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Date: 05/09/2017

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Meeting: 1294th meeting (September 2017) (DH)

Communication from the applicant's representatives (01/09/2017) in the case of RASUL JAFAROV v. Azerbaijan (Application No. 69981/14).

Information made available under Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1294e réunion (septembre 2017) (DH)

Communication des représentants du requérant (01/09/2017) dans l'affaire RASUL JAFAROV c. Azerbaïdjan (Requête n° 69981/14) ***[anglais uniquement]***

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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1 September 2017

Dear Sir/Madam,

Re: *Rasul Jafarov v. Azerbaijan*, Appl .No. 69981/14 – submissions pursuant to Rule 9(1) of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments

We are writing to make further submissions pursuant to Rule 9(1) of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments as to the individual measures required in the case Rasul Jafarov v Azerbaijan and to inform you about the latest developments concerning the payment of just satisfaction to the applicant. This is further to our earlier submissions of 26 October 2016 and 18 January 2017 on the individual measures necessary for the full and effective implementation of the judgment in this case.

These submissions deal with two issues: a) the re-opening of the domestic proceedings, and b) the payment of just satisfaction.

a) Re-opening of the domestic proceedings

We attach an expert legal opinion on the impact of a finding of a violation of Articles 5 and 18 of the European Convention on Human Rights at the domestic level, which was commissioned by the European Human Rights Advocacy Centre (EHRAC) from Julian B. Knowles QC at Matrix Chambers. Mr Knowles was asked to advise on the impact of the finding by the European Court of Human Rights of a violation of Article 18 relating to the applicant`s pre-trial detention on the legitimacy of the criminal proceedings that led to his conviction (Annex 1). The Opinion concludes that the Court`s findings under Articles 5 and 18, in the particular circumstances of Mr Jafarov`s case, should lead to the reopening of the proceedings by the domestic courts, in order to achieve full *restitutio in integrum*.

The Opinion refers to Recommendation No. R (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, which suggests that the re-opening of proceedings has proved to be the most efficient, if not the only, means of achieving *restitutio in integrum*, including in cases where `the violation found is based on procedural errors or shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings complained of` (para II(ii)(b)).

Although the Opinion recognises that not every finding of a violation of Article 5 together with Article 18 will necessarily justify the reopening of the proceedings (for example, where evidence subsequently emerges which justifies the bringing of criminal charges), Mr Knowles concludes that the findings of the Court in Mr Jafarov's case make it clear that the whole criminal case against him was politically motivated, and accordingly that Mr Jafarov`s conviction was based on procedural errors or shortcomings `of such gravity that a serious doubt is cast on the legitimacy of his conviction` (para 16).

We recall that the domestic law allows for the possibility of reopening as the Criminal Code provides for a procedure for the re-examination of criminal cases on the basis of 'newly discovered circumstances' (Articles 461-467). In the applicant's case, we submit that the Court's judgment should be considered as a newly discovered circumstance forming the basis for the re-examination of the criminal case against the applicant (see the applicant`s previous submissions of 26 October 2016 and 18 January 2017). In his earlier submissions the applicant informed the Department that on 26

August 2016 the Supreme Court rejected his request for the re-opening of his case as being inadmissible. A further decision was made by the Supreme Court on 27 January 2017, and again his request for reopening was rejected (Annex 2).

We recall that in previous cases in which the Court has found violations of both Articles 5 and 18 in the course of criminal proceedings, the question of the re-opening of the domestic proceedings, or other alternative means of ensuring the rehabilitation of the applicants, was central to the supervision process pursued by the Committee of Ministers (see the applicant`s previous submissions of 26 October 2016 and 18 January 2017). For example, in the case of *Lutsenko v Ukraine*, Appl. No. 6492/11 (violations of Articles 5 and 18), the applicant's criminal conviction was quashed by the domestic court, as a result of the ECtHR judgment.

It is emphasised that Mr Jafarov's conviction continues to severely limit his ability to exercise his rights and his professional activities, despite his early release. It is recalled that the applicant's conviction continues in effect for a period of six years after the date of his conviction, in accordance with Article 83.3.4 of the Criminal Code. Therefore, as a result of the conviction, the applicant is prevented from standing for any elections in Azerbaijan until 2021; nor can he be admitted to the Azerbaijani Bar Association until 2021. Furthermore, If he were convicted of any other criminal offence during the 6-year period, he would be punished more severely for committing an offence during the early release period, as provided in Article 83.1 of the Criminal Code.

