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Meeting: 1348th meeting (June 2019) (DH)

Communication from a NGO "EMDS (Election Monitoring and Democracy Studies Centre)" (23/04/2019) in the case of MAMMADLI (Ilgar Mammadov group) v. Azerbaijan (Application No. 47145/14)

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

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Réunion : 1348^e réunion (juin 2019) (DH)

Communication d'une ONG "EMDS (Election Monitoring and Democracy Studies Centre)" (23/04/2019) dans l'affaire MAMMADLI (groupe Ilgar Mammadov) c. Azerbaïdjan (requête n° 47145/14) (**anglais uniquement**).

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



18 April 2018

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Anar Mammadli v. Azerbaijan (47145/14)

Submission under Rule 9(2) of the Committee of Ministers' Rules

18 April 2019

This briefing is submitted by the Election Monitoring and Democracy Studies Centre (EMDS) to the Committee of Ministers of the Council of Europe on case of **Anar Mammadli v. Azerbaijan** (application no. 47145/14, repetitive case (leading case *ilgar mammadov v. azerbaijan*), enhanced procedure) in accordance with Rule 9(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, adopted by the Committee of Ministers on 10 May 2006.

I. Introduction

The EMDS is a non-governmental organization working for holding free and fair elections, as well as development of civil society and democracy in Azerbaijan. EMDS was established by founders and members of Election Monitoring Center (EMC), the registration of which was annulled in 2008.

Besides, EMDS has implemented programs on civil education and political rights (such as electoral rights, right of appeal, freedom of peaceful assembly and freedom of association), citizen participation in public policy, increasing accountability of local and central administrative bodies, as well as protection of political rights. At present, EMDS also deal with protection and promotion of human rights in Azerbaijan.

This briefing is aimed to inform the Committee of Ministers about the recent developments on implementation of the individual measures by the Azerbaijani Government with regard to the case of Anar Mammadli v. Azerbaijan.

II. Brief description

Anar Mammadli is a well-known civil society activist and human rights defender. He is the Chairman and one of the co-founders of the Election Monitoring and Democracy Studies Centre (EMDS), a non-governmental organisation specialising in the monitoring of elections. The Centre conducted both short-term and long-term observations of the last presidential elections, held on 9 October 2013. The Centre's preliminary report concerning the results of the elections, published on 21 October 2013, concluded that the presidential elections had failed to comply with democratic standards.

On 29 October 2013 the Prosecutor General's Office instituted criminal proceedings in connection with alleged irregularities in the financial activities of the Centre and the Public Union. On 31 October 2013 a search was conducted at the Centre's office, during the course of which all the organisation's documents and electronic data storage devices were taken away by the prosecuting authorities. On 16 December 2013 the applicant was arrested and charged with illegal entrepreneurship, large-scale tax evasion and abuse of power. On the same day the prosecutor lodged a request with the Nasimi District Court seeking the applicant's detention pending trial and the court ordered the applicant's detention for a period of three months. Following a request dated 4 March 2014 from the Prosecutor General's Office for an extension of the period of the applicant's pre-trial detention, on 6 March 2014 the Nasimi District Court extended the applicant's detention pending trial by three months, until 16 June 2014. On 26 May 2014 the Baku Court of Serious Crimes found the applicant guilty on all counts and sentenced him to five and a half years' imprisonment. On 10 December 2014 Baku Court of Appeal upheld this decision. On 26 August 2015, the Supreme Court also dismissed the appeal filed against the decision of the appellate court. By the presidential pardon decree issued on 17 March 2016, Mr. Mammadli was released from serving the remainder of his sentence.

In its judgment of 19 April 2018 which became final on 19 July 2018, the Court declared that there had been a violation of Article 5 § 1, 5 § 4 and 18 of the Convention taken in conjunction with Article 5 of the Convention. The Court furthermore held the respondent State was to pay the applicant, EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage; EUR 2,500 (two thousand five hundred euros), in respect of costs and expenses.

III. Recent developments on individual measures

The criminal case against Mr. Mammadli was instituted only a few days after the EMDS issued its preliminary report concerning the results of the 2013 presidential elections. The

Court noted that facts and circumstances indicated that the actual purpose of the impugned measures was to silence and punish the applicant as a civil society activist for his activities in the area of electoral monitoring. According to the judgment, the Government was to pay just satisfaction awarded by the Court and restore the rights of Mr. Mammadli which existed before he was arrested. In this context, the Government had to take two steps as individual measures: 1) It was to pay the amount of just satisfaction; 2) The restrictions to the rights and freedoms of Mr. Mammadli deriving from his conviction were to be lifted.

Unfortunately, despite one year passed after the Court delivered its judgment in respect of Mr. Mammadli, the Government failed to implement the judgment, as two abovementioned steps as individual measures have not yet been taken. Mr. Mammadli has not yet received the amount of just satisfaction. Delay to pay compensations has turned into new trend in Azerbaijan. Though the Government have always been reluctant to adopt general measures to ensure full implementation of the Court judgments, until 2016, it used to pay compensations of the applicants in time. However, since 2016, the Government have delayed the payment of just satisfaction of up to 50 applicants for a long time. The Government started to pay the compensations in parts since 2018. Those who encounter these challenges are mostly journalists, political activists and civil society representatives. It seems that the failure on payments is not related to the Government's financial situation but it is the consequence of the distinctive treatment against activists.¹

The second step that the Government should have taken was lifting restrictions imposed to Mr. Mammadli's rights and freedoms. Mr. Mammadli was released by the Presidential Pardon Decree dated 17 March 2016 but his conviction was not lifted. Though nine months passed after the Court's judgment became final, the restrictions to Mammadli's certain rights and freedoms still exist whereas they had to be lifted in accordance with the judgment. Under these restrictions, Mr. Mammadli is deprived of certain rights in particular the right to run as a candidate for the elections. If his conviction is not removed he will be unable to stand as a candidate in the next municipality and parliamentary elections.

IV. Recommendation

Having regard to abovementioned facts, the EMDS asks the Committee of Ministers to urge the Government to pay the amount of just satisfaction awarded to Mr. Mammadli, and to take steps with a view to removing his conviction and restore the situation that existed before he was arrested.

¹ 'Azerbaijan's 'selective ignoring' of European Court compensation rulings', OC-Media, available at <https://oc-media.org/azerbaijan-s-selectively-ignoring-of-european-court-compensation-rulings/>

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