



ELECTION MONITORING AND DEMOCRACY STUDIES CENTRE

FREEDOM OF MOVEMENT IN AZERBAIJAN:  
POLITICALLY MOTIVATED TRAVEL BANS

**ASSESSMENT REPORT**

**Baku 2019**

**Election Monitoring and Democracy Studies Centre**  
**Freedom of movement in Azerbaijan: Politically motivated travel bans**  
**Assessment report**

## **I. Summary**

The situation of human rights in Azerbaijan has further deteriorated in recent years. The authorities systematically limited people's freedoms of assembly, association and speech by adopting restrictive laws, and ramped up political repressions. There are 129 political prisoners in the country jailed on fabricated charges according to a group of domestic human rights defenders.<sup>1</sup> These include 10 journalists and bloggers, 18 political and civic activists, 14 participants of social protests and 68 people jailed for their religious views among others. The authorities started to use a new form of pressure to silence its critics in the last five years: travel bans preventing people from leaving the country.

Activists, journalists, opposition members and human rights defenders, who were subjected to travel bans, claimed that the government used these restrictions as a measure of punishment. Domestic courts dismissed the attempts of activists to challenge the travel ban due to the political motivations behind the restrictions.

In its judgments, the European Court of Human Rights concluded that Azerbaijan violated the right to free movement of 13 people. Azerbaijani authorities, however, have not implemented the judgments of the European Court.

The report was compiled by Election Monitoring and Democracy Studies Centre based on interviews with 30 people subjected to travel bans for politically motivated reasons and verified information. They include 18 journalists, five political activists, four lawyers and human rights defenders, two writers and a civil society representative. 26 of the travel bans are for an indefinite period while just four have the end date. Investigative authorities imposed 24 of the travel bans without any court decisions and six were placed by courts.<sup>2</sup>

Azerbaijani authorities imposed restrictions on free movement of its critics – activists, politicians, journalists and writers – without providing reasonable legal justification, without notifying the concerned persons in a timely manner and, in the majority of cases, for an indefinite time period. Most of the travel bans were applied in the last five years and targeted former political prisoners released on suspended sentences and the government critics facing criminal investigations.

The imposition of travel restrictions was carried out in violation of the country's domestic legislation and its international commitments.

Domestic courts failed to identify which courts had the jurisdiction to examine the complaints on travel bans and, in some cases, such bans were imposed without an official court decision. Furthermore, the authorities have ignored numerous judgments of the European Court on the

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<sup>1</sup> The United List of Political Prisoners in Azerbaijan, 23 August 2018, available at: <https://smdtaz.org/az/vahid-siyasi-m%C9%99hbus-siyahisi-hazirlanib/>

<sup>2</sup> See Annex 1 for the complete list of people subjected to travel bans

violation of the right to free movement and failed to ensure the applicants' rights in accordance with Article 2 of the Protocol 4 of the European Convention.

EMDS believes that the Parliament should improve the domestic legislation in order to address the current situation regarding the travel restrictions. The government, in turn, must end the practice of using travel bans as a tool of political pressure and apply such restrictions only in line with the requirements of the domestic and international law. EMDS calls the Azerbaijani government to adhere to the requirements of relevant documents of the UN and the Council of Europe, and the case-law of the European Court of Human Rights while imposing travel bans.

## **II. Introduction**

The situation of human rights in Azerbaijan has further deteriorated in recent years. By adopting restrictive laws, the authorities limited people's freedoms of assembly, association and speech while political repressions have increased. There are 131 political prisoners jailed on fabricated charges according to a group of domestic human rights defenders. These include 10 journalists and bloggers, 18 political and civic activists, 14 participants of social protests and 68 people jailed for their religious views among others.

The authorities started to use a new form of pressure to silence its critics in the last five years: travel bans. Many activists, journalists, opposition members and human rights defenders, who were prevented from leaving the country under various questionable justifications, claimed that the government used the travel bans as a measure of punishment. Some activists challenged the travel bans in domestic courts but did not achieve to lift them. On 13 December 2018, the European Court of Human Rights (hereafter the European Court) issued a judgment on the case of 11 political activists and journalists from Azerbaijan and concluded that the government had violated their right to free movement.<sup>3</sup> The European Court found that the travel bans were imposed discretionarily and domestic courts failed to properly justify the legal reasoning behind the bans. The judgment of the European Court has not been implementing up to the date of the release of this report.

The right to free movement of Azerbaijani citizens is guaranteed by the domestic legislation and several international documents which the country is party to. It allows for free and unhindered movement of a person within the country, travelling abroad and returning to the country. Therefore this report analysed the restrictions on free movement from the perspectives of domestic law and relevant international documents.

