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Date: 15/03/2022

DH-DD(2022)310

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Meeting: 1436th meeting (June 2022) (DH)

Communication from an NGO (Election Monitoring and Democratic Studies Centre) (24/02/2022) in the Mammadli group of cases v. Azerbaijan (Application No. 47145/14).

Information made available under Rules 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 : 1436^e réunion (juin 2022) (DH)

Communication d'une ONG (Election Monitoring and Democratic Studies Centre) (24/02/2022) relative au groupe d'affaires Mammadli 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.



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DGI

24 FEV. 2022

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

25 February 2022

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**Submission under Rule 9.2 of the Committee of Ministers' Rules
On Mammadli group cases v. Azerbaijan (Application no: 47145/14)**

1. This submission is submitted by the Election Monitoring and Democratic Studies Centre (EMDS) to the Committee of Ministers (The Committee hereinafter) of the Council of Europe on Mammadli group of cases v. Azerbaijan, (Application N°: 47145/14, leading case, enhanced procedure) in accordance with Rule 9.2 of the Rules of The Committee for the supervision of the execution of judgments and of the terms of friendly settlements.

2. This briefing is aimed to inform the Committee about the recent developments on the implementation of the judgments in the Mammadli group of cases by the Azerbaijani Government.

I. The organization

3. The EMDS is a non-governmental organization working for holding free and fair elections, as well as the development of civil society and democracy in Azerbaijan. Since 2001, 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 deals with the protection and promotion of human rights in Azerbaijan.

II. Brief summary of a group of cases

4. Nine applicants in this group are human-rights defenders, civil society activists and a journalist. They were all the subject of arrests and detention between 2013-2016 that the European Court of Human Rights (ECtHR hereinafter) found to constitute a misuse of criminal law, intended to punish and silence them.

5. ECtHR concluded that the actual purpose of the criminal proceedings was to punish the applicants for their activities or prevent their further work and that the restriction of the applicants' rights was applied for purposes other than those prescribed by the Convention.

Therefore, ECtHR found violations of Article 18 taken in conjunction with Article 5 in respect of all applicants and violation of Article 18 taken in conjunction with Articles 5 and 8 in respect of Aliyev.

6. This group of cases was formerly named Ilgar Mammadov group. Supervision of execution of judgements in the cases of *Mammadov v. Azerbaijan*, *Rashad Hasanov and others v. Azerbaijan* and *Jafarov v. Azerbaijan* were closed after satisfaction was achieved. Therefore, the oldest judgment – Mammadli case became the new leading case in the group.

III. Individual measures

7. The Committee, referring to its interim resolution adopted at 1369th meeting on 5 March 2020 – urging the Azerbaijani authorities to ensure that all the necessary individual measures are taken in respect of each of the applicants reiterated that restitutio in integrum in each case in this group can only be achieved through the quashing of all the applicants' convictions, their erasure from their criminal records and the elimination of all other consequences of the criminal charges brought against them, including by fully restoring their civil and political rights.

8. In its submission of 23 November 2021, the Government informed the Committee that the Supreme Court of Azerbaijan quashed the convictions of 4 old members of the NIDA Civic Movement, who were the applicants in *Rashad Hasanov and others v. Azerbaijan* case and awarded compensation total amount of 107,600 EURO.¹ However, each applicant in their separate communications dating 25 November 2021, demanded publication of the official decision and found the calculation of the compensation as discriminative in comparison with other applicants in the group, namely Ilgar Mammadov and Rasul Jafarov.

9. The remaining applicants (Mammadli and Aliyev) whose cases were transferred to the Supreme Court still suffer from the delay by authorities in terms of achieving restitutio in integrum in their case. Moreover, in their communication of 25 November 2021, applicants in *Yunusov and Yunusova v. Azerbaijan* complain of the absence of any kind of information whether their case has been transferred to the Supreme Court of Azerbaijan for reconsideration or not.