In conclusion, in the light of Mr Knowles' Opinion, it is submitted that the Committee of Ministers should (i) state that the terms of the judgment of the European Court of Human Rights in Mr Jafarov's case require the reopening of the domestic criminal proceedings against him, and the Committee should (ii) call on the Azerbaijani authorities to ensure that the proceedings are in fact reopened, and retried in a manner that is wholly compliant with the European Convention on Human Rights.

b) Partial delayed payment of just satisfaction

In its judgment in Mr Jafarov's case, the Court ordered the Azerbaijani Government to pay him damages of €25,000 and costs and expenses of €7,448 by the deadline of 4 October 2016. However, to date, the Government has only paid the applicant a total of €8,500 in a series of instalments: €2,000 in April 2017; €2,000 in May 2017; €1,500 in June 2017; €1,500 in July 2017; and €1,500 in August 2017 (Annex 3). Therefore, the Government is still required to pay the remaining sums due,

together with simple interest on all sums paid late or still outstanding, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points, as indicated in the Court's judgment.

We remain at the Department`s disposal should any additional information be required.

Yours faithfully,

Philip Leach

Khalid Baghirov

Joanne Sawyer

Ramute Remezaite

Legal Representatives of the applicant

Annexes

Annex 1. Opinion of Julian B. Knowles QC, Matrix Chambers, dated 17 August 2017

Annex 2. Judgment of the Supreme Court of Azerbaijan dated 27 January 2017 (with covering letter dated 10 February 2017) (in Azerbaijani, with English translation)

Annex 3. Letter to Mr Jafarov from the Ministry of Finance dated 4 July 2017 (in Azerbaijani, with English translation)

RASUL JAFAROV v. AZERBAIJAN

ADVICE

A. INTRODUCTION

1. I am asked to advise the European Human Rights Advocacy Centre ('EHRAC') in connection with the case of Jafarov v. Azerbaijan.[1] The EHRAC supports NGOs and lawyers litigating cases before the European Court of Human Rights ('ECtHR') against Armenia, Azerbaijan, Georgia, Russia and Ukraine.

2. In the Jafarov case the ECtHR found violations of Articles 5 and 18 of the European Convention on Human Rights ('the Convention') in relation to the prosecution and pre-trial detention of Mr Jafarov, who is a prominent human rights defender. He complained under Article 18 of the Convention that his Convention rights had been restricted for purposes other than those prescribed in the Convention. In particular, he argued that his arrest and detention for alleged criminal offences had had the purpose of punishing him as a government critic, silencing him as an NGO activist and human rights defender, discouraging others from such activities, and paralysing civil society in the country.

3. The ECtHR found violations of his rights under Article 5 and 18: It concluded that the charges against Mr Jafarov had not been based on a 'reasonable suspicion' within the meaning of Article 5(1)(c) of the Convention, and that in regards to Article 18 (paras 162 - 163):

> 162. The totality of the above circumstances indicates that the actual purpose of the impugned measures was to silence and punish the applicant for his activities in the area of human rights.

[1] http://hudoc.echr.coe.int/eng?i=001-161416.

> In the light of these considerations, the Court finds that the restriction of the applicant's liberty was imposed for purposes other than bringing him before a competent legal authority on reasonable suspicion of having committed an offence, as prescribed by Article 5(1)(c) of the Convention.
>
> 163. The Court considers this sufficient basis for finding a violation of Article 18 of the Convention, taken in conjunction with Article 5.

4. Since the judgment on 17th March 2016, the EHRAC has made two submissions to the Committee of Ministers, dated 1st November 2016 (http://hudoc.exec.coe.int/eng?i=DH-DD(2016)1228E) and 25th January 2017 (http://hudoc.exec.coe.int/eng?i=DH-DD(2017)88E).