The report was compiled based on verified facts, court decisions and information provided by people subjected to travel bans. International documents referred to in the report include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights and the case-law of the European Court. Domestic laws analysed in the report were the Constitution, the Migration Code, the law on Leaving, Returning to the County and Passports, the Code of Criminal Procedure and other laws.

The report describes politically motivated travel bans imposed on 30 people but the real number could be much higher. They include 18 journalists, five political activists, four lawyers and

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<sup>3</sup> Mursaliyev and others v. Azerbaijan, (8051/17, 12870/17), <http://hudoc.EuropeanConventioncoe.int/eng?i=001-188262>

human rights defenders, two writers and a civil society representative. 26 of the travel bans are for an indefinite period while just four have the end date. Investigative authorities imposed 24 of the travel bans without any court decisions and four were placed by courts.<sup>4</sup>

The aim of the report is to inform the public, state bodies and international organizations which Azerbaijan is party to about legal problems and consequences created by the discriminative and discretionary application of travel restrictions and provide recommendations about their resolution.

### III. Azerbaijan's international commitments on freedom of movement

The core of Azerbaijan's international commitments on freedom of movement lies in two UN documents: the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Article 12 of the International Covenant states:

*“Everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave any country, including his or her own. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (order public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant...”*

Azerbaijan is also party to the First Facultative Protocol of the Covenant which grants everyone with the right to lodge a complaint with the Human Rights Council of the UN on violation of rights stipulated in the Covenant.

Another obligation to guarantee the freedom of movement comes from the Protocol 4 of the European Convention which Azerbaijan has ratified in 2001 as a part of its accession to the Council of Europe.

Furthermore, the case-law of the European Court creates legal precedent for Azerbaijan, particularly in travel ban cases against Azerbaijan. The European Court already has three cases about the restrictions of movement where Azerbaijan was found in violation of the European Convention. The first such judgment was issued on 10 July 2008 in the case of *Hajibayli v. Azerbaijan*.<sup>5</sup> Vagif Hajibayli was an opposition politician. The authorities opened a criminal case against him on charges of intimidation and use of violence against state officials after Hajibayli participated in an opposition rally in April 2000. The criminal case was suspended later when one of the suspects hid from the investigation. The case was halted on 14 September 2005 when the statute of limitation expired. However, Hajibayli was banned from leaving the country during these five years. The European Court stated that the investigative authorities cannot impose travel restriction for such a long period on Hajibayli without carrying out any investigation in such non-complicated case.<sup>6</sup> The second judgment came on 16 July 2015 and was related to the case of **Ali Karimli v. Azerbaijan**.<sup>7</sup>

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<sup>4</sup> See Annex 1 for the complete list of people subjected to travel bans

<sup>5</sup> *Vagif Hajibayli v. Azerbaijan* (6528/05, 2008).

<sup>6</sup> *Ibid.*, §66

<sup>7</sup> *Ali Karimli v. Azerbaijan* (3967/09, 2015)

The latest judgment of the European Court dated 13 December 2018 on **the Mursaliyev and others v. Azerbaijan** case recognized the violation of the right to free movement of 11 activists and journalists by the Azerbaijani government.<sup>8</sup> The European Court concluded that the travel bans were in violation of Article 2 of the Protocol 4 of the European Convention because such restriction was not stipulated in the legislation.

#### IV. National legislation

Article 28 of the Constitution grants everyone who resides in Azerbaijan legally a right to move freely in the territory of the country, choose a place of residence or leave the country. The article also foresees cases when this right can be restricted through detention, arrest or imprisonment. The Migration Code provides further details on cases when a person could be restricted from leaving the country in its Article 9:

- in case the citizen is arrested or if any temporary restriction is imposed on him/her in compliance with the Code of Criminal Procedure of the Republic of Azerbaijan - till his/her release, the ending date of the restriction or the termination of the restriction;
- in case the citizen is imprisoned - till he/she serves the main punishment defined in the Criminal Code of the Republic of Azerbaijan or he/she is released from the punishment except for the case set forth in Article 9.3.4 of this Code;
- in case compulsory measures of medical nature are applied to him/her in compliance with the Code of Criminal Procedure of the Republic of Azerbaijan-till termination of application of the compulsory measures of medical nature;
- in case suspended sentence is imposed on him/her by charging with the obligations set forth in the Criminal Code of the Republic of Azerbaijan or if s/he is released on parole - respectively till the end of the probation period or not-served part of the punishment, or till earlier and complete termination of the suspended sentence or the charged obligations;
- in case of enlistment in limited compulsory military service - till the end of the period of the limited compulsory military service or till being released from that service in compliance with the law;
- in case suspended sentence is imposed on him/her by charging with the obligations set forth in the Criminal Code of the Republic of Azerbaijan or if s/he is released on parole - respectively till the end of the probation period or not-served part of the punishment, or till earlier and complete termination of the suspended sentence or the charged obligations;
- in case a taxpayer fails to implement his/her tax obligations within the time period defined in the Tax Code of the Republic of Azerbaijan, fails to pay calculated tax debt, related interest, or financial fines to the state budget and when there is a ruling of the court on restriction of the person's right to free movement till the ruling lifting such restriction;

