 July 2001]”

### **III. Communications made by the Secretary General to the Ministers' Deputies concerning alleged political prisoners in Armenia and Azerbaijan**

**A. Appointment of experts on cases of alleged political prisoners in Armenia and Azerbaijan.** [Extract from the "Communication by the Secretary General [...] to the 742<sup>nd</sup> meeting of the Ministers' Deputies; Information Document SG/Com (2001) 742, 15 February 2001]:

"Following the decision of the Ministers' Deputies of 31 January 2001 (738th meeting, item 2.1.b), I have appointed the following human rights experts to inquire into cases of alleged political prisoners in Armenia and Azerbaijan:

- Professor Stefan Trechsel, University of Zurich, former President of the European Commission of Human Rights;
- Professor Evert Alkema, University of Leiden, former member of the European Commission of Human Rights;
- Professor Alexander Arabadjiev, Judge at the Constitutional Court of Bulgaria, former member of the European Commission of Human Rights;

I would like to recall, in this context, that according to your decision of 31 January 2001, Delegations to the Committee of Ministers are invited to refer to me cases of alleged political prisoners in the two countries before 28th February 2001. It is important to respect this deadline to permit the experts to commence their work.

Following preliminary contacts with one of the experts, Professor Stefan Trechsel, and in order to facilitate and accelerate the work of the experts, I would like to clarify that certain minimum requirements should be satisfied. The lists should in particular contain the following information:

1. full name of the prisoner;
2. date of arrest;
3. legal status of the prisoner: police custody/detention on remand/serving sentence after conviction/any other form of deprivation of liberty, such as internment in a psychiatric hospital; persons who are not detained (any more) should not appear on the list;
4. offence (with reference to the article of Criminal Code or other law in question) for which the person is charged or has been convicted or other grounds given to justify his/her deprivation of liberty;
5. the reasons for which the person concerned could be regarded as a political prisoner.

To the extent that part of the required information is missing, reasons should be given as to why the experts should nevertheless consider the case.

To the extent that any documents are available to support the allegation that the case concerns a political prisoner, it is recommended that they be appended to the list of cases.”

**B. Examination of cases of alleged political prisoners in Armenia and Azerbaijan.**

[Extract from the “Communication by the Secretary General [...] to the 744th meeting of the Ministers’ Deputies; Information Document SG/Com (2001) 744, 7 March 2001 :

“The three independent experts I have appointed to examine the cases of alleged political prisoners in Armenia and Azerbaijan, Professors TRECHSEL, ALKEMA and ARABADJIEV, held their first meeting in Strasbourg, yesterday. I had a meeting with the three experts who met *inter alia* the Delegations of Armenia and Azerbaijan, the Delegations of Turkey and the Netherlands which act as Rapporteurs on this issue in the GT-Suivi AGO, as well as the Secretary General of the Parliamentary Assembly.

By 28 February 2001, I received communications from several Delegations and the Parliamentary Assembly. These communications concerned five cases which correspond to the required detailed information which I requested on 15 February 2001 (see doc SG/Com(2001)742) as well as lists composed of hundreds of names without the required information necessary for the experts to examine the cases.

Following my discussion with the independent experts, I suggest that Delegations be given the opportunity to provide me with the additional information required - with respect to the names appearing on these lists - by 31 March 2001. The experts will have no choice but to reject the consideration of cases which do not fulfil the said minimum requirements.

The Group of independent experts considers itself as a quasi-judicial body and it would therefore be inappropriate for it to fulfil, at the same time, the task of a ‘Prosecutor’.

Bearing in mind the amount of work to be undertaken by the experts, both in terms of quality and quantity and in the light of stringent time constraints, it is likely that they will subdivide the cases into categories and concentrate their examination on a limited number of cases in each category.

The experts intend to hold a second meeting at the beginning of May 2001, to be followed by a visit to the two countries.”

**C. Examination of cases of alleged political prisoners in Armenia and Azerbaijan.**

[Extract from the “Communication by the Secretary General [...] to the 754th meeting of the Ministers’ Deputies, 6 June 2001] :

“I wish to provide you with a short progress report on this subject. The three independent experts, Messrs TRECHSEL, ALKEMA and ARABEDJIEV, visited Armenia and Azerbaijan between 3 and 12 May 2001, where they met a number of detained persons and their lawyers, state officials, representatives of other international organisations, as well as NGOs.

As a result of difficulties in obtaining English-language translations of a number of judgments, the experts' work has fallen behind schedule. I therefore wish to inform the Deputies that, upon the request of the experts, I have agreed to the extension of the deadline for the transmission of the experts' opinion from 30 June to 16 July 2001."

**D. Examination of cases of alleged political prisoners in Armenia and Azerbaijan.** [Extract from the "Communication by the Secretary General [...] to the 758th meeting of the Ministers' Deputies, 21 June 2001] :

"Mr. Alexander Arabadjiev has informed me that, due to his recent election as a Member of Parliament of Bulgaria, he has decided to resign as an independent expert inquiring into cases of alleged political prisoners in Armenia and Azerbaijan".