5. I am asked to advise on the impact of a finding by the ECtHR of a violation of Article 18 of the Convention. Article 18 provides:

> The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

6. The ECtHR has emphasised that Article 18 of the Convention does not have an autonomous role. It can only be applied in conjunction with other Articles of the Convention (see Gusinskiy v. Russia, Application No. 70276/01). The Court has said that the whole structure of the Convention rests on the general assumption that public authorities in the member States act in good faith. However, the Court has also recognised that any public policy or individual measure may have a 'hidden agenda', and so the presumption of good faith is rebuttable. However, an applicant alleging that his rights and freedoms were being limited for an improper reason must convincingly show that the real aim of the authorities was not the same as that proclaimed or which could be reasonably inferred from the context. A mere suspicion that the authorities used their powers for some other purpose than those defined in the Convention is not sufficient to prove that Article 18 has been breached: see Khodorkovskiy v. Russia, No. 5829/04 (31st May 2011) and Khodorkovskiy and Lebedev v. Russia, Nos. 11082/06 and 13772/05 (25th July 2013).

7. The EHRAC has pointed out that politically-motivated proceedings are a problem in a number of the countries in which it operates. For example, it recently represented the former Prime Minister of Georgia, Mr Merabishvili, in his Grand Chamber hearing at the ECtHR on whether his pre-trial detention was politically motivated. The Fourth Section of the Court found violations of Articles 5 and 18 (http://hudoc.echr.coe.int/eng?i=001-163671) and the judgment of the Grand Chamber is pending.

8. However, as the Jafarov judgment makes clear at para 154, findings of Article 18 violations are very rare and it is unclear what the impact of such a finding should be at the domestic level.

9. Where the ECtHR finds a violation of Article 6 there is, in general, an expectation that domestic proceedings will be re-opened. The question I have been asked to consider is whether, given the Court's conclusion that the actual purpose of the impugned measures was to silence and punish Mr Jafarov for his activities in the area of human rights, there should be an equivalent obligation to re-open the domestic proceedings in this case, where there has been a finding of a violation of Article 5 together with Article 18.

B. ADVICE

10. My opinion, in summary, is that there will be many cases, including Mr Jafarov's, in which a finding of an Article 5 violation, together with an Article 18 violation, in the context of a case where there has been a criminal conviction, should lead to the criminal proceedings being reopened. Not every such violation might justify such a course – for example, where the violation is 'cured' by later events in the proceedings - but the circumstances of Mr Jafarov's case, and the reasons why the ECtHR upheld his complaint, do justify the reopening of the proceedings.

11. Under Article 46 of the Convention the Contracting Parties have accepted the obligation to abide by the final judgment of the ECtHR in any case to which they are parties, and it then falls to the Committee of Ministers to supervise its execution. In

certain circumstances this obligation may entail the adoption of measures, other than just satisfaction awarded by the ECtHR in accordance with Article 41 of the Convention and/or general measures, which ensure that the injured party is put, as far as possible, in the same situation as he or she enjoyed prior to the violation of the Convention (*restitutio in integrum).* It is for the competent authorities of the respondent State to decide what measures are most appropriate to achieve *restitutio in integrum*, taking into account the means available under the national legal system.

12. 'Recommendation No. R (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights' recorded that that the practice of the Committee of Ministers in supervising the execution of the ECtHR's judgments shows that in exceptional circumstances the re-examination of a case or a reopening of proceedings has proved the most efficient, if not the only, means of achieving *restitutio in integrum.* The Recommendation went on:

> The Committee of Ministers:
>
> I. Invites, in the light of these considerations the Contracting Parties to ensure that there exist at national level adequate possibilities to achieve, as far as possible, *restitutio in integrum*;
>
> II. Encourages the Contracting Parties, in particular, to examine their national legal systems with a view to ensuring that there exist adequate possibilities of re-examination of the case, including reopening of proceedings, in instances where the Court has found a violation of the Convention, especially where:
>
> (i) the injured party continues to suffer very serious negative consequences because of the outcome of the domestic decision at issue, which are not adequately remedied by the just satisfaction and cannot be rectified except by re-examination or reopening, and
>
> (ii) the judgment of the Court leads to the conclusion that
>
> (a) the impugned domestic decision is on the merits contrary to the Convention, or
>
> (b) the violation found is based on procedural errors or shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings complained of.