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<sup>8</sup> Mursaliyev and others v. Azerbaijan, (66650/13, 24749/16, 43327/16, 62775/16, 68722/16, 76071/16, 8051/17, 8702/17, 12870/17, 21246/17 və 37696/17)

- according to international medical sanitary rules or the international agreements that the Republic of Azerbaijan is a party to, during entry to/exit from the countries where prophylactic vaccination is required - till implementation of the prophylactic vaccination.
- in case of the existence of court decision legally entered into force on the temporary restriction of citizens' right to leave the country for not executing of court order given upon the court decision because of unexcused reasons within a period defined for voluntary execution – till the adoption of a decision on removal of restriction.

The law on Leaving and Arriving in the Country and Passports<sup>9</sup> have similar provisions to the Migration Code in terms of restrictions of movement. The range of restrictions, however, is larger in the Migration Code. Furthermore, the law on execution<sup>10</sup> allows for the courts to impose a temporary restriction on a person for failing to pay the debt within a defined period based on the justified presentation of an enforcement officer. The Civil Procedural Code<sup>11</sup> stipulates the right to challenge such restriction in the court. A person might be subjected to a travel ban in accordance with the provisions in the Tax Code,<sup>12</sup> the law on the Status of Military Servicemen<sup>13</sup> and the law on the State Secret.<sup>14</sup>

The freedom of movement is not an absolute right and therefore it can be restricted under certain conditions. However, such restriction should be imposed with the purpose of protecting the public interest and should be proportionate to the lawful purpose. Restrictions can take several forms ranging from limitation of movement within a country to a ban to leave or to return to the country, also known as a travel ban.

## V. Politically motivated travel bans

Azerbaijan's law enforcement agencies routinely impose a travel ban on activists, journalists and other critics of the government restricting their right to free movement. Such restrictions could be grouped under the following six categories:

### 5.1. Restrictions without providing a legal basis

Some activists have been subjected to a travel ban for simply being a witness in a criminal case in a blatant violation of the domestic legislation. Azerbaijani legislation does not specify a travel ban for witnesses. The authorities applied this illegal measure against 13 journalists working with the Berlin-based news website Meydan TV. The Department for Investigation of Grave Crimes of Prosecutor General's Office launched a criminal case against Meydan TV in 2015 and involved the journalists as witnesses in the case. Three journalist of Meydan TV – **Izolda Aghayeva, Sevinj Vagifgizi and Aytan Akbarova** – were detained at the airport on 20 September 2015 on their way back from Ukraine and were taken to the Main Organized Crimes Department of the Ministry of Internal Affairs where they were informed about the travel ban.

<sup>9</sup> The law on Leaving, Returning to the Country and Passports of the Republic of Azerbaijan, Article 1

<sup>10</sup> The law on Execution, Article 84-1

<sup>11</sup> The Code of Administrative Procedure, Article 231

<sup>12</sup> The Tax Code, Articles 23-24

<sup>13</sup> The law on the Status of Military Servicemen, Article 23

<sup>14</sup> The law on the State Secret, Article 25

They were subsequently released but still cannot leave the country. Another journalist working with Meydan TV **Natig Javadli** was told that there was a travel ban on him when he was summoned by the Department for Investigation of Grave Crimes as a witness in the case. Journalists **Aytaj Ahmadova, Salima Jalilova and Tural Asadov**, also witnesses in the case, cannot leave the country due to a travel ban.



*Journalists Sevinj Vagifgizi, İzolda Aghayeva and Aytan Alekberova leave Main Organized Crime Department of Ministry of Internal Affairs ( Photo was posted on social media)*

A writer **Rasim Garaja** has also been issued a travel ban despite the fact that just two of his writings had been published on Meydan TV in 2015 and only after appearing in other news websites. He has never had a contract with Meydan TV. However, he is a witness in the case and has not been able to leave the country since.

