



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME



Strasbourg, 19 February 2015

CommDH(2015)5  
English only

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**Third party intervention  
by the Council of Europe Commissioner for Human Rights**

under Article 36, paragraph 3, of the European Convention on Human Rights

**Application No. 81553/12  
Hilal MAMMADOV v. Azerbaijan**

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## Introduction

1. On 20 January 2015, the Council of Europe Commissioner for Human Rights (hereinafter: 'the Commissioner') informed the European Court of Human Rights (hereinafter: 'the Court') of his decision to intervene as a third party in the Court's proceedings, in accordance with Article 36, paragraph 3 of the European Convention on Human Rights (hereinafter: 'the Convention'), and to submit written observations concerning the case of *Hilal Mammadov v. Azerbaijan*. This case relates to the applicant's arrest and alleged ill-treatment by the police in June 2012, the institution of criminal proceedings against him and his pre-trial detention, as well as proceedings concerning his alleged ill-treatment.
2. According to his mandate, the Commissioner fosters the effective observance of human rights; assists member states in the implementation of Council of Europe human rights instruments, in particular the Convention; identifies possible shortcomings in the law and practice concerning human rights; and provides advice and information regarding the protection of human rights across the region.<sup>1</sup>
3. With reference to human rights defenders in particular, the Commissioner has a specific duty to work in this field, further to the adoption by the Council of Europe Committee of Ministers of the Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities, on 6 February 2008.
4. The Declaration "[i]nvites the Commissioner for Human Rights to strengthen the role and capacity of his Office in order to provide strong and effective protection for human rights defenders, notably by "continuing to meet with a broad range of defenders during his country visits and to report publicly on the situation of human rights defenders". It also calls on Council of Europe member states to "co-operate with the Council of Europe human rights mechanisms and in particular (...) with the Commissioner for Human Rights by facilitating his/her visits, providing adequate responses and entering into dialogue with him/her about the situation of human rights defenders when so requested."
5. The situation of human rights defenders in Azerbaijan is of great concern to the Commissioner. Reprisals, including judicial harassment, against critical voices in general, and those denouncing human rights violations in the country in particular is a widespread phenomenon in Azerbaijan, to which the Commissioner has repeatedly attempted to bring the attention of the authorities in his reports and interventions.
6. This intervention is based on the Commissioner's visits to Azerbaijan from 5 to 8 November 2012, from 22 to 24 May 2013 and from 22 to 24 October 2014, as well as on continuous country monitoring. During his visits the Commissioner held discussions with a number of state authorities and met with representatives of non-governmental organisations. He also met with a number of detained human rights defenders and other persons who had voiced dissenting views. The Commissioner met the applicant twice in the pre-trial detention centre of Kurdakhani, in November 2012 and May 2013. The applicant was since sentenced to 5 years' imprisonment, a sentence confirmed by the Supreme Court of Azerbaijan on 25 June 2014, and transferred to a high-security prison.
7. The Commissioner believes that the present case is an illustration of a serious and systemic human rights problem in Azerbaijan, which, in spite of numerous efforts by the Commissioner and other international stakeholders, remains unaddressed to date.

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<sup>1</sup> [Resolution \(99\)50](#) on the Council of Europe Commissioner for Human Rights, adopted by the Committee of Ministers on 7 May 1999.

8. Section I of the present written submission focuses on major issues concerning the right to freedom of expression in Azerbaijan; Section II describes the pattern of reprisals against human rights defenders in the country; and Section III contains observations on pre-trial detention. These sections are followed by the Commissioner's conclusions.