13. The language in (b) strongly points towards, and supports, the requirement that a case be re-opened where the Article 5 and Article 18 violations lead to the conclusion that

serious doubt is cast on the outcome of the domestic proceedings, which, in this case, means Mr Jafarov's conviction and sentence.

14. The question of whether this test is met or not will require close examination of the precise basis of the ECtHR's findings. Not every Article 5 and Article 18 violation will necessarily meet the test. For example, it might be the case that an initial arrest was improper, but that evidence later emerged which properly justified the bringing of criminal charges and the defendant's eventual conviction. In such a case, it might be difficult to argue that the eventual conviction was 'based' on the initial violation, so as to justify the re-opening of the criminal proceedings.

15. However, in my opinion there is no doubt that the test is met in Mr Jafarov's case. The findings of the Court make clear that the whole criminal case against him was politically motivated, and the Court said this conclusion was not undermined by the fact that he had been taken to trial and convicted. Having recited the facts and law relating to the criminal allegations against him, the Court said at paras 130 – 134 (emphasis added):

> 130. In such circumstances, the Court finds that the applicant could not have been reasonably suspected of having committed the criminal offence of "illegal entrepreneurship" under Article 192.2.2 of the Criminal Code, because there were no facts, information or evidence showing that he had engaged in commercial activity or the offence of "tax evasion" under Article 213 of the Criminal Code, as in the absence of such commercial activity there could be no taxable profit under the simplified regime. Furthermore, the above-mentioned facts were not sufficient to give rise to a suspicion that the applicant had sought to "obtain unlawful advantage for himself or for third parties", which was one of the constituent elements of the criminal offence of "abuse of power" under Article 308 of the Criminal Code (compare, mutatis mutandis, Lukanov v. Bulgaria, 20 March 1997, § 44, Reports of Judgments and Decisions 1997-II).
>
> 131. As for the additional charges under Articles 179.3.2 and 313 of the Criminal Code, brought against the applicant on 12 December 2014, the Court notes that they were brought after the latest domestic court order of 23 October 2014 extending the applicant's pre-trial detention. As such, all previous decisions ordering and extending the applicant's pre-trial detention had been based solely on the original charges under Articles 192.2.2, 213 and 308 of the Criminal Code, and therefore the new charges were of no significance to the assessment of the reasonableness of the suspicion underpinning the applicant's detention during the period falling within the scope of the present case, and the Government have not expressly argued otherwise.

132. In any event, the Court notes that, as with the original charges, the description of the new charges essentially remained the same and lacked a sufficient level of coherence. There was additional information regarding alleged deficiencies in some service contracts concluded by the applicant and amounts paid under these contracts. Presumably, this was the basis for the suspicion that the applicant had committed the offence of "forgery by an official" under Article 313 of the Criminal Code. However, the Government again failed to produce before the Court any specific evidence or information which could constitute the basis for the prosecuting authorities' suspicions in this regard. As for the charge of embezzlement under Article 179.3.2 of the Criminal Code, the Court cannot characterise it as anything other than spurious, given that the money was given to the applicant voluntarily by donors under grant agreements and that the donors expressed complete confidence that the money had been spent properly for the purposes for which it had been allocated. Taking into account the manifest unreasonableness of the original three charges against the applicant (see paragraph 130 above) and the heightened level of scrutiny required by the specific context of the present case (see paragraph 120 above), the Court considers that the respondent Government also failed to satisfy the Court that the applicant was reasonably suspected of having committed the alleged offences under Articles 179.3.2 and 313 of the Criminal Code.

133. The Court is mindful of the fact that the applicant's case has been taken to trial. That, however, does not affect the Court's findings in connection with the present complaint, where it is called upon to consider whether the deprivation of the applicant's liberty during the pre-trial period was justified on the basis of the information or facts available at the relevant time. In this respect, having regard to the above analysis, the Court finds that the material put before it does not meet the minimum standard set by Article 5 § 1 (c) of the Convention for the reasonableness of a suspicion required for an individual's arrest and continued detention. Accordingly, during the period the Court is considering in the present case, the applicant was deprived of his liberty in the absence of a "reasonable suspicion" of his having committed a criminal offence.