The Code of Criminal Procedural does not include any provision that foresees a travel ban for witnesses. The case has not been tried in the court yet and therefore it is not clear which law had been taken as a basis for the said travel bans. Journalist Izolda Aghayeva attempted to challenge the travel ban in the court and filed a complaint with the Nasimi District Court. But in its ruling on 21 June 2016, the Nasimi Court declined to examine her complaint on its merit saying that it was under the jurisdiction of the administrative court. The administrative court, in turn, also refused to review the complaint stating that it was not an administrative measure and therefore it should be heard at an ordinary district court. In the case of another journalist Aytan Alakbarova, the Supreme Court ruled on 28 December 2016 that the travel ban was a procedural action and it was within the jurisdiction of ordinary courts. Aghayeva filed a complaint with an ordinary court referring to the ruling of the Supreme Court but the ordinary court repeated its previous decision and declined to examine the case. In the case of Mursaliyev and others v Azerbaijan, the European Court ruled that investigating authorities had imposed the travel bans in the absence of any judicial decision and “the domestic courts, in their review of the impugned measures, had

failed to specify the legal basis for the imposition of the travel bans, contenting themselves merely with refusing to examine the impugned actions on the merits”.<sup>15</sup>

The authorities failed to refer to any provisions of domestic law while justifying the restriction on Meydan TV’s journalists’ right to leave the country. It was not specified which court has the jurisdiction to review the case on its merit and as a result, the complaints of the journalists were not examined at the court.

## 5.2. Failing to notify persons subjected to travel ban

One of the major issues faced by persons subjected to travel ban is not being informed about the imposition of such restriction in a timely manner. The principle of legal clarity of the European Court puts the lack of prior notification of a person about such restriction at odds with the European Convention on Human Rights. The European Court’s standards require the law to be understandable and unambiguous and ensuring that everyone has access to necessary information about laws and their enforcement.

Azerbaijani activists, however, are usually aware of travel bans only when they try to leave the country. Freelance journalist **Gular Mehdizada**, for example, learned that she had a travel ban when she was travelling to Turkey. Similar things happened to Meydan TV journalists **Aynur Ganbarova**<sup>16</sup> on her way to Switzerland, and **Shirin Abbasov and Elnur Mukhtar**<sup>17</sup> while travelling to Georgia.

In some cases, although, activists and journalists are informed about having travel bans on them, they cannot receive information on the legal causes of the ban. **Azer Gasimli**, deputy chair of opposition REAL party, was stopped at the border while travelling to Georgia and was informed that he had a travel ban. In response to his official request, the Department for Investigation of Grave Crimes informed him that the travel ban was imposed in connection with a criminal case. But, the department did not clarify what or who was the case about and in what capacity Gasimli was involved in the case. The European Court concluded that there was no legal basis for the travel ban on Gasimli.<sup>18</sup>

Young lawyer **Emin Aslan** was prevented from leaving the country in July 2018 on his way to Georgia due to a travel ban imposed by the Ministry of Interior. But he has not been able to learn about the reason for the travel ban. Young activist **Fatima Movlanli** has faced a similar issue and is not able to learn why she was imposed a travel ban.

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<sup>15</sup> Mursaliyev and others v. Azerbaijan (8051/17, 12870/17, §36 və 47 ), <http://hudoc.EuropeanConvention.coe.int/eng?i=001-188262>

<sup>16</sup> Forced limbo: how Azerbaijan prevents journalists from leaving the country, ODR, <https://bit.ly/2PDiuUZ>

<sup>17</sup> <https://bit.ly/2PJeLW1>

<sup>18</sup> Mursaliyev and others v. Azerbaijan, (21246/17), <http://hudoc.EuropeanConvention.coe.int/eng?i=001-188262>



*Emin Aslan is a graduate from Syracuse University, USA.*

A senior member of the opposition party Azerbaijan Popular Front Party (PFP) **Ayaz Maharramov** was not allowed to cross the border to Georgia from Balakan region of the country in September 2018. Another member of the party **Elshan Tahmazov** was detained in the Baku Airport on his way to China. Both were told that the Ministry of Interior had imposed travel bans on them without providing any further details. The Ministry has not responded to their numerous letters and information requests.

People facing travel bans are not able to challenge these restrictions in courts as they are not notified about them in a timely manner or lack any information about the legal reasons behind the restrictions. This results in a violation of their right to fair trial along with the country's international commitments regarding the freedom of movement.

