

SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES



Contact: Zoë Bryanston-Cross
Tel: 03.90.21.59.62

Date: 21/08/2024

DH-DD(2024)941

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1507th meeting (September 2024) (DH)

Communication from NGOs (Free Voices Collective (FVC), Independent Lawyers Network (ILN), European Human Rights Advocacy Centre (EHRAC) and International Partnership of Human Rights (IPHR)) (08/08/2024) concerning the group of cases Mammadli v. Azerbaijan (Application No. 47145/14).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

* * * * *

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1507^e réunion (septembre 2024) (DH)

Communication d'ONG (Free Voices Collective (FVC), Independent Lawyers Network (ILN), European Human Rights Advocacy Centre (EHRAC) and International Partnership of Human Rights (IPHR)) (08/08/2024) relative au groupe d'affaires Mammadli c. Azerbaïdjan (requête n° 47145/14) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



DGI Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECtHR
F-67075 Strasbourg Cedex
FRANCE
Email: DGI-Execution@coe.int

8 August 2024

COMMUNICATION

In accordance with Rule 9.2. of the Rules of the Committee of Ministers of the Council of Europe regarding the supervision of the execution of judgments in the Mammadli v. Azerbaijan group of cases (47145/14)

I. Introduction

1. We write to lodge submissions pursuant to Rule 9(2) of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments in respect of the Mammadli group, currently consisting of seven applicants who are human rights defenders, civil society activists and a journalist. They were all subjected to arrests and detentions in 2013-2016, which the European Court found to constitute a misuse of criminal law, intended to punish and silence them for their human rights and journalistic activities. The Court has also established that these cases reflected a troubling pattern of arbitrary arrests and detentions of government critics, civil society activists and human rights defenders through retaliatory prosecutions and misuse of criminal law in defiance of the rule of law, and the actions of the State gave rise to a risk of further repetitive applications (*Aliyev v Azerbaijan*, § 223).
2. The signatory organisations, Free Voices Collective (FVC), the Independent Lawyers Network (ILN), the European Human Rights Advocacy Centre (EHRAC) and the International Partnership of Human Rights (IPHR) are non-governmental human rights organisations working to advance respect for human rights. EHRAC representatives acted as legal representatives in the proceedings before the Court in a number of cases in this group.
 - Free Voices Collective is an EU-based non-profit, and non-governmental organization established by Azerbaijani human rights defenders, journalists, and lawyers in Germany. The FVC's mission is to build a democratic environment in Azerbaijan by advocating for the rights and protections of journalists, activists, and NGOs, ensuring a society where civil freedoms are upheld and civil society can thrive without fear of persecution.

- The Independent Lawyers Network (ILN) is an Azerbaijan-based non-profit and non-governmental organization, which is committed to strengthen the role of the lawyers to protect human rights and freedoms effectively through strategic litigations and advocacy.
 - The European Human Rights Advocacy Centre (EHRAC) is an independent human rights centre that uses international legal mechanisms to challenge serious human rights abuses in Russia, Georgia, Azerbaijan, Armenia, and Ukraine, in partnership with local lawyers and NGOs. EHRAC aims to secure justice for victims of human rights violations and their families, and to bring about lasting systemic change in the region.
 - International Partnership for Human Rights (IPHR) is an independent, non-governmental organization founded in 2008. With a presence in Brussels, Kyiv, and Tbilisi, IPHR works closely with civil society groups from a broad range of countries in the Former Soviet Union Region to raise human rights concerns at the international level and promote respect for the rights of vulnerable communities by diverse means.
3. This submission provides an update on the most recent domestic developments relevant to both individual and general measures in this group of cases. The section on individual measures includes information on the situation of applicant Anar Mammadli who faces new retaliatory trumped-up charges and likely criminal conviction with aggravated circumstances due to his currently still standing previous conviction that has not been quashed to date. The section on general measures focuses on two main issues: a) a new wave of retaliatory prosecution and misuse of criminal law against journalists, human rights defenders and other Government critics, and b) the issue of independence of the judiciary.

II. Individual measures

Restitutio in Integrum

4. On numerous occasions, the Committee of Ministers (CM), in its decisions on this group of cases, reiterated that *restitutio in integrum* can only be achieved through the quashing of all the applicants' convictions, their erasure from their criminal records, and the elimination of all other consequences of the criminal charges brought against them, including the full restoration of their civil and political rights.
5. As the CM is aware, the Supreme Court has done so with regard to a number of applicants in this group of cases: Ilgar Mammadov and Rasul Jafarov on 23 April 2020, Rashad Hasanov, Zaur Gurbanli, Uzeyir Mammadli, and Rashadat Akhundov on 19 November 2021, and Azizov and Novruzlu on 10 September 2023. Proceedings in the criminal cases of all these applicants were discontinued since their guilt had not been proven in accordance with Article 39.2; they were acquitted under Article 39.3 of the Criminal Code (CC) and were awarded compensation for non-pecuniary damages. However, the cases of seven remaining applicants in this group are still pending before the Supreme Court without any justifiable explanation.

