

## SECRETARIAT / SECRÉTARIAT

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COMMITTEE  
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Meeting: 1390<sup>th</sup> meeting (1-3 December 2020) (DH)

Communication from NGOs (Amnesty International, the Baku Human Rights Club, the Election Monitoring and Democracy Studies Centre, the European Human Rights Advocacy Centre, the European Implementation Network, the Human Rights House Foundation, the International Partnership for Human Rights, the Legal Education Society and the Netherlands Helsinki Committee) (22/10/2020) and reply from the authorities (02/11/2020) in the Mammadli group of cases v. Azerbaijan (Application No. 47145/14)

Information made available under Rules 9.2 and 9.6 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 : 1390<sup>e</sup> réunion (1-3 décembre 2020) (DH)

Communication d'ONG (Amnesty International, the Baku Human Rights Club, the Election Monitoring and Democracy Studies Centre, the European Human Rights Advocacy Centre, the European Implementation Network, the Human Rights House Foundation, the International Partnership for Human Rights, the Legal Education Society and the Netherlands Helsinki Committee) (22/10/2020) et réponse des autorités (02/11/2020) relative au groupe d'affaires Mammadli c. Azerbaïdjan (requête n° 47145/14)

**[anglais uniquement]**

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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21st October 2020

## COMMUNICATION

### **In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision**

#### **of the execution of judgments and of terms of friendly settlements by**

Amnesty International, the Baku Human Rights Club, the Election Monitoring and Democracy Studies Centre, the European Human Rights Advocacy Centre, the European Implementation Network, the Human Rights House Foundation, the International Partnership for Human Rights, the Legal Education Society and the Netherlands Helsinki Committee.

[On the MAMMADLI group of cases \(Application No 47145/14\)](#)

### **Introduction**

1. Widespread use of criminal law and restrictive NGO legislation as a weapon against critical voices is an ongoing hallmark of the human rights situation in Azerbaijan. The regime has tried to silence human rights defenders, including lawyers, journalists, bloggers, and civil society leaders as well as politicians by means of arbitrary prosecution and imprisonment.
2. So far, the European Court of Human Rights (ECtHR) has rendered ten judgments against the Government of Azerbaijan – concerning sixteen victims - regarding politically motivated prosecutions (Article 18 of the ECHR). Only two have been implemented so far and only with regard to their individual measures. Progress on general measures necessary to implement all the judgments concerned, including those closed under the infringement procedure in the case of Ilgar Mammadov v. Azerbaijan, under article 46.4 ECHR, is flagrantly absent.
3. In its most recent decision, rendered on the 4th of September 2020, the Committee of Ministers of the Council of Europe has ended infringement proceedings against Azerbaijan. It expressed satisfaction in view of the acquittal of two of the applicants, Ilgar Mammadov and Rasul Jafarov. It also called for *restitutio in integrum* for the other applicants who continue to endure the consequences of arbitrary criminal convictions. These include Anar Mammadli, the head of the Election Monitoring and Democracy Studies Centre, and the prominent human rights lawyer Intigam Aliyev. On the same day that the Committee of Ministers' decision to end infringement proceedings was taken, another Azeri opposition

leader, Tofiq Yagublu, was convicted on what Amnesty International have described as politically motivated charges.<sup>i</sup>