134. Accordingly, there has been a violation of Article 5 § 1 of the Convention.

16. For these reasons, in my opinion there is no question but that Mr Jafarov's conviction was based on procedural errors or shortcomings - namely the bringing of a politically motivated case resulting in his detention - of such gravity that a serious doubt is cast on the legitimacy of his conviction. Quite simply, without the case being brought, and without his detention, there could have been no conviction. Hence in my opinion in order to achieve *restitutio in integrum* in this case, the re-opening of the criminal proceedings is called for.

17. I would be happy to advise further if asked.

JULIAN B. KNOWLES QC

Matrix Chambers

Gray's Inn

17th August 2017

Criminal Board of the Supreme Court of the Republic of Azerbaijan

10 February 2017 No. 12(102) - 004/16

Rasul Jafarov Aghahasan
Baku city, H.Zardabi
avenue 39, apartment 40

Copy of the decision of the Supreme Court of the Republic of Azerbaijan about convicted Rasul Jafarov Agahasan dated 27 January 2017 is sent to you.

Attachment: copy of the decision on page 03.

Judge [signature] **Hafiz Nasibov**

Case no. 12 (102)-104/2016

The Supreme Court of the Republic of Azerbaijan

DECISION

on application for examination of a court judgment or decision in connection with newly discovered facts

27 January 2017 Baku city

I, judge of the Supreme Court of the Republic of Azerbaijan Hafiz Nasibov Ganbar reviewed the application submitted by Rasul Jafarov Aghahasan requesting examination of a court judgment or decision in connection with newly discovered facts related to his conviction under articles 179.3.2, 192.2.2, 308.2, and 313 of the Criminal Code of the Republic of Azerbaijan in accordance with the decision of the European Court of Human Rights dated 17 March 2016 in the case of "Rasul Jafarov v. Azerbaijan" and

IDENTIFIED THAT:

Rasul Jafarov Aghahasan was found guilty of crimes under articles 179.3.2, 192.2.2, 213.1, 308.2 and 313 of the Criminal Code of the Republic of Azerbaijan and was sentenced to 6 (six) years and 6 (six) months of prison with 3 (three) years of deprivation of the right to hold senior positions in municipal and public offices, and to engage in business activities by the decision of the Baku Grave Crimes Court dated 16 April 2015 (the trial chaired by judge E.H.Ismayilov, and attended by judge A.N.Osmanov and judge J.I.Huseynov).

According to the judgment of the court, Jafarov was convicted because he was elected as a chair of the "Human Rights Club" entity established in Baku on 10 December 2010 at the general assembly of the entity held on the same date and operated as non-governmental organization without state registration as a legal entity, received funds in large sums as grants from international donors and foreign states under contracts without registration at the relevant executive body in violation of requirements of Article 16 of the law of the Republic of Azerbaijan on "Non-Governmental organizations (public unions and foundations)" dated 13 June 2000. He bestowed himself with decision making functions by appointing himself project manager, spent these funds not in line with the purpose of the funding recruiting employees to various positions, pretended that he had used their services, filled in official documents like contract, handover and takeover acts, payment and receipt orders related to these services with deliberately false information. During 2010-2014, Jafarov misappropriated these funds, abused his official service powers for personal interests, and engaged in illegal entrepreneurship evading to pay taxes to state budget in large sums.

Jafarov withdrew cash in total amount of 195,789.44 AZN using following cashbooks...

- no. FJB 110 170 215 3257 dated 17.01.2011;

- no. FJB 111 830 324 0140 dated 02.07.2011;
- no. FJB 122 900 704 1155 dated 16.10.2012;
- no. FJB 123 040 715 0380 dated 30.10.2012;
- no. FJB 132 000 953 7376 dated 19.07.2013;
- no. FJB 132 801 031 9476 dated 07.10.2013;
- no. FJB 133 601 111 2294 dated 26.12.2013;
- no. FJB 140 551 159 4165 dated 24.02.2014 and other cashbooks.

from his bank accounts listed below...