6. The CM, its most recent 1501st DH meeting held on 11-13 June 2024, issued a decision (CM/Del/Dec/1501/H46-4)¹ reiterating its previous calls, in which it has "expressed profound concern that no information has been provided on the outcome of the long-awaited domestic court judgments in which the European Court found to have been the result of misuse of criminal law intending to punish and silence them, still stand". The CM urged Azerbaijani authorities to promptly annul the convictions of remaining seven applicants, clear their criminal records, restore their full civil and political rights, and called for *restitutio in integrum*, emphasizing the joint responsibility of all competent authorities to provide updates, including timelines for the quashing of the convictions.
7. Applicant Anar Mammadli faces serious consequences of the Supreme Court's failure to quash his conviction. On 30 April 2024, he was arrested on new charges against him, as a part of a new wave of arrests of civil society and media members, where he is considered by the prosecution as a person with earlier conviction as an aggravating circumstance. The Baku City Main Police Department's "Decision on the involvement of an accused person" of April 30, 2024 described Anar Mammadli as "...born on July 26, 1978 in Yevlakh district, citizen of the Republic of Azerbaijan, with higher education, unmarried, previously convicted, ...". A reference to his previous conviction indicates that prosecuting authorities took his previous conviction into consideration as an aggravating circumstance in the current criminal investigation, that will eventually result in a more severe punishment of Anar Mammadli in the current criminal proceedings. Mammadli's previous conviction should therefore be re-examined by the Supreme Court as soon as possible and his conviction quashed to ensure that it is not used by the prosecuting authorities and the judiciary to convict him in a new-instituted criminal case as a person with a conviction and criminal record. (See Annex_1 Decision on Mammadli's new detention).
8. As to the applicants Leyla and Arif Yunuses, we note that on 26 June 2023, the Azerbaijani government informed the Committee (DH-DD(2023)767) that the Supreme Court's decision of 27 December 2016 annulled previous court decisions convicting Leyla Yunusova and Arif Yunusov and that the case was sent back to the appeal court. On 18 October 2022, the appeal court suspended the proceedings due to the applicants' absence since both applicants live in exile. The Government alleges that the guilty verdicts against them currently do not stand, however, their convictions have not been quashed by the Supreme Court but rather returned to the appeal court for re-examination.
9. Having regard to the facts above, it is of utmost importance for the Supreme Court to re-examine the cases of the remaining seven applicants and acquit them in order to restore the situation that existed before the violation of their conventional rights.
10. The Government last provided information on individual measures in its action report of 26 June 2023², informing the CM that the remaining cases to be examined under this group are currently under review at the Supreme Court. However, in its subsequent Action Report of 4 April 2024³, the Government remained silent on individual measures, leaving both the CM

¹ <https://hudoc.exec.coe.int/?i=CM/Notes/1501/H46-04E>

² [https://hudoc.exec.coe.int/?i=DH-DD\(2023\)767E](https://hudoc.exec.coe.int/?i=DH-DD(2023)767E)

³ [https://hudoc.exec.coe.int/?i=DH-DD\(2024\)385E](https://hudoc.exec.coe.int/?i=DH-DD(2024)385E)

and the applicants uninformed about the updates on their cases pending before the Plenum. More than four years have passed since the Plenum of the Supreme Court's first decision to quash convictions in two cases of the Mammadli group.

11. During this period, the Government cited various reasons for the delays in re-examination, ranging from the quarantine regime to martial law due to the II Karabakh War. According to Article 456.2 of CPC the cases are heard before the Plenum within three months starting from the date the decision of the ECtHR is delivered to the Supreme Court. However, despite this established time limit, the Government's failure to provide convincing justifications is a clear indication of the blatant failure of the authorities and the judiciary to abide by its own law and is a part of the judicial harassment against Government critics.

III. General measures

3.1. A NEW WAVE OF RETALIATORY PROSECUTION AND MISUSE OF CRIMINAL LAW AGAINST JOURNALISTS, HUMAN RIGHTS DEFENDERS AND OTHER GOVERNMENT CRITICS

12. The CM is well aware of the punitive criminal prosecution of Azerbaijani human rights defenders, journalists and activists during the so called 2014 civil society crackdown, with a number of them being applicants in the Mammadli group of cases. Since 2022, a new wave of retaliatory persecutions emerged, which has particularly intensified in November 2023, resulting in arbitrary arrests and detentions of journalists and activists on trumped up charges, as set out below. Many of these charges relate to 'Western funds' allegedly smuggled into the country, which is similar to the context within which the 2014 crackdown took place. The local civil society calls it the largest ever wave of repression of the civil society since Azerbaijan's accession to the Council of Europe.
13. In 2022, Azerbaijan adopted repressive laws in the field of media and political parties placing operation of media and political parties under even tighter grip of the Government. These laws, coupled with their stringent application by the authorities, have not only stifled the civic space but also led to the recent arrests of media personnel, political opposition and civil society representatives, further exemplifying the ongoing erosion of the political and legal environment in the country.⁴

⁴ On February 10, 2022, the Committee to Protect Journalists International organization called Azerbaijan to repeal a newly enacted media law that increases state control of the press (<https://cpj.org/2022/02/new-azerbaijan-media-law-increases-restrictions-on-the-press/>). The Joint Opinion of the Venice Commission and the Directorate General on Human Rights and Rule of Law (DGI) of the Council of Europe on the Law on Media of Azerbaijan adopted on 17-18 June and published on 20 June 2022 noted following: *"It has come to the conclusion that in the context of an already extremely confined space for independent journalism and media in Azerbaijan, the Law will have a further "chilling effect". Many provisions are not in line with European standards on freedom of expression and media freedom and do not allow the media to effectively exercise its role as a "public watchdog". Therefore, the Law should not be implemented as it stands."* ([https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2022\)009-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2022)009-e)). Legal analysis of the Law of the Republic of Azerbaijan "On Media" commissioned by the Office of the OSCE Representative on Freedom of the Media adopted on 24 February 2022 also maintained that the new law contains a series of provisions that are not aligned with applicable international and regional standards (https://www.osce.org/files/f/documents/d/9/512935_0.pdf). The new Law on Political Parties having been adopted by the Parliament on December 16, 2022, and subsequently signed into law by the President on January 11, 2023, was also another significant legislative backsliding in Azerbaijan. Following its enactment, the law was subject to scrutiny by the Venice Commission and the OSCE/ODIHR, which provided a joint opinion on March 10-11, 2023. Their assessment was critical, highlighting that the law introduced highly problematic new provisions which risk having further