### **I. Observations on the right to freedom of expression in Azerbaijan**

9. Through his visits to Azerbaijan and continuous monitoring, the Commissioner has identified a number of deficiencies in the protection of freedom of expression, assembly and association in Azerbaijan. The Commissioner has had to conclude that Azerbaijan was failing to comply with its international obligations which require safeguarding these freedoms.
10. Regarding freedom of expression in particular, the Commissioner has repeatedly called on the authorities to improve the respect for this right and to release all persons who are detained because of the views they have expressed.
11. In his report following his May 2013 visit to Azerbaijan,<sup>2</sup> the Commissioner expressed serious concerns at the apparent intensification of the practice, already highlighted by his predecessor in 2010 and 2011, of the unjustified or selective criminal prosecution of journalists and others who express critical opinions. He noted that several media workers had recently been prosecuted and/or sentenced for incitement to national, racial or religious hatred and in some instances terrorism, as well as for hooliganism, tax evasion, drug possession and illegal possession of weapons, with the credibility of the relevant charges being widely challenged. As a result, a number of journalists had to serve long prison terms or carry out corrective labour and/or pay heavy fines.
12. In this context, the Commissioner's report refers specifically to the applicant as one of those who have been prosecuted and detained on the basis of seemingly spurious charges.
13. The Commissioner noted that Hilal Mammadov, a journalist, editor-in-chief of *Tolishi Sado* newspaper (The Voice of Talysh, the only newspaper printed in the minority Talysh language), academic and minority rights defender, was arrested on 21 June 2012 on charges of drug possession. A few days later, additional charges of treason and incitement to national, racial or religious hatred were brought against him. The Commissioner shared the views of others who had stressed the inconsistencies in the various charges brought against him.
14. The Commissioner was all the more worried given that Novruzali Mammadov, the former editor of *Tolishi Sado*, died in a prison hospital on 17 August 2009, while serving a ten-year sentence following his conviction for charges similar to those brought against Hilal Mammadov.
15. In an update to the report published in April 2014, the Commissioner stressed that the situation with regard to freedom of expression in Azerbaijan had deteriorated.<sup>3</sup> He noted that in the comments they had submitted in response to his 2013 report, the Azerbaijani authorities had stated that the journalists referred to in his report had not been prosecuted for their professional activity. However, the Commissioner pointed to consistent reports according to which these cases are based on charges which lack credibility and often follow critical reporting or posts on the Internet. Indeed, several interlocutors of the Commissioner stressed that the applicant was arrested after posting music and a video clip on the Internet which attracted attention to the Talysh culture.

<sup>2</sup> Commissioner for Human Rights, Report on Azerbaijan, 6 August 2013, [CommDH\(2013\)14](#).

<sup>3</sup> Commissioner for Human Rights, Observations on the human rights situation in Azerbaijan: An update on freedom of expression, freedom of association, freedom of assembly, and the right to property, 23 April 2014, [CommDH\(2014\)10](#).

16. The Commissioner also reiterated that steps should be taken urgently to address the above concerns and called once more on the authorities to immediately release all persons imprisoned because of views or opinions expressed, including the applicant.
17. The Commissioner's findings and conclusions were echoed by a number of other international bodies. In a recent interim resolution,<sup>4</sup> the Committee of Ministers of the Council of Europe, supervising the execution of the judgments adopted by the European Court of Human Rights in the cases of *Mahmudov and Agazade v. Azerbaijan* and *Fatullayev v. Azerbaijan*, considered that, as regards the arbitrary application of criminal legislation to limit freedom of expression, "the present situation raises serious concerns, in particular on account of the reported recent use of different criminal laws - similar to the ones used in the present group of cases (accusations of illegal activities, abuse of authority, treason, hooliganism or other crimes which can have close links to the legitimate exercise of the freedom of expression) - against journalists, bloggers, lawyers and members of NGOs."
18. Emphasising the structural dimension of the aforementioned shortcomings, the Commissioner has also repeatedly stressed the need to take measures to ensure a genuinely independent and impartial review by the judiciary of cases involving journalists and others expressing critical voices.

## **II. Reprisals against human rights defenders**

### **Hindrances to the work of human rights defenders in the Council of Europe area**

19. In the course of ongoing discussions with human rights defenders, the Commissioner's attention has been drawn to the very difficult situation which human rights defenders in some countries face, including regular and severe threats and attacks against their personal security as well as administrative and legal obstacles. Both individuals and organisations can be targeted. In order to mobilise public support for some of their actions, states often engage in defamation campaigns against these individuals and organisations. Defenders are accused of spying, being "enemies of the state", getting support from outside forces due to their reliance on foreign funding or helping "criminals" and "deviants". Sometimes defamation and libel suits are launched against defenders.<sup>5</sup>

### **Reprisals in Azerbaijan as human rights violations**

20. The arrest and detention of the applicant in June 2012 is part of a more general crackdown on human rights defenders in Azerbaijan, which intensified over the summer of 2014. In the Commissioner's view, the prosecution of human rights defenders and prominent journalists in Azerbaijan constitute reprisals against those who have co-operated with the Council of Europe or other organisations and denounced human rights violations in the country. The close working relationships of the Commissioner's Office and the Council of Europe as a whole with these human rights defenders reinforce the belief that they are being deliberately targeted with criminal proceedings as a result of their engagement in activities that should be perfectly legal in a well-functioning democracy. Almost all have participated in human rights defenders' round-tables organised by the Commissioner's Office in recent years. Others have provided legal aid on a number of cases before the European Court of Human Rights, or have provided information to monitoring mechanisms of the Council of Europe. Finally, some of them have organised or participated in several side events during sessions of the

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<sup>4</sup> [Interim Resolution](#) CM/ResDH(2014)183, adopted by the Committee of Ministers of the Council of Europe on 25 September 2014.