10. Government, in its communication of 29 November 2021, argued that those applicants whose convictions were expunged are not considered convicted and regarding the case of remaining applicants in terms of restoration of all rights and freedoms and claimed it to have limited impact on the lives of remaining applicants. However, both the legal and psychological impact of the absence of the acquittal, especially in the light of the finding of the ECtHR of Article 18 where predominant intention to silence the applicants is clearly mentioned, and cannot be objectively framed as 'limited'. For your information, most of the applicants' convictions would be expunged in March-May 2022. Thus, Government seems to aim at applying the logic of suggesting the expungement of conviction as an acceptable alternative to the full acquittal.

Whereas the mere completion of the amount of conviction time should not be equalized with the acquittal of the victim on the Supreme Court level both for legal and psychological implications. The government's stance on the issue with the subsequent acknowledgement of the absence of full acquittal in the case of remaining applicants indirectly confirms the

¹ OC-Media, 'Azerbaijani Court Acquits NIDA Activists', <https://oc-media.org/azerbaijani-court-acquits-nida-activists/>

reluctance and clearly expresses the lack of political will to implement the execution and the recurring recommendations by the Committee.

11. Additionally, a number of applicants still wait for the just satisfaction to be paid in full. On December 7, 2021 Giyas Ibrahimov, the applicant in *Ibrahimov and Mammadov v. Azerbaijan* tried to set himself on fire in front of the building of the Presidential Administration protesting the delay in payment of compensation decided by ECtHR in February 2020.²

12. Recalling that an Article 18 violation is a consequence of the political will rather than the deficiencies in the judiciary, applicants find incompleteness in restoring all civil and political rights to all applicants in a timely manner as the clear sign of selective justice. The Government's arguments for huge delays in the Supreme Court's working system due to overload and quarantine-related difficulties had been duly addressed by the last communication of EMDS to the committee on 11 October 2021.

13. Considering the last decision of acquittal and awarding of compensations by the Supreme Court of Azerbaijan and current issues applicants in the Mammadli group suffer from on a legal and technical level, EMDS reiterates its stance that such selective justice and attitude will never contribute to ensuring a rapid restitutio in integrum in respect of each applicant and is not consistent with the spirit of the European Convention and the Council of Europe's core principles. As a result, some applicants still remain convicted and deprived of their civil and political rights, among which just satisfaction still hasn't been paid to some of the applicants – (Giyas Ibrahimov and Khadija Ismailova).

IV. General measures

14. In the judgments of this group the ECtHR established three main aspects that led to violation of the Convention rights:

- a) the arrest and detention of each applicant took place in the absence of any reasonable suspicion that he or she had committed an offence;
- b) the domestic courts had not conducted a genuine review of the lawfulness of the detention;
- c) a misuse of criminal law intended to punish them and to prevent their further work in the respective field.

15. In order to prevent these patterns from being repeated, both the judiciary and the legal framework on regulation of civil society should be subjected to tangible reforms addressing systemic problems.

16. Government failed to respond to the number of issues raised by EMDS in the last communication of 11 October 2021. Accordingly, EMDS highlighted the problems regarding the refusal by judges to set audio recordings on the account of the number of groundless reasons, availability of tracking bracelets, especially, in the politically-sensitive cases where government critics and others are involved, the matter of transfer of whole power of the Judicial-Legal Council (Council hereinafter) to the judiciary by solving the composition issues and the number of politically-motivated barriers lawyers face who especially represent the cases of government critics etc.

² JAM News, 'Former political prisoner tried to set himself on fire in front of Azerbaijani Presidential Administration', <https://jam-news.net/former-political-prisoner-tried-to-set-himself-on-fire-in-front-of-azerbaijani-presidential-administration/>

17. In its communication of 3 February 2022, the Government enlists a number of technical decisions made to increase the level of independence of the judiciary by among others restructuring and increasing the number of employees of the Supreme Court and increasing powers of the Council on the appointment of judges and allocation of ever-increasing budget for courts. However, on the most highlighted issues reiterated by the Committee which is the composition of the Council, Government only stated the law that regulates the composition without any necessary or decisive steps taken to be in line with the GRECO recommendations.³ Thus, while these steps communicated by the Government may separately improve the efficiency of the work of the Supreme Court and Council, the Government's reluctance to have significant improvements in the composition of the Council demonstrates the absence of the political will to prevent the repetitive human rights violations from recurring.