#### **IV. Programmes of visits to Armenia (4-5 May 2001) and Azerbaijan (7-12 May 2001) of the independent experts**

Mr. Stefan TRECHSEL, Mr. Evert ALKEMA and Mr. Alexander ARABADJIEV

Accompanied by :

Mr. Andrew Drzemczewski, Head of Monitoring Department, Directorate of Strategic Planning, Council of Europe.

Mrs Catherine Maffucci-Hügel, Administrative Officer, Monitoring Department, Directorate of Strategic Planning, Council of Europe.

#### **ARMENIA (4-5 May)**

##### **Friday 4 May 2001**

- 03.50           Arrival in Yerevan
- 10.00           Meeting with Mr. Hovhannes HOVHANNISSIAN, Chairman of the Standing Committee for Foreign Relations of the National Assembly of the Republic of Armenia, Mr. Ashot GALOYAN, member of the Standing Committee for Foreign Relations (“Armenian People Party”), Mr. Yura MANOUKIAN, member of the Standing Committee for Culture and Education (“Communist Party”), and Mr. Shmavon SHAHBAZIAN, Head of the Foreign Relations Department of the National Assembly
- 11.30           Meeting with H.E. Mr. David HAROUTUNIAN, Minister of Justice of the Republic of Armenia
- 12.30           Meeting with H.E. Mr. Vartan OSKANIAN, Minister for Foreign Affairs of the Republic of Armenia
- 16.00           Meeting with H.E. Mr. Hayk HAROUTUNIAN, Minister of Interior of the Republic of Armenia, Mr. Ararat MAHTESIAN, Deputy Minister, Mr. Michael GRIGORIAN, Adviser of the Minister, Mr. Edward GHAZARIAN, Head of the Secretariat, Mr. Hovhannes POGHOSIAN, Head of the Department of International Relations
- 17.00           Meeting with Mr. Dave LINGWOOD, Chargé d’Affaires, Embassy of the United Kingdom in Yerevan
- 18.30           Meeting with Ambassador Roy S. Reeve CMG, Head of the OSCE Office and Mr. Branimir RADEV, Deputy Head of Office

##### **Saturday 5 May 2001**

- 9.00-9.45       Meeting with Mr. Armin E. KOBEL, Head of the ICRC Delegation

- 10.30 Meeting with Mr. Ashot BLEYAN (Remand Centre of NOUBARASHEN) and his lawyer, Mr. GRIGORIAN
- 14.00 Meeting with Mr. Aram TAMAZIAN, Prosecutor General of the Republic of Armenia
- 16.00-18.00 Meeting with NGOs organised by the OSCE Office : Mr. Michael DANIELYAN (Helsinki Association), Mr. NERSESIAN (Armenian Centre for the Protection of Human Rights), Mrs DONELIAN and Mr. ANTONIAN (Pro-Democracy Organisation)

### **Sunday 6 May 2001**

- 09.45 -11.35 Yerevan - Moscow
- 16.00 -18.00 Working session (Moscow, Hotel)

## **AZERBAIJAN** (7-12 May)

### **Monday 7 May 2001**

- 9.20-13.15 Moscow-Baku
- 16.30-18.45 Working session with the Azerbaijan group of experts constituted to study the issue of alleged political prisoners in Azerbaijan :
- Mr. Ilham AGAYEV, Deputy Head of Human Rights, Democratisation and Humanitarian Problems Department, Ministry of Foreign Affairs of the Republic of Azerbaijan
  - Mr. Fuad ALESGEROV, Head of Division on the Work with Law-Enforcement Agencies of the Executive Office of the President of the Republic of Azerbaijan.
  - Mrs Rabiyat ASLANOVA, Deputy Head of the Permanent Commission for Human Rights of the Parliament of the Republic of Azerbaijan
  - Mr. Aydin GASIMOV, Deputy Minister of Justice of the Republic of Azerbaijan
  - Mrs Gultakin HAJIYEVA, Deputy Head of the Permanent Commission for International Relations and Interparliamentary Relations of the Parliament of the Republic of Azerbaijan
  - Mr. Ali HUSEYNOV, Deputy Chairman of the Permanent Commission on Legal Policy and Public Administration of the Parliament of the Republic of Azerbaijan

- Mr. Latif HUSEYNOV, member of the secretariat of the Parliament, Head of Department for Constitutional Legislation

- Mr. Safa MIRZOYEV, Head of the Secretariat of the Parliament of the Republic of Azerbaijan

- Mr. Samed SEYIDOV, Head of the Parliamentary Commission for International Relations and Interparliamentary Relations of the Parliament of the Republic of Azerbaijan, Deputy Head of Delegation of the Republic of Azerbaijan to the Parliamentary Assembly of the Council of Europe

21.00-22.30 Meeting with Mr. Stein IVERSEN, First Secretary of the Royal Norwegian Embassy in Baku