<sup>5</sup> [Report](#) on the Round-Table organised by the Office of the Commissioner for Human Rights of the Council of Europe, Strasbourg, 27-28 October 2011, CommDH(2012)21, para. 12.

Parliamentary Assembly of the Council of Europe over the last year. All of them are important and reliable partners of the Council of Europe and the Commissioner's Office.

21. The applicant's case provides a disturbing illustration of this pattern of reprisals against those who co-operate with international institutions, including the Council of Europe, to address human rights shortcomings in Azerbaijan.
22. As a minority rights defender, the applicant is a long-standing partner of the Advisory Committee on the Framework Convention on the protection of national minorities, the independent expert committee responsible for evaluating the implementation of the Framework Convention in State Parties and advising the Committee of Ministers of the Council of Europe. He represented the non-governmental organisation *Talysh Human Rights Project* in a meeting with the Advisory Committee in September 2007, in the course of the latter's second visit to Azerbaijan. In the Opinion adopted following this visit,<sup>6</sup> the Advisory Committee noted "with concern that, in general, there is a tendency for the authorities, and at times for some media, to associate persons belonging to certain national minorities with separatism and 'disloyalty' towards the State. The Advisory Committee is disconcerted by reported manifestations of intolerance against some NGO's involved in human rights and minority rights protection. It is deeply concerned by allegations of harassment against persons involved in the dissemination, at the local level, of information on the Framework Convention for the Protection of National Minorities."
23. A third visit of the Advisory Committee to the country was carried out from 9 to 12 July 2012 and a meeting with the applicant was planned during this visit. However, shortly before the visit, the applicant was arrested and thus could not participate in that meeting. The third Opinion on Azerbaijan, adopted by the Advisory Committee in October 2012, refers to the applicant in the following terms:

"The Advisory Committee is moreover deeply concerned about the recent arrest and indictment of Mr Hilal Mammedov, who succeeded Mr Novruzali Mammadov as Editor in Chief of the 'Tolishy Sado', under very similar charges, shortly before the Advisory Committee's country visit. The indictment against Mr Hilal Mammedov of 3 July accuses him of having attended conferences in Iran in April and October 2006 and having spoken in that context on public Iranian TV about the Talysh population in Azerbaijan, allegedly with the aim of inciting ethnic hatred in Azerbaijan. The Advisory Committee is deeply concerned by this case as it appears again to incriminate a person for seeking to enjoy rights that are expressly granted by the Framework Convention, including the freedom of expression. According to a number of interlocutors, the case demonstrates the extent to which persons belonging to certain national minorities are habitually considered as having an affiliation with neighbouring countries, and seen as disloyal to Azerbaijan when seeking to express their minority identity."<sup>7</sup>

24. The Commissioner shares the concern expressed by the Advisory Committee that the applicant appears to have been prosecuted for activities that he was entitled to carry out under the Framework Convention. As underlined by the Advisory Committee, it is "inconceivable that these activities, which the authorities through their ratification of the Framework Convention have committed not only to permit but to actively support (...) could be interpreted as acts of treason against the government."<sup>8</sup> Moreover, the short period of time between the arrest of the applicant and the visit of the Advisory Committee suggests that the applicant might have been deliberately prevented from exchanging views with the experts of

<sup>6</sup> Advisory Committee, Second Opinion on Azerbaijan, adopted on 9 November 2007, [ACFC/OP/II\(2007\)007](#), para. 68 and 69.

<sup>7</sup> Advisory Committee, Third Opinion on Azerbaijan, adopted on 10 October 2012, [ACFC/OP/III\(2012\)005](#), para. 67.

<sup>8</sup> *Ibid.*, para. 66.

that Committee. Many interlocutors of the Commissioner consider that the arrest and detention of the applicant is an attempt to silence his efforts to report on human rights violations.

25. The judgment of the European Court of Human Rights in the case of Ilgar Mammadov,<sup>9</sup> which recently became final, brings the broader issue of selective justice in Azerbaijan to the forefront. In this judgment, the Court found that the applicant had been detained for purposes other than having committed an offence, and that there had accordingly been a violation of Article 18 of the Convention (limitation on use of restrictions on rights) taken in conjunction with Article 5 (right to liberty and security). The Court stressed that the circumstances of the case “indicate that the actual purpose of the impugned measures was to silence or punish the applicant for criticising the Government and attempting to disseminate what he believed was the true information that the Government were trying to hide.”<sup>10</sup> On the basis of his work on Azerbaijan, the Commissioner believes that similar issues arise with respect to the detention and conviction of a number of other individuals who have voiced critical views, including human rights defenders.