18. Since the changes in the judicial system that the government presents as "reform" did not result in the elimination of the structural deficiencies that are the main barrier to judicial independence, it leaves no place to be surprised that recent tendencies in the violations of human rights in Azerbaijan point at the classic misuse of the criminal law scheme as detailed in the section below.

The current situation with applicants in the Mammadli Group

19. In this group of cases the ECtHR concluded that the applicants' arrest and imprisonment were carried out by misusing the criminal code, for the purpose of punishing them and preventing their further work in their respective fields.⁴ As EMDS mentioned in its last communication of 10 November 2021, the draconian NGO legislation in Azerbaijan remains unchanged and thus contributes to paralyzing of the work of, especially, independent CSOs which again amount to demonstrate the absence of the political will to prevent the misuse of the criminal code and repetitive human rights violations from recurring.

20. EMDS welcomes the full acquittal of the applicants in the *Rashad Hasanov and others v. Azerbaijan* case and stresses the decisions by both the ECtHR and the Committee to restore all rights and freedoms of the remaining applicants.

21. EMDS regretfully notes that concerning the tendency of misuse of the criminal law and question of the independence of prosecuting authorities remain in place Azerbaijan. On December 1, opposition politician Tofiq Yagublu was detained by police and taken to 39th police station on December 1 in central Baku during the support rally for Saleh Rustamov who recognized by local human rights defenders as political prisoner. Later that day Yagublu was found in the suburbs of the capital in a devastating state with traces of severe hits around his eyes and reported that he was severely beaten after he was detained.⁵ Though he filed a complaint on the torture and degrading behavior by police officers, Sabail District Prosecutor Office refused to open an investigation into the claims and highlighted the possibility of self-

³ Council of Europe: GRECO, '4th Evaluation round: Corruption prevention in respect of members of parliament, judges and prosecutors, addendum to the 2nd compliance report, Azerbaijan', par.19-27, <<https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a28742>>

⁴ Detailed description of the difficulties faced by NGOs as a result of the recent legislative amendments can be found in the case of Rasul Jafarov v. Azerbaijan (Application no. 69981/14, §§ 99-113).

⁵ Human Rights Watch, 'Azerbaijan: Opposition Leader Beaten in Custody', <https://www.hrw.org/news/2021/12/03/azerbaijan-opposition-leader-beaten-custody>

damage by the opposition figure based on the accounts of police officers and rejected to open the investigation into the case.

22. Another concerning tendency is the failure by prosecuting authorities to respond to the official complaints by citizens regarding the wrongdoings of the Police. Although the domestic laws demand⁶ prosecuting authorities to respond to the requests of the citizens within up to 30 days, in practice, requests by citizens mentioning police wrongdoings, especially in politically-sensitive cases either receive no response at all or get reviewed in an unreasonably long period of time.

V. Recommendations

23. Having regard to the facts mentioned above, the EMDS calls on the committee to urge the Government to take the following steps to fully implement the ECtHR's judgments in this group:

a) Restitutio in integrum should be ensured in respect of all the applicants by paying of just satisfaction in full where still required and the quashing of all the applicants' convictions and the restoring of their civil and political rights;

b) Structural reforms should be prioritized targeting preventing the influence of the executive over the judiciary; judges should be elected or appointed by judges;

d) Decisions of prosecuting authorities should be subjected by courts to close scrutiny not only in theory but also in practice;

e) Restrictive amendments to the CSO legislation that impeded the effective operation of CSOs should be repealed, groundless restriction for funding of CSOs in particular, the norms and regulations limiting foreign funding and requiring state registration of grants should be lifted.

f) Considering a repeated absence of progress & the apparent refusal of the government to implement the ECtHR judgments, the committee should use a so-called "toolbox" of measures available to the committee, which the Committee is able to draw on in order to promote the implementation of judgments of the ECtHR.

Yours Sincerely,

Anar Mammadli,



Chairperson,

Election Monitoring and Democracy Studies Center/Azerbaijan

⁶ Commission on Combating Corruption of the Republic of Azerbaijan, 'the Law of the Azerbaijan Republic on procedures for review of citizen applications', article 10, <http://www.commission-anticorruption.gov.az/upload/file/law%20o%20procedures%20for%20review%20of%20citizen%20app..pdf>