- Bank Respublika, EUR account no: AZ 34 BRES 003 811 978 002 094 970 02;
- Bank Respublika, AZN account no: AZ 35 BRES 003 811 944 002 094 970 05;
- Bank Respublika, USD account no: 38 118 400 020 949 700 01;
- Bank Respublika, USD account no: AZ 67 BRES 003 811 840 002 094 970 01;
- Bank Respublika, EUR account no: 381 197 800 218 217 05;
- Bank Respublika, EUR account no: 381 197 800 209 497 0001;
- Bank Respublika, CHF account no: AZ 20 BRES 003 811 756 002 094 970 06;
- Kapital Bank, AZN account no: AZ 31 AIIB 382 100 194 434 013 951 04;
- Kapital Bank, AZN account no: AZ 52 AII 382 200 184 034 013 951 04;
- Unibank, AZN account no: AZ 7 UBAZ 160 724 471 212 10 AZN 001;
- Unibank, AZN account no: AZ 12 UBAZ 160 724 471 410 10 AZN 001;
- Unibank, AZN account no: AZ 74 UBAZ 160 724 471 212 12 AZN 001;
- Unibank, AZN account no: 167 244 713 801 AZN 01;
- Unibank, AZN account no: 167 244 712 434 AZN 01;
- Bank Standard, AZN account no: 380 10T 000 017 496;
- Bank Standard, AZN account no: 410 109 441 301 969 820 01;
- Access Bank, account no: AZ27ACAB 0001 009 24 2 0001 187.02;

...as individual (physical person) tax payer registered at the Baku city Tax Department on 15 August 2008 under following grant contracts that were not registered at the relevant executive body...

- 82,545.83 AZN from National Endowment for Democracy (NED) of the USA for "Increasing citizens activeness" project with contract no.2013-167 dated 2 July 2013;
- 2,851.54 AZN from "People in Need" of Czech organization for raising awareness of local and regional civil society project dated 30 May 2013 [note from translator: no contract number];
- 16,131 AZN from Norwegian Stiftelsen Frett Ord organization for Art for Democracy project with contract no. 1308-08-05 dated 29 August 2013;
- 1,989.93 AZN from Azerbaijani office of the Open Society Foundation of the Lichtenstein kingdom;
- 6,411 AZN from the Embassy of the United Kingdom in Azerbaijan;
- 549.01 AZN from the Organization for Security and Cooperation in Europe;
- 749.44 AZN from the Open Society Foundation;

- 2,510 AZN from Ilya Lozovsky, the USA;
- 4,006.70 AZN from the International Bridge organization of the Switzerland;
- 1,055.83 AZN from the Embassy of the Norwegian Kingdom in Azerbaijan;

...along with 10,000 AZN from the National Endowment for Democracy USA for the project "Advocacy for human rights" (contract no. 2014-160 dated 27 February 2014), 31,000 AZN from the Black See Trust Fund of the German Marshall Fund for the project "Strengthening International human rights protection in Azerbaijan" (contract no. 4492 dated 22 January 2014), and 35,989.16 AZN from the Budapest office of the Open Society Foundation for the project "Using all forms of artistic expression for promotion of human rights in Azerbaijan" (contract no. OR2013-04835 dated 15 July 2013) under the names of *Legal Protection and Education Society* organization chaired by Elchin Sadigov Ali and International *Cooperation of Volunteers* organization chaired by Elnur Mammadov Akif with purpose of evading taxes. Jafarov was in close connection with Mammadov and Sadigov. Above-mentioned funds were transferred to bank accounts of these two legal entities at Sabail district branch of the International Bank of Azerbaijan, account no: AZ28 IBAZ 381 900 184 025 046 4209, and at Rabitabank, USD account no: 133 318 011 0944-50855.

146,133.27 AZN of these funds were not deposited into the cash register by Jafarov who did not design payment documents related to these funds consequently hiding these transactions from registry and abusing his service powers for his personal interests. Jafarov agreed with Ahmad Heybatov Nuraddin on development, edit and copying onto disc of animation for exchange of 1,720 AZN and signed service contract no. ACI-YF/X-03 dated 3 July 2013 and subsequently signed handover and takeover act dated 28 August 2013. However, Heybatov did not receive any funds and Jafarov filled in deliberately false information into receipt invoice no. 217519 dated 28 August 2013 on payment of 1,720 AZN.