### **Reprisals in Azerbaijan as obstruction to the functioning of international human rights mechanisms**

26. The Commissioner underlines that intimidation and reprisals against human rights defenders in retaliation for their work at the international, regional or national levels not only amount to attacks on human rights, but also breach the rule of law.
27. In this respect, the Commissioner recalls Article 5 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,<sup>11</sup> which describes the activities in which human rights defenders may engage at national and international level, including the right to communicate with non-governmental or intergovernmental organisations.
28. In addition, the Council of Europe 2008 Declaration calls on member states “to ensure the effective access of human rights defenders to the European Court of Human Rights, the European Committee of Social Rights and other human rights protection mechanisms in accordance with applicable procedures.”<sup>12</sup>
29. In a 2013 Resolution on Protecting Human Rights Defenders, the UN Human Rights Council reaffirmed the right of unhindered access to and communication with international and regional human rights mechanisms and called on states to avoid legislation that has the effect of undermining that right and to refrain from any act of intimidation or reprisals against those who co-operate, have co-operated or seek to co-operate with international institutions, including their family members and associates.<sup>13</sup>

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<sup>9</sup> *Ilgar Mammadov v. Azerbaijan*, application no. 15172/13, judgment of 22 May 2014.

<sup>10</sup> *Ibid.*, para. 143.

<sup>11</sup> Article 5 of the [UN Declaration](#) on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by General Assembly resolution 53/144 of 9 December 1998: For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

(b) To form, join and participate in non-governmental organizations, associations or groups;

(c) To communicate with non-governmental or intergovernmental organizations.

<sup>12</sup> [Declaration](#) on Council of Europe action to improve the protection of human rights defenders and promote their activities, adopted by the Committee of Ministers on 6 February 2008, para. 2 (vii).

<sup>13</sup> Human Rights Council [Resolution](#) 22/6 on Protecting Human Rights Defenders, adopted on 12 April 2013, para. 13 and 14.



30. Finally, the Commissioner would like to draw attention to the recently published Guidelines on the Protection of Human Rights Defenders,<sup>14</sup> which also provide that states shall ensure that human rights defenders enjoy the right to unhindered access to and communication with international and regional bodies and states that they should refrain from any action that may frustrate or undermine the right of human rights defenders to provide information to international bodies; they should notably not prevent human rights defenders from meeting with international delegations when they visit the country.
31. As stressed in the Explanatory report to these Guidelines, “international human rights mechanisms depend on the information submitted by individuals and groups in order to support the implementation of international human rights standards by states. Therefore, any form of reprisal against human rights defenders for providing information to international bodies, or otherwise obstructing their interaction with these bodies, is both a human rights violation and, at the same time, undermines the functioning of mechanisms with which states have committed to co-operate in good faith.”

### III. Pre-trial detention

32. Another issue of serious concern to the Commissioner is the frequent resort to pre-trial detention as a preventive measure in Azerbaijan.
33. In a report published in 2010,<sup>15</sup> the Commissioner’s predecessor noted that since 2000 and the adoption of the new Criminal Procedure Code of Azerbaijan, the power to order pre-trial detention of a person suspected or accused of a crime had been transferred from the Prosecutor General to judges. According to the Criminal Procedure Code, detention during the pre-trial stage of criminal proceedings may only be ordered by the court in strictly limited circumstances prescribed by law, and only where other restrictive measures are not regarded as adequate. The report concluded that, while the provisions of the Code in this regard are in accordance with European standards, judges have in practice ordered pre-trial detention in the vast majority of criminal proceedings without proper or adequate consideration for the grounds or whether less restrictive measures, such as house arrest or release on bail, would be sufficient.
34. Despite the adoption of an important decision by the Plenum of the Azerbaijani Supreme Court on 3 November 2009,<sup>16</sup> instructing all courts to consider alternatives to detention on remand, and the adoption of a new law, clarifying norms of different legislative acts related to pre-trial detention,<sup>17</sup> the Commissioner observes that the World Pre-trial/Remand Imprisonment List<sup>18</sup> recently showed that the number of pre-trial detainees in Azerbaijan has been continuously rising since 2002.
35. Several judgments of the European Court of Human Rights have found a violation of Article 5 of the Convention with respect to Azerbaijan,<sup>19</sup> related in particular to the lack of relevant and

<sup>14</sup> OSCE/ODIHR [Guidelines](#) on the Protection of Human Rights Defenders, 10 June 2014, J. Right to access and communicate with international bodies.