### **5.3. Applying travel ban without time limit**

Another issue with the travel bans imposed on activists, journalists and other critics of the government is their duration. Investigative authorities and law enforcement agencies frequently impose travel restrictions for an indefinite period without any court decision. Since there are usually no legal grounds behind the travel bans, it is virtually impossible to clarify the duration of the restriction.

The Department for Investigation of Grave Crimes imposed a travel ban on journalist **Shahvalad Namazov** (Chobanoghlu) in 2014 in connection with the criminal case against the Radio Free Europe/Radio Liberty. Before the travel ban, Namazov used to visit Turkey for medical treatment but he has not been able to travel abroad since 2014 and his treatment has been disrupted. He was informed that the travel ban remains in place as recently as September 2018. It is not clear when the restriction will be lifted. Another journalist of the Radio Free Europe **Babak Bakir** also cannot leave the country for a long time.



*Shahvalad Namazov at Department for Investigation of Grave Crimes © Radio Liberty*

Azerbaijan Lawyers Association was ordered to pay a fine by the Tax Ministry as a part of the criminal investigation launched into non-governmental organizations in Azerbaijan in 2014. The organization's chair **Annaghi Hajibayli**'s bank accounts were frozen and the Department for Investigation of Grave Crimes imposed a travel ban on him. The organization has fully paid the fine but the travel ban has remained in place since. The European Court recognized that Azerbaijan had violated Hajibayli's right to free movement stipulated in the European Convention.<sup>19</sup>

Journalist **Sevinj Abbasova (Vagifgizi)** has not been able to travel abroad since 2015 due to a travel ban in connection with the criminal case against Meydan TV.<sup>20</sup> As a result, she could not take part in numerous events, training courses and conferences in the last three years. Her repeated letters and information requests to the Department for Investigation of Grave Crimes has only gathered a general reply that her travel abroad was not considered appropriate.

Another journalist contributing to Meydan TV **Aynura Heydarova** has not been able to return to Azerbaijan from abroad where she currently studies because of an indefinite travel ban. She is concerned that upon her return she would not be able to leave the country and her education would be disrupted. The European Court concluded that Heydarova's travel ban was in violation of the domestic law and the European Convention.

In its two rulings on Azerbaijan, the European Court concluded that restricting freedom of movement without reasonable justification and for a long or indefinite period was a violation of the European Convention.<sup>21</sup> People subjected to indefinite travel bans suffered from uncertainty. The European Court ruled that a state body cannot uphold a restriction for a long period without

<sup>19</sup> Mursaliyev and others v. Azerbaijan, (76071/16), <http://hudoc.EuropeanConvention.coe.int/eng?i=001-188262>

<sup>20</sup> Information was provided by Sevinj Abbasova.

<sup>21</sup> Vagif Hajibayli v. Azerbaijan (6528/05, §66, 2008), Ali Karimli v. Azerbaijan (3967/09, §66, 2015).

periodic investigation on whether such restriction has a legal basis.<sup>22</sup> Because, even if the imposed restriction has a legal basis, upholding it for a long period of time could result in a hindrance to its proportionality and therefore could amount to a violation of the right to free movement.

#### 5.4. Travel bans on former political prisoners

The authorities also use the travel ban to restrict the movement of political prisoners after their release. Several political prisoners were released on a suspended sentence which was accompanied by travel bans.

Human rights defender **Intigam Aliyev**, who was sentenced to 7.5 years in prison in 2014 but released on a five-year-long suspended sentence in 2016, cannot leave the country. The court allowed him to travel to France in June 2016 to attend a conference. However, he has not been allowed to travel since. The European Court ruled that Aliyev's imprisonment was politically motivated owing to his work in the field of human rights and aimed at obstructing his human rights activities.<sup>23</sup>

Investigative journalist **Khadija Ismayil**, director of internet TV Kanal 13 (Channel 13) **Aziz Orujov** and the chair of the Republican Alternative party **Ilgar Mammadov** have similar travel bans. Ismayil was sentenced to 7.5 years in prison in 2015 on fabricated charges. She was released in May 2016, when her prison sentence was replaced with a 3.5-year suspended sentence and a five-year-long travel ban. Orujov, who was sentenced to six years in prison in 2017, was released with the decision of the Supreme Court on conditions of three-year suspended sentence and three-year travel ban. Mammadov was arrested in January 2013 and sentenced to seven years in prison. He spent more than five years in jail despite two judgements of the European Court demanding his immediate release. The European Court called his detention politically motivated and punishment for his criticism of the government in its 22 May 2014 judgment.<sup>24</sup> The second judgment came in November 2017 and concluded that Mammadov's right to fair trial was violated.<sup>25</sup> The government refused to release Mammadov prompting the Committee of Ministers of the Council Europe to launch infringement proceeding under Article 46.4 for the first time in the history of the organization in December 2017.<sup>26</sup> Mammadov was finally released on 13 August 2018 on a two-year-long suspended sentence.