He also misappropriated 520 AZN from the service contract, dated 6 July 2013, in an amount of 1,720 AZN signed with individual (physical person) Anar Jabiyev Rizvan on composing a song, designing a video to the music, edit and copying onto disc. After signing the handover-takeover act dated 27 August 2013, Jabiyev was paid only 1,200 AZN while the receipt invoice no. 443806 dated 27 August 2013 were filled with deliberately false information.

Javarov also signed a rent contract with Jahangir Ahmadov Kazim dated 31 May 2013 for the rent of a living space located on 1 Bahruz Nuriyev street, apartment 16, Baku city for 250 AZN per month, but did not make any payment to Ahmadov. Jafarov embezzled 933.10 AZN by deliberately filling in false information into payment orders no. I/1 and 44 dated 30 August 2013 and 31 October 2013 respectively.

He also signed a contract no. 1308-08-05/06 dated 19 February 2014 in an amount of 1,280 AZN with Nijat Imranli Javanshir for development of script, its design and publication, and a handover-takeover act confirming the delivery of agreed service dated 17 April 2014. However, Imranli did not receive any

payment and Jafarov misappropriated 1,280 AZN by filling in deliberately false information into receipt invoice no. 559503 dated 21 April 2014.

Jafarov signed a service contract dated 17 November 2013 with Seymur Verdizada Vagif for acting as a moderator in a movie festival for an amount of 200 AZN and a handover-takeover act dated 30 November 2013 indicating the delivery of agreed service. However, Verdizada received only 150 AZN, while the receipt invoice no. 268726 dated 30 November 2013 was deliberately filled in with false information about the amount of the payment.

In total, Jafarov embezzled 150,636.37 AZN (one hundred fifty thousand six hundred thirty six manat and thirty seven qepiks) entrusted him by going beyond a number of contractual agreements with parties and repeated misappropriation. In addition, by evading paying taxes on provided services, he carried out his intentions of extorting profit in large size and abused his service powers by appointing himself to a project manager position and others to other positions at grant projects that were not registered at the relevant executive bodies in total amount of 156,427.73 AZN (one hundred fifty six thousand four hundred seven manat and seventy three qepiks) in accordance with the exchange rate of relevant period from above-mentioned donor organizations at the Human Rights Club organization without state registration which he co-founded and chaired. He arranged payments to himself and others involved in projects and engaged in illegal entrepreneurship extracted income in the significant size of 150,170.62 AZN (one hundred fifty thousand one hundred seventy manat and sixty two qepiks) and therefore caused damage to citizens, organizations as well as the society and state in the significant size. He also evaded taxes in significant size of 6,257.11 AZN (six thousand two hundred fifty seven manat and eleven qepiks) in accordance with articles 124, 150.1.6, 218, 219 and 220 of the Tax Code of the Republic of Azerbaijan.

The Criminal Board of the Baku Appeal Court Appeal refused to support appeal complaint submitted by victims and defense of the convicted individual in its decision dated 31 July 2015. The Appeal Court changed the decision of the Baku Grave Crimes Court dated 16 April 2015 and freed Jafarov from criminal liability under Article 213.1 of the Criminal Code of the Republic of Azerbaijan. The Appeal Court sentenced him to 6 (six) years and 3 (three) months in prison for crimes under articles 179.3.2, 192.2.2, 308.2 and 313 of the Criminal Code of the Republic of Azerbaijan.

The Supreme Court of the Republic of Azerbaijan refused to grant a cassation complaint of Jafarov's lawyers in its ruling dated 16 February 2016 (the hearing was chaired by F.A. Karimov, with two other judges G.L.Rzayeva and I.T.Hajiqayiboy) and uphold the decision of the Criminal Board of the Baku Appeal Court dated 31 July 2015.

Before the above-mentioned court decisions were adopted, Jafarov filed a complaint to the European Court of Human Rights during the primary investigation period (the application was submitted to the European Court on 10 October 2014).

The applicant claimed that his arrest and pre-trial detention were not justified or carried out with fairly, his right to freedom of assembly was violated, and his rights were restricted for other purposes than specified in the Convention.

In its ruling dated 23 February 2016, the European Court of Human Rights concluded that suspicion for arrest and continued detention of Jafarov had not correspond to the minimum standards set in clause C of the Article 5.1, meaning the application was deprived of liberty without reasonable suspicion. The ruling also stated that national courts did not properly examine lawfulness of his arrest and the paragraphs number one and four of the Article 5 of the Convention had been violated.