<sup>15</sup> Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Azerbaijan, 29 June 2010, [CommDH\(2010\)21](#).

<sup>16</sup> Decision of the Plenum of the Azerbaijani Supreme Court on “the practice of the application of the law by courts when submissions to order the restrictive measures of arrest in respect of the accused are considered”, 3 November 2009.

<sup>17</sup> *Law On protection of rights and freedoms of detainees* (22.05.2012, N 352-IVQ).

<sup>18</sup> [World Pre-trial/Remand Imprisonment List](#), May 2014. See also the 2013 Council of Europe Annual Penal Statistics ([SPACE I](#) and [SPACE II](#) surveys), published on 11 February 2015.

<sup>19</sup> The violations of Article 5 of the Convention concerning arrest and detention on remand are currently examined by the Committee of Ministers of the Council of Europe in the context of the *Farhad Aliyev* group

sufficient reasoning by courts while considering pre-trial detention and its extension. The Court recently stated:

“In all their decisions in the present case, the domestic courts limited themselves to copying the prosecution’s written submissions and using short, vague and stereotyped formulae for rejecting the applicant’s complaints as unsubstantiated. In essence, the domestic courts limited their role to one of mere automatic endorsement of the prosecution’s requests and they cannot be considered to have conducted a genuine review of the “lawfulness” of the applicant’s detention. That is contrary not only to the requirements of Article 5 § 4, but also to those of the domestic law as interpreted and clarified by the Plenum of the Supreme Court.”<sup>20</sup>

36. On the basis of his work on Azerbaijan, the Commissioner considers that the situation remains unchanged. He wishes to reiterate that pre-trial detention should be the exception rather than the norm, as provided for by European and international standards, including the Committee of Ministers Recommendation 2006(13) on the use of remand in custody.<sup>21</sup> He also wishes to underline that a genuine change in practice will first of all depend on the level of judicial independence and changes in the way law enforcement bodies work during the course of investigations.

## Conclusions

37. As noted by the Parliamentary Assembly of the Council of Europe, there is a tendency among Azerbaijani authorities to rely on the Court to rectify the shortcomings of the national judicial procedures.<sup>22</sup> The Commissioner cannot stress enough that it is essential that national authorities assume their responsibilities in the field of human rights protection: national judges should apply the Convention, as interpreted by the Court, more systematically.

38. In conclusion, the Commissioner is of the opinion that:

- There is a clear pattern of repression in Azerbaijan against those expressing dissent or criticism of the authorities. This concerns particularly human rights defenders, but also journalists, bloggers and other activists, who may face a variety of criminal charges which defy credibility. Such charges are largely seen as an attempt to silence the persons concerned and are closely linked to the legitimate exercise by them of their right to freedom of expression.
- Moreover, these criminal prosecutions often constitute reprisals against those who cooperate with international institutions, including the Council of Europe.
- Reprisals against human rights defenders in retaliation for their work at the international, regional or national levels amount to human rights violations. In particular, arrest and detention in such circumstances raise issues under Article 5 § 1 of the Convention, in the absence of a reasonable suspicion that a criminal offence has been committed.
- Pre-trial detention is used as a tool of punishment to silence those expressing dissenting views, including to prevent them from providing information to international human rights bodies.

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of cases (see notably *Farhad Aliyev v. Azerbaijan*, application no. 37138/06, judgment of 9 November 2010, and *Muradverdiyev v. Azerbaijan*, application no. 16966/06, judgment of 9 December 2010).

<sup>20</sup> *Ilgar Mammadov v. Azerbaijan*, application no. 15172/13, judgment of 22 May 2014, para. 118.

<sup>21</sup> [Recommendation](#) Rec(2006)13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, adopted by the Committee of Ministers on 27 September 2006.

<sup>22</sup> [Report](#) of Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), *The functioning of democratic institutions in Azerbaijan*, 31 May 2010, para. 79.



- Pre-trial detention orders are problematic due to the absence of proper or adequate consideration for the grounds of detention and for alternative measures to detention.

39. Lastly, the Commissioner would like to stress that reprisals against the civil society partners of his Office make it increasingly difficult to work on human rights issues in Azerbaijan. These reprisals should immediately stop and all persons who are in detention because of their views expressed or legitimate civic activity should be released.