14. The new wave has particularly escalated since November 2023, when the pro-government media outlets in Azerbaijan have noticeably intensified its slander campaign against civil society and media entities, with the accusations against them of collaborating with Western organizations and receiving funds from them that they allegedly illegally bring to Azerbaijan.⁵ This was soon followed by a series of legal repercussions for those targeted, including arrests, interrogations, blocking of bank accounts, and travel bans.⁶ It escalated with the arrests of members of independent media outlet AbzasMedia when the police arrested six journalists from the entire managerial and editorial team of AbzasMedia under smuggling charges, followed by other arrests in 2023 and early 2024:

- On 20-21 November 2023, Abzas Media director Ulvi Hasanli and his assistant Mahammad Kekalov (disability rights activist) and chief editor Sevinj Vagifgyzy were detained by Baku city main police department;⁷ a week later, on November 30, journalist Nargiz Absalamova was summoned as a witness but was detained as a suspect. They were all charged under Article 206.3.2 (smuggling when committed by a group of persons) of the Criminal Code of the Republic of Azerbaijan⁸.
- On 27 November 2023, Kanal 13 journalists Aziz Orujov and Shamo Eminov were arrested under the same charges.⁹
- On 11 December 2023, Azerbaijani journalist, Teymur Karimov, was arrested on charges of extortion by threat (Article 182 of the Criminal Code)¹⁰
- On 13 December 2023, investigative journalist Hafiz Babaly was detained on charges of smuggling when committed by a group of persons (article 206.3.2 of the Criminal Code) as a part of the same criminal investigation against AbzasMedia.
- On 14 December 2023, police arrested Tofiq Yagublu, a former journalist who is an outspoken critic of the government and a prominent opposition leader.¹¹ Yagublu was

chilling effects on pluralism in the country. The aforementioned new regulations give rise to serious concerns with respect to the right to freedom of association which is guaranteed both in international human rights instruments and the national Constitution (Para., 117) (See annex [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2023\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)007-e)).

⁵ March 8, 2024 - "Toplum TV" adapts its activities not to the laws of Azerbaijan, but to the directives from the United States. https://musavat.com/news/toplum-tv-oz-fealiyyetini-azerbaycan-naunlarina-deil-abs-dan-gelen-direktivlere-ugunlasdirir_1051312.html ; March 8, 2024: Where does Toplum TV's funding come from? <https://qafqazinfo.az/news/detail/toplum-tv-nin-maliyye-menbeyi-haradan-gaynaglanir-429575>; March 9, 2024: More than half a million funds were illegally delivered to Azerbaijan via Toplum TV. <https://qafqazinfo.az/news/detail/toplum-tv-uzerinden-varim-milyondan-cox-vesait-geyri-ganuni-azerbaycana-catdirilib-429641>; 30 January 2024: Authorities continue searching for "spies" and "traitors" among civil society, <https://turan.az/en/politics/authorities-continue-searching-for-spies-and-traitors-among-civil-society>; November 22, 2023: How are unregistered grants from the West implemented in Azerbaijan? - RESEARCH, <https://report.az/analitika/qerbden-gelen-qeydiyyatsiz-grantlar-azerbaycanda-nece-realize-edilir-arasdirma/> ; November 21, 2023: US Updates Subversive Technologies, Builds Compact, Agile Squads - INVESTIGATION

<https://report.az/analitika/abs-texribat-texnologiyalarini-yenileyir-vigcam-cevik-desteler-formalasdirilir/> ; November 23, 2023: Treacherous plans of US institutions... This time NGOs and mass media were "controlled" by feminists... https://www.veniazerbaijan.com/Siyaset_e93500_az.html;

⁶ STATEMENT OF CIVIL SOCIETY ON MEDIA FREEDOM AND HUMAN RIGHTS VIOLATIONS — ABZASMEDIA CASE, November 23, 2023, <https://medium.com/@journalistresistance/medi%CC%87a-azadli%C4%9Fi-v%C9%99-i%CC%87nsan-h%C3%BCquqlari-pozuntularina-dai%CC%87r-v%C9%99t%C9%99nda%C5%9F-c%C9%99mi%CC%87yy%C9%99ti%CC%87ni%CC%87n-b%C9%99yanati-abzasmedi%CC%87-391110dba311>

⁷ The Committee to Protect Journalists, Azerbaijani anti-corruption journalists Ulvi Hasanli and Sevinj Vagifgizi detained for 4 months, November 21, 2023, <https://cpi.org/2023/11/azerbaijani-anti-corruption-journalists-ulvi-hasanli-and-sevinj-vagifgizi-detained-for-4-months/>

⁸ Frontline Defenders: Nargiz Absalamova, Hafiz Babali, And Elnara Gasimova Of Abzas Media Detained On Money Smuggling Charges, <https://www.frontlinedefenders.org/en/case/nargiz-absalamova-hafiz-babali-and-elnara-gasimova-abzas-media-detained-money-smuggling-charges>

⁹ Committee to Protect Journalists: Azerbaijani authorities charge Kanal 13 journalists Aziz Orujov and Shamo Eminov over alleged foreign donor money, order channel blocked, January 8, 2024, <https://cpi.org/2024/01/azerbaijani-authorities-charge-kanal-13-journalists-aziz-orujov-and-shamo-eminov-over-alleged-foreign-donor-money-order-channel-blocked/>