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<sup>22</sup> Földes v. Földesné Hajlik v. Hungary, (41463/02, § 36, 2006).

<sup>23</sup> Intigam Aliyev v. Azerbaijan (68762/14 v. 71200/14), <http://hudoc.EuropeanConventioncoe.int/eng?i=001-186126>

<sup>24</sup> Ibid, § 143.

<sup>25</sup> Ilgar Mammadov v. Azerbaijan (№ 2) (919/15 ), <http://hudoc.EuropeanConventioncoe.int/eng?i=001-178631>

<sup>26</sup> Interim Resolution CM/ResDH(2017)429, Execution of the judgment of the European Court of Human Rights, Ilgar Mammadov against Azerbaijan, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=090000168076f1fd](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168076f1fd)



*Khadija İsmail is brought to Baku Court of Grave Crimes © Voice of America*

The European Court states that a convicted person's freedom of movement can only be restricted for a sake of a genuine public interest which outweighs the individual's right to freedom of movement.<sup>27</sup> The authorities should demonstrate that they are preventing a crime or a risk while restricting a person's freedom of movement. A person's conviction or the lack of rehabilitation should not be a justification for a travel ban. Such restriction should not also apply solely by formally referring to law and without examining the individual situation of the person concerned. Applying a travel ban in an automatic manner and with only a concern of formal lawlessness is in violation of the right to free movement guaranteed by the European Convention. For example, the fact that Intigam Aliyev was allowed to leave the country for ten days in 2016 shows that the court had concluded that he had not possessed any threat to the public. Therefore, the subsequent restriction on his movement is in breach of the European Convention.

### **5.5. Travel bans related to tax fines**

The authorities launched an unprecedented crackdown on civil society in 2014. As a result, a number of civil society leaders were imprisoned while those who were in freedom faced travel bans and freezing of bank accounts. Two separate state bodies imposed travel bans on **Asabali Mustafayev**, chair of the Democracy and Human Rights Resource Centre and human rights lawyer. First, he was not able to travel outside of the country due to the restriction placed by the Department for Investigation of Grave Crimes in July 2014. Two years later, based on the Tax Ministry's claim, the court imposed a travel ban on Mustafayev for failing to present relevant documents to the Ministry about the registration of a grant awarded by the OSCE despite the fact that information about the registration of the grant had been posted on the Ministry's website.

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<sup>27</sup> Vlasov and Benyash v. Russia (51279/09 32098/13), <http://hudoc.EuropeanConvention.coe.int/eng?i=001-166738>



*Asabali Mustafayev at the Court hall © Voice of America*

Director of National and International Research Centre **Leyla Aliyeva** faced a similar issue. Her organization's bank accounts were frozen while she was imposed a travel ban by the court in June 2014.