4. Our organisations do not believe that these two acquittals alone should warrant an optimistic assessment of the actions of the Azerbaijani authorities. Nor should they warrant a decrease in the level of supervision by the Committee of Ministers. Systemic problems of reprisals and political persecution persist in Azerbaijan, as the government continues its strategy to weaken civil society and peaceful dissent.
5. Local human rights groups have compiled a list of political prisoners, which on 10 June 2020 included 108 people.<sup>ii</sup> Since the beginning of the pandemic, the government has continued a crackdown on dissenting voices.<sup>iii</sup> Following political opposition rallies in Baku in July 2020, more than 100 opposition leaders, supporters, and activists were detained and prosecuted on politically motivated charges or subjected to severe penalties under administrative law.<sup>iv</sup>
6. Even when victims of politically motivated prosecutions are released from custody, they are left with criminal records. The effects of this are significant, and include bans on carrying out professional activities (such as leading NGOs or representing clients in legal proceedings); being unable to access bank accounts; ineligibility to stand in elections; and bans on travelling abroad.
7. Government critics have been pursued under trumped-up charges, detained arbitrarily, subjected to torture and other ill-treatment, and imprisoned following unfair trials. All pillars of the criminal justice system have been compromised: starting with the police (who carry out arrests without due process); continuing with the prosecution (which uses trumped-up charges); and finishing with courts (which hand out convictions following unfair trials, in which “confessions” obtained under torture are routinely admitted as evidence).
8. Restrictive NGO laws were introduced in Azerbaijan in 2013-2014 and have been applied arbitrarily since then. The result has been the hindering of legitimate activities of independent NGOs critical of the government, in particular through continued arbitrary denial of registration and the application of onerous reporting, tax and other requirements creating a pretext for a string of arbitrary arrests and prosecutions of NGO leaders. Subsequent amendments in 2016-2017 created a lengthy, complex and burdensome multi-tier system of approval of grants, which de facto prevents NGOs from accessing grants from foreign donors. Each grant agreement requires approval from the Ministry of Justice and an opinion on the financial-economic expediency of the grant from the Ministry of Finance, which interpret provisions in a discretionary manner, on vague and broad grounds.<sup>v</sup> Grants are refused for areas which are considered to be already addressed by the governments or where the purpose of a grant and its financial-economic expediency can be assessed as insufficiently described. Furthermore, the state controls information over NGO donations, collects information on individuals donating

to NGOs, and exercises extensive monitoring powers over NGO activities. The rules on investigating activities of NGOs give the Ministry of Justice the power to impose, in the context of inspections, requirements on NGOs that are extremely burdensome.

9. The entirety of this legislation has forced NGOs to operate on the fringes of the law in order to continue functioning, leaving them exposed to sanctions deriving from arbitrary interpretations of this exceedingly prohibitive legislation. The European Court of Human Rights has held that the harsh regulation of NGO activity “*cannot be ignored*” when looking at the politically motivated prosecution of members of civil society, because the nature of the regulations leads to the criminalization of NGO activity.<sup>vi</sup> The Court<sup>vii</sup>, the Venice Commission<sup>viii</sup> and the former Commissioner for Human Rights<sup>ix</sup> have all expressed grave concerns about the NGO legislation not being in line with international standards and about the arbitrary and harsh way it has been applied.
10. The issues of politically motivated prosecutions and the restrictive NGO framework are therefore closely intertwined. Intigam Aliyev, Rasul Jafarov and Anar Mammadli, amongst others, were imprisoned under legislation governing NGOs. In these cases, accusations of criminal activity were unlawfully linked to the administrative failures to adhere to draconian NGO and grants legislation. Systemic misuse of the criminal justice system in Azerbaijan cannot be effectively addressed without carrying out reforms to change the laws that are used to facilitate them. Furthermore, a vibrant civil society is fundamental to achieving reforms to ensure independence of the judiciary and prosecution authorities, which are necessary to prevent politically motivated prosecutions - and this will not be possible under legislation that is suffocating civil society.

## **Recommendations**

### **11. We, the undersigned NGOs, call upon the Committee of Ministers of the Council of Europe to:**

- Express serious concern for Azerbaijan’s failure to pursue any of the measures required to address the systemic causes that led to the multiple Court judgments finding politically motivated prosecutions and imprisonment of government critics, lawyers, and human rights defenders, and which led the Committee of Ministers to initiate its first infringement procedure under art 46.4 ECHR in the case of Ilgar Mammadov v Azerbaijan.
- Maintain the *Mammadli* group on the agenda of every upcoming CM DH meeting, in order to apply continuous and effective scrutiny of the implementation of individual and general measures, as a follow up to the infringement procedure in the case of Ilgar Mammadov v. Azerbaijan.
- Call upon the Azerbaijani authorities to effectively address the lack of independence in the judiciary that enables and condones arbitrary arrests and prosecutions; to end the politically motivated prosecution of members of civil society and all arbitrary restrictions on their work; and to stop reprisals for legitimate human rights work.