¹⁰ Amnesty International: "Azerbaijan: Authorities intensifying crackdown on independent media", December 12, 2023, <https://www.amnesty.org/en/latest/news/2023/12/azerbaijan-authorities-intensifying-crackdown-on-independent-media/>

¹¹ Human Rights Watch, Azerbaijan: Prominent Opposition Figure Arrested, Tofiq Yagublu Is Latest Government Critic Targeted, December 19, 2023, <https://www.hrw.org/news/2023/12/19/azerbaijan-prominent-opposition-figure-arrested>

- charged under Articles 178.3.2 (fraud by an organized group), 320.1 (Forgery of official documents), and 320.2 (Use of counterfeit documents) of the Criminal Code of Azerbaijan.¹²
- On 13 January 2024, after her questioning at the Baku City Main Police Department, journalist Elnara Gasimova was detained as a suspect and accused on charges of smuggling committed by a group of persons by prior conspiracy (Art. 206.3.2 of the Criminal Code). Gasimova became the sixth journalist and media worker arrested in the Abzas Media case.¹³
15. The arrests continued in early March 2024, starting with a police raid in the premises of the Institute for Democratic Initiatives (NGO), Toplum TV (media organisation), and the Third Republic Platform (political organisation), and the arrests of their representatives.¹⁴
- Eight representatives of the three entities, the Institute for Democratic Initiatives, Toplum TV and the Third Republic Platform, have been arrested following the raid. Between 6-8 March 2024, the Baku District Court ordered a four-month pre-trial detention for several journalists and human rights defenders, including Akif Gurbanov (co-founder of IDI and III Republic Platforms), Ali Zeynalov, Mushvig Jabbar, Ramil Babayev, Ilkin Amhrahov, and Alasgar Memmedli (all from Toplum TV), as well as Ruslan Izzatli (co-founder of III Republic Platform). Additionally, the prosecuting authority decided to impose police supervision on Elmir Abbasov and Farid Ismayilov, both journalists from Toplum TV.¹⁵
 - On 22 April 2024, Imran Aliyev, the head of the Meclis.info portal that monitors the parliamentary activities, was arrested.¹⁶
 - On 29 April 2024, Anar Mammadli, chair of the Election Monitoring and Democratic Studies Center and the applicant in the Mammadli group of cases has been arrested under charges of smuggling when committed by a group of people who conspired in advance. The arrest followed his three critical reports on the snap presidential elections held on 7 February 2024 and critical speech in the side event at UN Human Rights Council on 15 March 2024, mirroring the circumstances of his 2013 arrest.^{17 18} In

¹² JAMnews: "Prominent Azerbaijani opposition figure remains under arrest", 16.04.2024, <https://jam-news.net/azerbaijani-oppositionist-remains-under-arrest/>

¹³ The news agency Turan: "Journalist Elnara Gasimova detained in Abzas Media case", 13 January 2024, <https://turaz.az/en/politics/journalist-elnara-gasimova-detained-in-abzas-media-case-776231>

¹⁴ Committee to Protect Journalists, Azerbaijani police raid Toplum TV, detain journalists over alleged currency smuggling, March 11, 2024, <https://cpj.org/2024/03/azerbaijani-police-raid-toplum-tv-detain-journalists-over-alleged-currency-smuggling/>

¹⁵ The news agency Turan: "The detention of three more arrested "in the case of Toplum TV" has been extended", 3 July 2024, <https://turaz.az/en/politics/the-detention-of-three-more-arrested-in-the-case-of-toplum-tv-has-been-extended>

¹⁶ Committee to Protect Journalists, Azerbaijan arrests 13th journalist over alleged international donor funding, April 22, 2024, <https://cpj.org/2024/04/azerbaijan-arrests-13th-journalist-over-alleged-international-donor-funding/>

¹⁷ EMDS issued a statement regarding the snap presidential elections, 12.12.2023, <https://smdtaz.org/smdt-novb%C9%99d%C9%99nk%C9%99nar-prezident-seckil%C9%99ri-bagli-b%C9%99yanat-vayib/>

EMDS issued the Interim Report on the observations on the pre-election campaign stage of the February 7, 2024 snap presidential election, 03.02.2024, <https://smdtaz.org/emds-announced-the-interim-report-on-the-observations-on-the-pre-election-campaign-stage-of-the-february-7-2024-snap-presidential-election/>

EMDS issued the Preliminary Statement on the results of the observations of the snap presidential election held on February 7, 2024, 08.02.2024, <https://smdtaz.org/emds-issued-the-preliminary-statement-on-the-results-of-the-observations-of-the-snap-presidential-election-held-on-february-7-2024/>

¹⁸ HRC55: Media and Civil Society Under Pressure in Azerbaijan Ahead of COP29. On 15 March 2024, Human Rights House Foundation will host "Media and Civil Society Under Pressure ahead of COP29 in Azerbaijan", a civil society event on the sidelines of the 55th session of the UN Human Rights Council. Published: March 5, 2024 <https://humanrightshouse.org/events/hrc55-media-and-civil-society-under-pressure-ahead-of-cop29-in-azerbaijan/>

2024, Mammadli co-founded the Climate of Justice Initiative ahead of COP29, to be held in Azerbaijan with the purpose to call the release of political prisoners in Azerbaijan. The Khatai District Court ordered his pre-trial detention for 3 months and 28 days on 30 April 2024.