### **5.6. Travel bans related to politically motivated criminal cases**

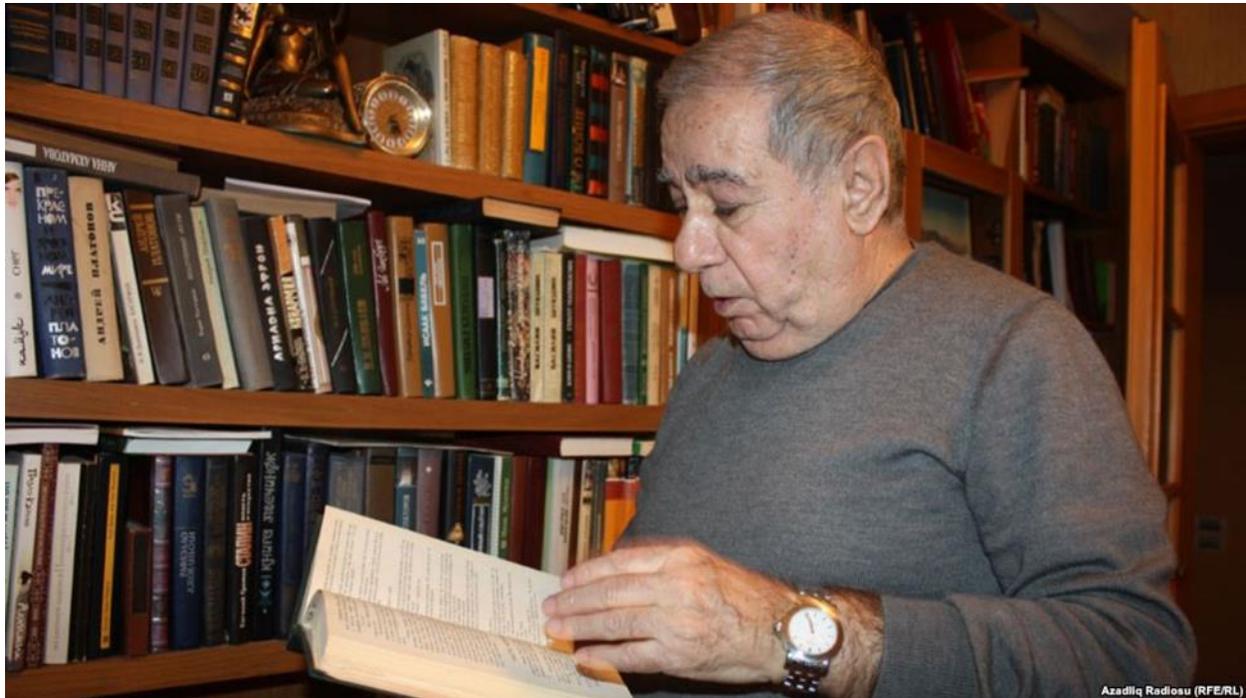
Azerbaijani authorities also apply de-facto travel bans without a formal decision of a state body or a court. The chair of the opposition party Azerbaijan Popular Front (APFP) **Ali Karimli** has not been able to receive a travel document (passport) from the Ministry of Interior since 2006 because of a politically motivated criminal investigation launched against him in 1996 and halted a year later. Karimli has never been imposed an official travel ban in connection with the said criminal case but he has been denied a passport without any explanation. The European Court called it de-facto travel ban and concluded that it was a violation of the European Convention in its judgment issued on 16 October 2015.<sup>28</sup> The judgement has yet to be implemented by the government.

The authorities used similar measures to silence writers and journalists who criticise its policies. Writer **Akram Aylisli** was detained by the police at the airport and prevented from travelling to Italy to attend a book conference on 30 March 2016 for his book "Stone Dreams".<sup>29</sup> The police claimed that Aylisli, an 80-year-old writer, attacked an officer of the State Border Service and charged him with hooliganism. The charges were changed to using force against a state representative. Aylisli's national ID was also taken away by the Baku City Prosecutor's Office

<sup>28</sup> Ali Karimli v. Azerbaijan (3967/09, §66, 2015), <http://hudoc.EuropeanConventioncoe.int/eng?i=001-156070>

<sup>29</sup> 'Author Akram Aylisli responds to 'hooliganism' charge after airport detention', the Guardian, <https://bit.ly/2SPvQPL>

which limits his travel within the country as well.<sup>30</sup> He has not been able to visit his hometown in Nakhchivan because of it. Aylisli addressed a letter to the Prosecutor General asking to halt the fabricated criminal investigation considering his senior age and poor health condition in September 2018. The letter, however, remains unanswered.



*Akram Aylisli © Radio Liberty*

The editor-in-chief of opposition news website [www.Basta.info](http://www.Basta.info) **Mustafa Hajibayli** and editor-in-chief of Criminal.az news website **Anar Mammadov** cannot leave the country due to travel bans imposed on them in connection with a criminal case. Hajibayli was informed about the restriction on 31 October 2018 at the airport while attempting to travel to Georgia. Mammadov learned about the criminal case a month later. Both editors are accused of disseminating false and misleading news about the attempted murder of the Mayor of Ganja city.

## **VI. Conclusions and Recommendations**

Analysis of travel bans imposed on activists, journalists, political prisoners and other government critics from Azerbaijan's international commitments and national legislation perspective produced the following conclusions:

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<sup>30</sup> 'Azerbaijan: Harassment of writer must end', PEN International, <https://bit.ly/2TiWK2S>

- Restrictions on free movement of the government critics imposed by the authorities and the courts are accompanied by violations of the country's national legislation and its international commitments;
- In the majority of cases, the travel bans were imposed for an indefinite time period and people subjected to the ban were not notified in a timely manner;
- The courts failed to identify which courts had the jurisdiction to examine the complaints on travel bans and, in some cases, such bans were imposed without an official court decision. Furthermore, the authorities have ignored numerous judgments of the European Court on the violation of the right to free movement and failed to ensure the applicants' rights in accordance with Article 2 of the Protocol 4 of the European Convention;
- Travel bans imposed on former political prisoners upon their release on suspended sentences are in violation of the principle of the quality of law constituted in the judgements of the European Court. The courts failed to demonstrate that a genuine public interest outweighed the individual's right to free movement and the restriction aimed at preventing a risk or a crime when imposing travel bans.