Furthermore, the European Court concluded that Rasul Jafarov's deprivation of liberty was not motivated by the purpose of bringing him before the competent legal authority on reasonable suspicion of committing a crime as stipulated in the clause C of Article 5.1 of the Convention, but was motivated by other reasons and was in breach of Article 18 along with Article 5 of the Convention.

In addition, according to the European Court, responsible state failed to comply with obligations stipulated in Article 34 of the Convention due to restrictions imposed on applicant Rasul Jafarov's right to lodge an individual complaint.

Along with identifying the above-mentioned violations, the European Court also held that Azerbaijan was to pay Rasul Jafarov 25,000 EUR in respect of pecuniary and non-pecuniary damage and 7,448 EUR in respect of court related costs and other expenses.

The European Court noted in its ruling that although there was a judgment on the criminal case during the period of examination of applicant's complaint, it had not entered into lawful force and had been in the examination at the appeal court. Therefore, adopted court decisions about the substance of charges brought against Rasul Jafarov and the issue of fair trial stipulated in the Article 6 of the European Convention were not subject of examination of the European Court , and the Court was satisfied with the above-mentioned conclusions. The decision did not request reasoning for renewal of court executions (re-examination of induction) with purpose of remedying of violated right of the applicant.

The comparison of Rasul Jafarov's application with the ruling of the European Court shows that his request noted in the application – examination of the criminal case at the Plenum of the Supreme Court of the Republic of Azerbaijan and annulling the decision of the Criminal Board of the Supreme Court dated 16 February 2016 ultimately suspending all charges against him – is not driven by character of violations and conclusions stated in the ruling of the European Court.

There is no substantiated grounds for Rasul Jafarov's case to be examined at the Plenum of the Supreme Court since the application does not gives rise to doubts concerning the soundness of the disputed court decision (judgment, decisions of appeal or cassation instances of court) and it should be left without examination.

Article 456.3 of the Criminal Procedure Code of the Republic of Azerbaijan stipulates that the submitting an application examination of a court judgment or decision in connection with newly discovered facts, requirements regarding the application and its preliminary review are governed by requirements set in articles 464-466 of the Criminal Procedure Code.

According to the Article 466.2.1 of the Criminal Procedure Code, if the application does not give rise to doubts concerning the soundness of the disputed court judgment or decision, it shall be left unexamined by the judge who carries out the primary examination.

According to the above-mentioned and guided by articles 455, 456, 464-466 of the Criminal Procedure Code of the Republic of Azerbaijan,

I DECIDED:

Application requesting review of the decision of the Criminal Board of the Supreme Court of the Republic of Azerbaijan dated 16 February 2016 about examination of a court judgment or decision in connection with newly discovered facts at the Plenum of the Supreme Court of the Republic of Azerbaijan to be left without examination.

This is a final decision and it cannot be appealed or protested.

Judge: Hafiz Nasibov

Correct.

Judge of the Supreme Court: Hafiz Nasibov [signature]

[Translation of the stamp: The Supreme Court of the Republic of Azerbaijan]

[Note from translator: the same stamp appears at the end of every page of the document (decision)]

The Ministry of Finance

the Republic of Azerbaijan

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04 July 2017 No. DA01/01-03-662-3377

To Rasul Jafarov Aghahasan
living in apartment 40
Baku city, H.Zardabi avenue 39

Review of the request

Received by the Ministry of Finance
of the Republic of Azerbaijan on 12 June 2017

Your information request on implementation of the ruling of the European Court of Human Rights no. 69981/14 dated 17 March 2006 was examined at the Ministry of Finance.

We note that the Ministry of Finance ensures transfer of funds to relevant accounts based on requests of budget organizations in accordance with its functions specified in the legislation. Guided by this function and based on request of the Affairs Office of the President of the Republic of Azerbaijan, 4,000.0 (four thousand) euros were transferred to your bank account at the Sabail branch of the International Bank of Azerbaijan OSC in two monthly installments of 2.000 (two thousand) euros every months during April-May 2017.

Chief of apparatus [signature] **Namig Suleymanov**