- On 30 May, Azerbaijani well-known independent economist Farid Mehralizade, who was expected to testify in the AbzasMedia case, was abducted and detained by police and on 1 June 2024.¹⁹
- On 22 July 2024, former diplomat and activist Emin Ibrahimov has been detained by the police on charges under Articles 126.2.4 (intentional infliction of serious harm to health from hooligan motives) and 221 (hooliganism) of the Criminal Code.²⁰ He is one of the fierce critics of Azerbaijan's policy towards Russia and attributed his arrest to his social media posts on these issues.”²¹

16. All above mentioned individuals remain in extended pre-trial detention, awaiting trial.

17. In all these cases, as reported by the lawyers of the detainees, Azerbaijani courts failed to carry out meaningful judicial oversight. Judicial decisions merely echoed the prosecution's arguments, often by copying and pasting text without providing relevant and sufficient reasoning, in the same pattern as widely observed in the cases of the Mammadli group. All these cases demonstrate that arbitrary arrests and detentions as tools of retaliation through misuse of criminal law against critical media members, human rights defenders and opposition activists continue, making the scrutinizing of Azerbaijan's actions under the Mammadli group all the more urgent.

18. On May 16, 2024, mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, communicated with Azerbaijan regarding the Abzas Media case. They raised several questions about the alleged arbitrary detention and criminalization of journalists and human rights defenders, including Mr. Ulvi Hasanli, Ms. Sevinj Abbasova, Ms. Nargiz Absalamova, Mr. Hafiz Babali, and Ms. Elnara Gasimova. The Special Rapporteurs requested additional information on the allegations, the legal basis for the arrests and charges, measures for confidential lawyer communication, and any investigations into alleged disappearances and ill-treatment including the legal basis for seizing documents and electronic devices and measures to protect journalistic confidentiality.²²

Wider human rights context and the new wave of repression

19. The Committee of Ministers is invited to review the information on the new wave of retaliatory and arbitrary arrests and detentions against the wider dire human rights situation in the country.

¹⁹ The news agency Turan: "Farid Mehralizadeh is another arrested in "Abzas media" case", 1 June 2024, <https://turaz.az/en/politics/farid-mehralizadeh-is-another-arrested-in-abzas-media-case>

²⁰ The news agency Turan: "The court arrested the former diplomat for 4 months (UPDATED)", 24 July 2024, <https://turaz.az/en/politics/the-former-diplomat-charged-under-two-articles-of-the-criminal-code>

²¹ JAMnews: "Former diplomat detained in Baku on stabbing charges", 23.07.2024, <https://jam-news.net/arrests-in-azerbaijan-former-diplomat/>

²² <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=29049>

20. In 2021, Azerbaijan scored 5.8 on the CSO Sustainability Index, ranking it among the least enabling environments for CSOs across 73 countries of Central and Eastern Europe and Eurasia.²³ In 2023, the overall score of the civil society environment in Azerbaijan decreased from 4.1 in 2022 to 4.0 by CSOMeter – A Compass to Conducive Environment and CSO Empowerment project was implemented by ECNL and its partners.²⁴
21. According to the Platform to promote the protection of journalism and safety of journalists of the Council of Europe, 23 journalists are currently in detention and two cases of impunity for murder were recorded on the Platform.²⁵ According to the Reporters Without Borders' (RSF) World Press Freedom Index 2024, Azerbaijan fell 13 places below Russia (162) and Pakistan (152) on the index and ranked 164th out of 180.²⁶ On 1 August 2024, Reporters Without Borders has released the Press Freedom Index for 2024, placing Azerbaijan in 164th position. This ranking reflects a decline in all indicators, particularly political ones, due to a wave of media repression ahead of the presidential elections.²⁷
22. In a report released on 22 February 2024, Human Rights Watch (HRW) added Azerbaijan to the list of governments that target nationals living abroad by highlighting a growing trend of “transnational repression”, in which countries target journalists, political opponents, human rights defenders, civil society activists and others across borders.²⁸
23. On February 12, 2024, the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe adopted document 15927, reiterating its concerns about Azerbaijan's adherence to Council standards. The document reflects ongoing issues highlighted in the Assembly's Resolution 2322 (2020)²⁹, which condemned Azerbaijan for the detention of individuals on politically motivated charges, dismissing the authorities' denial of such practices as untenable in light of numerous European Court of Human Rights judgments.³⁰
24. According to the Election Monitoring and Democracy Studies Center's report, in 2023 alone, 85 activists, politicians, journalists and religious activists faced politically motivated criminal charges leading to their arrests.³¹ Additionally, 39 individuals were subjected to administrative arrests on political grounds that same year, highlighting a concerning trend of repression against political dissent.³²

²³ The 2021 CSO Sustainability Index for Azerbaijan, page 30, <https://www.fhi360.org/wp-content/uploads/drupal/documents/csosi-europe-eurasia-2021-report.pdf>

²⁴ CSO METER: A compass to conducive environment and CSO empowerment. AZERBAIJAN 2023 COUNTRY REPORT, page 6, <https://csometer.info/sites/default/files/2024-02/Azerbaijan%20CSO%20Meter%20Country%20Report%202023.pdf>

²⁵ Safety of Journalists Platform, The Platform for the Protection of Journalism and Safety of Journalists is a unique mechanism which helps the dialogue between the governments and the organizations of journalists, with the aim of stopping violations to press freedom in the member states of the Council of Europe and enabling journalists to exercise their profession without the risk of compromising their safety, <https://fom.coe.int/en/pays/detail/11709482>