### **Tuesday 8 May 2001**

- 8.30- Gobustan Prison. Meetings with :
- Mr. Alikram GUMBATOV and his lawyer, Mr. Elchin GAMBAROV
  - Mr. Raqim GAZIYEV and his lawyer, Mr. Elchin GAMBAROV
  - Mr. Iskander GAMIDOV and his lawyer, Mr. Iaver HÜSEYN
  - Mr. Fahmin Ahmedpasha oglu HADJIYEV and his lawyer, Mr. Iaver HÜSEYN
  - Mr. Narimam Shamo oglu IMRANOV
  - Mr. Suret Davud oglu GUSEYNOV and his lawyer, Mr. Arif Ibrahim oglu SHAMMEDOV
- 14.00- Colony No. 9. Meetings with :
- Mr. Anatoliy SISOYEV
  - Mr. Rafik AGAYEV
- 19.30 Meeting with Mr. Fuad AGAYEV, President of Agayev & Zoulfugarzadeh Law Firm
- 20.00 –22.00 Working dinner with Mr. Etimad ISMAILOV, lawyer of Mr. Rafik AGAYEV

### **Wednesday 9 May 2001**

- 8.30-9.30 Working breakfast with the Head of the OSCE Office in Baku Ambassador CORNELISSEN and Mr. Vadim THELIN, Human Dimension Officer
- 10.00-10.45 Meeting with Mr. Eldar ZEYNALOV, Director of the Human Rights Centre of Azerbaijan and Mrs Zaliha I. TAHIROVA, Coordinator of Amnesty International Initiative Group in Azerbaijan
- 10.45-11.30 Meeting with Mrs Leila YUNUS, Director of the Institute of Peace and Democracy

- 11.30-12.00 Meeting with Mr. Murad S. SADADDINOV, Director of the Azerbaijan Foundation of Democracy Development and Human Rights Protection, Mrs Rena Y. NAJAFZADEH-SADADDINOVA, Deputy Director and Mrs Hagigat Iman gizi GUSEYNOVA, lawyer of several alleged political prisoners
- 12.30-14.00 Lunch
- 14.30- 15.15 Meeting with Mr. MUSTAFAYEV, Director of the Institute of Human Rights of the Academy of Sciences of Azerbaijan
- 15.15-15.45 Meeting with Mrs Arzu ABDULLAYEVA, Director of the Azerbaijan National Committee of the Helsinki Citizens' Assembly
- 16.00-16.30 Meeting with Mr. Pierre V. APRAXINE, Deputy Head of the ICRC delegation and coordinator of ICRC protection activities
- 20.00-21.30 Meeting with Mrs Saida GOJAMANLY, Chairperson of the "Bureau for Human Rights and Law Respect".

**Thursday 10 May 2001**

- 07.30 Working breakfast with Mr. Elchin GAMBAROV, lawyer of Mr. Alikram GUMBATOV and Mr. Raqim GAZIYEV
- 09.00 Meeting with H.E. Mr. Z. GARALOV, Prosecutor General of the Republic of Azerbaijan
- 09.45 Meeting with H.E. Mr. R. USUBOV Minister of Interior of the Republic of Azerbaijan
- 10.30 Meeting with H.E. Mr. F. MAMMEDOV, Minister of Justice of the Republic of Azerbaijan
- 11.15 Meeting with H.E. S. HASANOVA, Chairperson of the Supreme Court of the Republic of Azerbaijan
- 12.00 Meeting with H.E. Mr. Kh. HAJIYEV, Chairman of the Constitutional Court of the Republic of Azerbaijan
- 13.00 Lunch hosted by Mr. Stein IVERSEN, First Secretary of the Norwegian Embassy, with Ambassador Sjoerd GOSSES, Ambassador of the Netherlands, (residing in Ankara), Mrs Riny BUS, First Secretary of the Royal Netherlands Embassy in Ankara, Baku Office at the German Embassy, Mr. Andreas CANDIANIS, First Secretary of the Greek Embassy, Mr. Thibaut FOURRIERE, First Secretary of the French Embassy, Mr. Julian COULTER, First Secretary of the British Embassy, Mrs Katharina PANOS, Embassy of the United States, Mr. Martin LANGER, Embassy of Germany.

- 14.30 Meeting with H.E. Mr. R. MEHDIYEV, Head of the Executive Office of the President of the Republic of Azerbaijan
- 15.15 Meeting with Mr. K. KHALAFOV, Deputy Minister of Foreign Affairs of the Republic of Azerbaijan
- 16.00 Meeting with Mr. Ilham ALIYEV, Head of the Parliamentary Delegation of the Republic of Azerbaijan to the Parliamentary Assembly of the Council of Europe and other members of the Delegation
- 17.30 Meeting with members of the Commission on Pardons
- 20.00 Dinner hosted by representatives of the Government of the Republic of Azerbaijan

**Friday 11 May 2001**

- 14.00 Working session at Hotel Europe (all afternoon)

**Saturday 12 May 2001**

- 03.15 Working session at Baku Airport with Ministry of Foreign Affairs officials
- 04.00 Brief meeting with H.E. Mr. V. GULIYEV, Minister of Foreign Affairs of the Republic of Azerbaijan
- 04.40 Departure of the Delegation.