***EMDS proposes the following recommendations in order to solve the current situation regarding the restrictions of free movement of political activists and journalists.***

***To the Parliament:***

- Amend the Code of Criminal Procedure and the Migration Code adding necessary provisions on timely notification of persons about travel bans imposed on them;
- Amend the Code of Criminal Procedure adding necessary provisions in order to prevent the imposition of travel bans for an indefinite or long period of time without serious and well-grounded justification.

***To the central executive authorities and the prosecution:***

- End the practice of using travel bans as a mean of political pressure and apply such restrictions only in line with international law and practice;
- Impose travel bans for a reasonable duration and require prosecution and other law-enforcement agencies to appropriately justify bans imposed for an extended period of time;
- End the de-facto and informal travel bans, carry out the refusal to issue passports and travel documents only within the requirements of the law and provide a detailed justification for refusal, and execute the judgments of the European Court of Human Rights.

***To the judicial bodies:***

- Adhere to the requirements of the International Covenant on Civil and Political Rights, and other relevant UN documents along with the European Convention, and refer to the case-law of the European Court while imposing travel bans;
- Eliminate the practice of applying travel bans on all political prisoners released on suspended sentence or provide reasonable justification for imposing such travel bans;
- Ensure the right to fair trial for people subjected to travel bans in connection with a criminal case or investigation by examining their relevant complaints on the merit of the case in ordinary courts.

## Annexe 1

### The government critics banned from leaving the country

№	Name	Profession	Organization	Current status
1.	Shahvalad Namazov	Freelance journalist		
2.	Khadija Ismayilova	Freelance journalist		
3.	Babak Bakir	Freelance journalist		
4.	Natig Javadli	Freelance journalist		Lifted
5.	Sevinj Abbasova	Freelance journalist		Lifted
6.	Izolda Aghayeva	Freelance journalist		Lifted
7.	Aytan Alakbarova	Freelance journalist		Lifted
8.	Aynura Heydarova	Freelance journalist		Lifted
9.	Aynur Ganbarova	Freelance journalist		Lifted
10.	Aytaj Ahmadova	Freelance journalist		Lifted
11.	Elnur Mukhtar	Freelance journalist		Lifted
12.	Shirin Abbasov	Freelance journalist		Lifted
13.	Salima Jalilova	Freelance journalist		Lifted
14.	Tahmina Taghizade	Freelance journalist		Lifted

15.	Tural Asadov	Journalist	“Report.az” news website	Lifted
16.	Aziz Orujov	Journalist	“Kanal 13” internet TV	
17.	Mustafa Hajibayli	Journalist	“Basta.info” news website	
18.	Anar Mammadov	Journalist	“Criminal.az” news website	
19.	Intigam Aliyev	Human Rights Defender	Legal Education Society	
20.	Asabali Mustafayev	Human Rights Defender	Democracy and Human Rights Resource Centre	
21.	Annaghı Hajibayli	Human Rights Defender	Azerbaijan Lawyers’ Association	Lifted
22.	Emin Aslan	Freelance human Rights lawyer		
23.	Ali Karimli	Politician	Azerbaijan Popular Front Party	
24.	Ilgar Mammadov	Politician	Republican Alternative Party	Lifted
25.	Azar Gasimli	Politician	Republican Alternative Party	
26.	Ayaz Maharramli	Politician	Azerbaijan Popular Front Party	
27.	Elshan Tahmazov	Politician	Azerbaijan Popular Front Party	
28.	Akram Aylisli	Writer-novelist		
29.	Rasim Garaja	Writer	Editor at “Alatoran” magazine	Lifted
30.	Leyla Aliyeva	Political Analyst	National and International Research Centre	
31.	Fatima Movlamli	Journalist	Objective TV	
32.	Vugar Ali	Education manager	Code Academy	
33.	Abulfaz Sadigov	Politician	Chairman of Musavat Youth Organisation	
34.	Taleh Rustamov		Businessperson Saleh Rustamov’s brother	
35.	Valeh Rustamov		Businessperson Saleh Rustamov’s brother	

Contact:

E-mail: [emc.az2001@gmail.com](mailto:emc.az2001@gmail.com)

Telephone: +994503334674

Web: [www.smdtaz.org](http://www.smdtaz.org)

Twitter: [SMDT\\_EMDS](#)