²⁶ Reporters Without Borders, Index 2024, <https://rsf.org/en/index>

²⁷ Turan Information Agency: "Reporters Without Borders has released the Press Freedom Index for 2024: Azerbaijan is in one of the last places", 1 August 2024, <https://turaz.az/en/politics/reporters-without-borders-has-released-the-press-freedom-index-for-2024-azerbaijan-is-in-one-of-the-last-places-783160>

²⁸ HRW, "We Will Find You: A Global Look at How Governments Repress Nationals Abroad," 22 February 2024, accessed 5 March 2024, <https://www.hrw.org/report/2024/02/22/we-will-find-you/global-look-how-governments-repress-nationals-abroad>

²⁹ PACE, Reported cases of political prisoners in Azerbaijan, Resolution, Res. 2322 30/01/2020, <https://pace.coe.int/en/files/28584>

³⁰ PACE, Report | Doc. 15927, The honouring of obligations and commitments by Azerbaijan | 12 February 2024, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), <https://pace.coe.int/en/files/33194/html>

³¹ New list of political prisoners includes 254, VOA, 1 Dec. 2023, <https://www.amerikaninnesi.org/a/7380030.html>

³² EMDS Annual Fact-Summary on Politically Motivated Arrests, <https://smdtaz.org/wp-content/uploads/2024/01/fakt-xulas%C9%99-2023.pdf>

25. The most recent list of political prisoners updated on 14 June 2024 by the Union for the Freedom of Political Prisoners in Azerbaijan included 303 cases, highlighting the ongoing issues of politically motivated detentions in Azerbaijan.³³
26. This dramatic escalation of repressions led to the Council of Europe's PACE resolution on 25 January 2024 denying ratification of credentials of Azerbaijan's delegation due to unfulfilled commitments over two decades.³⁴

3.2. REGARDING INDEPENDENCE OF THE JUDICIARY

27. The CM has been consistently focusing on the need to ensure stronger independence of the judiciary from the executive branch as a general measure in this group of cases. In the below section, we provide comments on the Government's reported progress on this issue and draw the CM's attention to two other issues related to the independence of the judiciary that both raise concern: selection and appointment of judges, and performance evaluation of judges.

3.2.1. Re-organising of the composition of the Legal – Judicial Council

28. The Government's Action Report dated 4 April 2024 refers to 'a significant milestone' achieved towards judicial independence, such as: reducing non-judge members in the Judicial Legal Council (LJC), excluding presidential, ministerial, and Supreme Court chairman representatives, and introducing a draft law with numerous amendments to the Law on Courts and Judges aimed at minimizing executive interference in judicial affairs to promote effective judicial self-governance (Action Report, paras 5-8). The amendments made to the Law on Courts and Judges, which were adopted on 29 March 2024, shifted a number of administrative and oversight functions from the Ministry of Justice to the Judicial Legal Council, enhancing the latter's power regarding the governance of the judiciary.³⁵ These changes include the Judicial Legal Council taking over responsibilities such as providing material and technical support to first-instance courts, compiling court statistics, organizing court record management, ensuring labor and social rights of judges, and managing case distribution in a random and automated electronic manner. Furthermore, the Judicial Legal Council is now empowered to initiate and manage disciplinary proceedings against judges independently, without requiring applications from executive authorities.
29. While these developments are seen as positive, there are a number of issues relating to the Council that are of concern. Firstly, the judge election processes to the Judicial-Legal Council (JLC) lack transparency due to the newly established judge conference mechanism. With the amendments made to the Law on the JLC (Article 6-1), the Conference of judges was established in Azerbaijan for selecting judicial members of the JLC. According to Article 6-1.2 of the Law on JLC, the conference of judges is formed by representatives from various

³³ Institute for Peace and Democracy, List of Political Prisoners, Union for the Freedom for Political Prisoners of Azerbaijan, 14 June 2024, 303 prisoners, <https://www.ipd-az.org/political-prisoners-for-14-jun2024/>

³⁴ <https://www.coe.int/en/web/portal/-/pace-resolves-not-to-ratify-the-credentials-of-azerbaijan-s-parliamentary-delegation-citing-a-failure-to-fulfil-major-commitments->

³⁵ Law of the Republic of Azerbaijan No. 1115-VIQD dated March 29, 2024 "On Amendments to the Law of the Republic of Azerbaijan "On Courts and Judges", <https://e-qanun.az/framework/56901>

courts: 5 from the supreme court, 3 from the appellate court, 1 from each specialized first instance court, and 1 from each district (city) court. While such composition ensures a wide representation of the judiciary in the Council, there are no publicly available rules on how these representatives are elected. It is therefore unclear how representatives from all these courts are elected to the Council and how the Conference of judges organises the elections to the Council.

30. Secondly, there are no regulations in place that would promote the rotation of the Council members and ensure that members are not elected for indefinite periods. At the moment, the term of office of the members of the Judicial-Legal Council is five years, however, since 2010, the law on JLC was amended to remove the provisions stipulating a system that limited being elected to the membership to JLC two times in a row.

3.2.2. Selection and Appointment of Judges

31. The judiciary in Azerbaijan remains under strong presidential influence, especially concerning the appointment of judges of Supreme and Constitutional Courts. The President nominates judges for the Constitutional Court and Supreme Court, with the parliament's weakened role by the 2016 constitutional referendum, which empowers the President to dissolve Parliament if it rejects his judicial nominations. The Venice Commission, in its Opinion (CDL-PI(2016)010, paragraph 66) noted that the 2016 constitutional provision allowing the President to dissolve Parliament if it rejects his judicial nominations threatens judicial independence by increasing the judiciary's dependence on the President.³⁶
32. Another concerning issue regarding the independence of the judiciary is the appointment process. Judges appointed for the first time serve an initial three-year probation period, during which their performance is evaluated before possible re-appointment until retirement. The Venice Commission³⁷ and the ECtHR³⁸ have both criticized such probation periods, noting that they can undermine judicial independence by pressuring judges to decide cases in particular ways. The Venice Commission recommends that ordinary judges be appointed permanently until retirement to ensure true judicial independence.