- Address the issue of restrictive NGO and grants legislation in the next decision regarding the Mammadli group and request the Azerbaijani government to amend the current restrictive legislation regarding NGO activities and grants to bring it into line with the country's obligation under international human rights law.
- Request that the Secretariat prepare an Interim Resolution, to be issued by the Committee of Ministers at its March 2021 CM/DH meeting unless the criminal convictions of all applicants in this group are overturned by that meeting.

12. Further details of the arguments set above are available in the submissions made by [Amnesty International and the European Human Rights Advocacy Centre<sup>x</sup>](#), the [International Partnership for Human Rights<sup>xi</sup>](#), and in Rule 9.1 submissions made by the victims, available [here](#).

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<sup>i</sup> <https://www.amnesty.org/en/latest/news/2020/09/azerbaijan-tofig-yagublu-handed-politically-motivated-sentence/>

<sup>ii</sup> *A unified list of political prisoners in Azerbaijan*, The Working Group (WG) on Unified List of Political Prisoners in Azerbaijan, 21 February 2019, available at:

<https://www.turan.az/ext/news/2020/6/free/Social/en/124755.htm>

available at (in azeri) <https://smdtaz.org/wp-content/uploads/2020/06/Vahid-Siyasi-Mahbus-Siyahisi-10.06.2020-az.pdf>

<sup>iii</sup> Human Rights House Foundation, Azerbaijani authorities must cease crackdown on dissenting voices, and release political prisoners, 9 September 2020.

<sup>iv</sup> Amnesty International Public Statement, Azerbaijan: End Brutal Crackdown on Opposition Activists, 5 August 2020, available at <https://www.amnesty.org/download/Documents/EUR5528482020ENGLISH.pdf>

<sup>v</sup> 1377th meeting (June 2020) (DH) - Rule 9.2 - Communication by Amnesty International, European Human Rights Advocacy Centre (27/04/2020) in the ILGAR MAMMADOV GROUP v. Azerbaijan.

<sup>vi</sup> *Yunusova and Yunusov v. Azerbaijan*, application no. [68817/14](#), judgment rendered on 16 July 2020, para. 192. See also *Rasul Jafarov v. Azerbaijan*, application 69981/14, judgment of 04 July 2016 para 120.

<sup>vii</sup> *Rasul Jafarov v. Azerbaijan*, application 69981/14, judgment of 04 July 2016 para 120.

<sup>viii</sup> Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, adopted by the European Commission for Democracy Through Law (Venice Commission) at its 88th Plenary Session (Venice, 14-15 October 2011).

<sup>ix</sup> Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights in the case of *Rasul Jafarov v Azerbaijan*, Application No. 69981/14, CommDH(2015)8, 20 March 2015.

<sup>x</sup> 1377th meeting (June 2020) (DH) - Rule 9.2 - Communication by Amnesty International, European Human Rights Advocacy Centre (27/04/2020) in the ILGAR MAMMADOV GROUP v. Azerbaijan

<sup>xi</sup> 1369th meeting (March 2020) (DH) - Rule 9.2 - Communication by International Partnership for Human Rights (IPHR) (12/02/2020) in the ILGAR MAMMADOV GROUP v. Azerbaijan (Application No. 15172/13)

**RESPONSE OF THE GOVERNMENT OF AZERBAIJAN**  
on the Communication submitted by group of non-governmental organizations  
on the MAMMADLI group of cases (47145/14)

The delegation of Azerbaijan would like to provide the following comments with regard to the Communication concerning the execution of the *Mammadli* group of cases submitted on 26 October 2020 by a group of NGOs under Rule 9.2 of the Rules of the Committee of Ministers on supervision of the execution of judgments and of terms of friendly settlements.