3.2.3. Performance Evaluation of judges

33. According to the position of the Venice Commission, "Evaluation and discipline should be two separate processes".³⁹ The OSCE/ODIHR Kyiv Recommendations (para. 30) states that "Evaluations shall be conducted mainly by other judges and court chairpersons should not have the exclusive competence to evaluate judges."

³⁶ CDL-PI(2016)010, Azerbaijan Preliminary Opinion on the draft modifications to the Constitution submitted to the referendum of 26 September 2016. <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2016\)010-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2016)010-e)> accessed 1 December 2022.

³⁷ CDL-AD(2007)028. Judicial Appointments. Report adopted by the Venice Commission at its 70th Plenary Session (Venice, 16-17 March 2007), para. 40. <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2007\)028-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)028-e)> accessed 1 December 2022.

³⁸ Henryk Urban and Ryszard Urban v Poland App no 23614/08 (ECtHR, 30 November 2010). In that case, the ECtHR recalled that 'in determining whether a body can be considered as "independent" – notably of the executive and of the parties to the case – regard must be had, inter alia, to the manner of appointment of its members and the duration of their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence.' Cf. Campbell and Fell v the United Kingdom App no 80 (ECtHR, 28 June 1984); Findlay v the United Kingdom, App no 22107/93 (ECtHR, 25 February 1997); Inal v. Turkey, App no 22678/93 (9 June 1998); Brudnicka and Others v Poland App no 54723/00 (3 March 2005); Luka v. Romania App no 34197/02 (ECtHR, 21 July 2009).

³⁹ In its opinion on the draft legislation of Armenia on their proposed evaluation system, the Venice Commission has also highlighted that "The fact that a negative result in the evaluation procedure could lead to a disciplinary sanction, including dismissal, is problematic. VC Opinion Armenia para 9. <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)007-e)>

34. Performance evaluation of judges in Azerbaijan is carried out periodically and it may lead to disciplinary consequences for the evaluated judge. In accordance with Article 13.1 of the Law on Judicial Legal Council (Law on JLC), all serving judges are subject to periodical performance evaluations every five years (for judges appointed for the first time for a period of three years at the end of that period).⁴⁰ The Law on JLC (Art.13.3) and the evaluation rules (Art.2.6 and 2.1)⁴¹ entitle the Ministry of Justice and the court chairpersons with a mandate to prepare evaluative opinions on judges' activities to the JLC, following which the JLC shall issue a final opinion concluding that a judge is either i) suitable for their position or ii) has professional deficiencies. In the case of a latter, judge's performance is re-evaluated within 6 months to 2 years, and if deficiencies persist, judge's powers are terminated (Article 3.7 on Law on JLC).⁴² The law on Courts and Judges (article 113) also provides that judges' powers may be prematurely terminated if re-evaluation reveals recurring professional deficiencies.
35. Available official statistics indicate that regular evaluations of judges' performance are used due to alleged disciplinary misconduct.⁴³ Although violations of ethical and professional rules and standards can be considered in the evaluation process, international standards suggest that states should clearly differentiate between evaluation and disciplinary measures and processes. In Azerbaijan, periodic evaluations may result in a dismissal or demotion of judges for professional deficiencies on the basis of opinions from the Ministry of Justice and court chairpersons, which is contrary to the Venice Commission recommendations. Such integration of performance evaluation with disciplinary actions creates a chilling effect and may deter judges from acting independently due to the fear of negative evaluations and subsequent disciplinary measures, and therefore further threatens the independence of the judiciary.

Concluding note

36. While we welcome the legislative amendments increasing the powers of the Judicial Legal Council, we note that the real positive impact of any such reforms towards enhancing independence of the Council and the judiciary shall be demonstrated through practice. For example, pursuant to Articles 111 and 112 of the Law on Courts and Judges, the Judicial-Legal Council can initiate disciplinary proceedings against judges in its own initiative in case of violations of the law established in the decisions of the European Court of Human Rights, and that court chairpersons can apply to the Judicial-Legal Council for initiation of disciplinary proceedings. However, despite the numerous ECtHR judgments regarding the violation of Article 18 of the Convention, such as in the Mammadli group, revealing the judiciary's failure to conduct effective oversight, no disciplinary investigations have been initiated against judges

⁴⁰ The Law on JLC, Article 13.1. The activity of judges appointed for a period of 3 years for the first time is evaluated by the Judicial-Legal Council at the end of that period (three years), and the activity of other judges not less than once in five years.

⁴¹ Decision No. 2 of March 6, 2020 of the Judicial-Legal Council on the approval of the "Rules for evaluating the performance of judges", <<https://e-ganun.az/framework/44796>> accessed 29 July 2024.

⁴² Decision No. 2 of March 6, 2020 of the Judicial-Legal Council on the approval of the "Rules for evaluating the performance of judges", <<https://e-ganun.az/framework/44796>> accessed 29 July 2024.

⁴³ Available reports indicate that only in 2017, more than 170 judges' (probation period ended) have had their performance evaluated and about 20 judges and 7 court presidents have been dismissed because of gross violations. Furthermore, 6 court presidents and 8 appeal court judges were demoted. Media: Rüşvətxor məhkəmə hakimləri cəzalandırılıb. 28 fevral 2018 (Media: Corrupt court judges were punished. 28 February 2018), <<https://sputnik.az/life/20180228/414237512/mehkeme-hakimlari-cezalandirilib.html>> accessed 1 December 2022. ; According to the 2022 data of the JLC, professional deficiencies were identified in the work of 30 judges during the performance evaluations in the past period, and 10 of judges' power were terminated. Respublika newspaper, 16 December 2022, No. 275, https://respublika-news.az/uploads/files/pdf_archive/b89621bc7f-20221216.pdf

to date. The judiciary in Azerbaijan remains under substantial executive influence, lacking institutional independence and substantial reforms. As documented above, misuse of criminal law continues in the new wave of crackdown against civil society, journalists and politicians launched in autumn of 2023, where these individuals, including Anar Mammadli – one of the seven remaining applicants in the Mammadli group - have been placed in pre-trial detention in absence of reasonable suspicion, without effective review by the judiciary, indicating the executive's continued influence on the judiciary.

IV. RECOMMENDATIONS

37. In light of the above, the signatory organizations call on the Committee to urge the Government to take the following steps to fully implement the ECtHR's judgments in this Group:

1. Restitutio in integrum should be ensured in respect of all the applicants by quashing all the applicants' convictions, clearing their criminal records and restoring their civil and political rights through the acquittal verdicts.
 - i. The quashing of the criminal conviction of applicant Anar Mammadli should be ensured immediately, as he faces new conviction under aggravated circumstances due to his current conviction.
2. Put an immediate end to the ongoing wave of retaliatory prosecution and release all those detained under politically motivate charges.
3. Domestic courts should exercise effective judicial oversight in these cases and adequately substantiate their decisions
4. The Government should provide the CM with concrete evidence of domestic courts exercising effective oversight in criminal cases, particularly with regard to allegations of trumped-up charges against Government critics, as an illustration of increased independence of judiciary from the executive power.
5. Structural reforms in the judiciary should be primarily aimed at curtailing the influence of the executive over the judiciary. Such reforms should include ensuring that judges are elected and evaluated in line with principles of transparency, and through democratic processes complying with international standards.

On behalf of the signatory organisations

Nijat Mammadbayli,

Co-founder, Free Voices Collective



ID: 2855112



Azərbaycan Respublikası adından

QƏRAR

BAKİ ŞƏHƏRİ XƏTƏİ RAYON MƏHKƏMƏSİ

Bakı şəhəri

İş № 4(011)-328/2024

30.04.2024-cü il

Hakim Hacıyeva Sülhanə Sərdar qızının sədrliyi,
Paşayev Orxan Zakir oğlunun katibliyi,
Bakı şəhər Baş Polis İdarəsinin İstintaq və Təhqiqat İdarəsinin ağır cinayətlərin
istintaqı şöbəsinin baş müstəntiqi Toğrul Hüseynovun,
Bakı şəhər prokurorluğunun Daxili işlər orqanlarının istintaq, təhqiqat və əməliyyat-
axtarış fəaliyyətində qanunların icrasına nəzarət idarəsinin prokuroru Hüseynov Əbülfəz
Hüseyn oğlunun,
Təqsirləndirilən şəxs **Məmmədli Anar Asəf oğlunun**,
müdafiəçi – Bakı şəhəri 5 saylı Vəkil Bürosunun vəkili Cavadov Cavad Yusif
oğlunun və 14 saylı Vəkil Bürosunun vəkili Süleymanov Elmar İslam oğlunun iştirakları
ilə,

26 iyul 1978-ci ildə Yevlax rayonunda doğulmuş,
Azərbaycan Respublikasının vətəndaşı, ali təhsilli,
subay, **əvvəllər məhkum olunmuş, işsiz, Bakı şəhəri,**
Xətai rayonu, Əhmədli yaşayış sahəsi, Xudu
Məmmədov küçəsi ev №, mənzil № ünvanında
qeydiyyatda olmaqla, Bakı şəhəri, Nərimanov rayonu,
M.Sənani küçəsi ev №, mənzil № ünvanında faktiki
yaşamış, Azərbaycan Respublikası Cinayət
Məcəlləsinin 206.3.2-ci maddəsində nəzərdə
tutulmuş cinayət əməlini törətməkdə təqsirləndirilən
şəxs cəlb edilmiş

Məmmədli Anar Asəf oğlunun barəsində həbs qətimkan tədbirinin seçilməsinə dair
Bakı şəhər Baş Polis İdarəsinin İstintaq və Təhqiqat İdarəsinin ağır cinayətlərin istintaqı
şöbəsinin baş müstəntiqi Toğrul Hüseynovun vəsatəti və Bakı şəhər Prokurorunun müavini
ədliyyə müşaviri Mobil Şəfiyevin təqdimatına toplanmış ilkin sübutlarla birlikdə qapalı
məhkəmə iclasında baxaraq, məhkəmə

Sənədi elektron imzalayan şəxsin vəzifəsi, adı və soyadı: Hakim - Sülhanə Hacıyeva
Məhkəmənin adı: Bakı Şəhəri Xətai Rayon Məhkəməsi
Sənədin elektron yüklənmə ünvanı:
<http://e-mehkeme.gov.az/signed/ShowEdoc?guid=535168116a734b62a956e3a704f4716b>

Qeyd: «Elektron imza və elektron sənəd haqqında» Azərbaycan Respublikası Qanununun 3-cü maddəsinə
əsasən elektron imza əl imzası ilə bərabər hüquqi qüvvəyə malikdir. Elektron imza şəxsin kağız daşıyıcı
üzərindəki möhürə təsdiq edilmiş əl imzasına bərabər tutulur.



S/N: 001