In their communication, the group of NGOs do not elaborate upon the individual and general measures required for rectifying the violations identified by the Court in its respective judgments. They rather try to depict the overall human rights situation in the country from their activist perspective and even use unacceptable language calling the Respondent Government “the regime”.

In its latest decision on this group of cases adopted at the 1377bis DH meeting on 3 September 2020, the Committee of Ministers described the scope of expected individual measures, which are to ensure *restitutio in integrum* for six applicants through quashing the criminal charges brought against them and eliminating the negative consequences. While the projected general measures in this group of cases stated in depth in the Committee’s relevant decision adopted at the 1362nd DH meeting in December 2019, where the authorities were encouraged to step up their efforts aimed at strengthening the independence of the judiciary and the prosecution service in line with the relevant Council of Europe standards and recommendations, including as well providing effective safeguards for defending the criminal justice system from any undue influence.

The Government has regularly provided the Committee about information on general measures taken for execution of these cases and will continue to implement measures and update the Committee.

It is worth to mention that, although some applicants are NGO activists, the violations found by the Court in this group of cases mainly relates to the misuse of criminal law and deprivation of liberty without reasonable suspicion, not involving violation of the right to freedom of association. Only two applicants (Rasul Jafarov, Aliyev) claimed for the alleged violation of their rights under the Article 11, whereas the Court in its respective judgments did not satisfy these claims and did not see any necessity to examine violation of the Article 11. Despite some cross-references, the judgments of the Court in these cases contain neither in-depth legal analysis of the NGO legislation of the Respondent state, nor the assessment of its compliance with the Convention standards.

It should therefore be recalled that the issues relating to the legislative framework governing the registration and operation of NGOs are examined by the Committee in relation to other cases, concerning violations of freedom of association (*Ramzanova and Others* group).

Respectively, NGOs’ recommendation “to address the issue of restrictive NGO and grant legislation in the next decision” (§11, p.4) is irrelevant. Despite the fact that the information

provided in the Communication on the NGO legislation does not represent the accurate state of play, the delegation refrains from commenting on it, since this issue actually falls out the scope of execution of these cases.

Furthermore, the delegation is of the view that communications should exclusively be built upon the legal findings of the Court and therefore will abstain from remarking on accusations about the alleged “political prisoners” and the cases pending before the national courts.

The Communication also attempts to undermine the importance of the decisions adopted by the Plenum of the Supreme Court of Azerbaijan on 23 April 2020 on Ilgar Mammadov and Rasul Jafarov cases, quashing their convictions and awarding them compensation for non-pecuniary damage and to prejudge potential outcomes of the forthcoming hearings. This approach contradicts with the Committee’s decision of 3 September 2020 that welcomed the Plenum’s decisions as an important milestone in the process of execution of these cases, as well as underlined their precedent setting character involving the Convention-compliant interpretation and application of national legislation.

The NGOs’ Communication goes even further by proposing the examination of these group of cases “as a follow up to the infringement procedure in the case of Ilgar Mammadov v. Azerbaijan” (§11, p.3). It needs to be reminded that the case of Ilgar Mammadov v. Azerbaijan examined under the infringement procedure was closed by the Final Resolution CM/ResDH(2020)178 of 3 September 2020, as the Responded Government exercised its functions under Article 46, paragraph 2 of the Convention in this case as regards the individual measures. The Grand Chamber judgment under the Article 46.4 concerned one particular case and absolutely is not open for any broader interpretation.

Bearing all above-mentioned in mind, the NGOs’ Communication that principally deviates from the Court’s findings and the Committee’s decisions in these cases cannot be regarded as a valid contribution to their execution.