

## Summary of Points

### **EIN briefing to the Committee of Ministers on 20 May 2019**

The following recommendations were presented at the briefing by:

*(1) Amrit Singh, Counsel for Mr Al Nashiri, Director at the Open Society Justice Initiative, (2) Prof. Philip Leach, EHRAC (UK), and (3) Tural Aghayev, lawyer at the Election Monitoring and Democracy Studies Centre, Azerbaijan.*

#### **(1) *Al-Nashiri v Romania (Application No 33234/12)***

The Committee of Ministers should ask the Romanian authorities to:

- Undertake specific measures to promptly conduct an effective criminal investigation into Romania's role in the CIA extraordinary rendition and secret detention programme and the violation of Mr Al Nashiri's rights, including but not limited to:
  - Disclosing the full terms of reference of the investigation to Mr Al Nashiri's counsel as well as to the public;
  - Granting counsel for Mr. Al Nashiri unhindered access to the entire case file, including any updated communications on a regular basis;
  - Declassifying materials of the investigation to the fullest extent possible, especially with regard to any procedural decisions made by the prosecutor;
  - Disclosing to counsel for Mr. Al Nashiri the investigative actions undertaken together with the anticipated time frame for future actions.
- With respect to the Committee of Minister's March 2019 concerns about "amendments to the Criminal Code aimed at substantially reducing the limitation periods for a number of criminal offences, including torture," keep the Committee of Minister apprised of developments relating to further judicial review of amendments to relevant statutes of limitations.
- Seek reliable, specific, and binding diplomatic assurances from the U.S. authorities relating to the death penalty and flagrant denial of justice. An executive bilateral agreement between Romania and the United States would meet these requirements.
- Disclose to Mr. Al Nashiri's counsel all communications to and from the U.S. government in relation to the assurances relating to the death penalty as well as the flagrant denial of justice so that counsel can monitor the Romanian government's compliance with the Court's judgment.
- Disclose to Mr. Al Nashiri's counsel the steps the Romanian government plans to undertake in the near future to ensure that Mr. Al Nashiri is not subjected to the death penalty and to a flagrant denial of justice.
- Disclose to defense counsel for Mr. Al Nashiri in U.S. military commission proceedings all communications to and from the U.S. government in relation to the assurances relating to the death penalty as well as the flagrant denial of justice. The requests for assurances will assist defense counsel in arguing against the death penalty and flagrant denials of justice.
- Public disclosure of all communications to and from the U.S. government in relation to the assurances relating to the death penalty as well as the flagrant denial of justice.
- Issue an official acknowledgement from the highest level of the Romanian government that Romania hosted a secret CIA prison over 2003-2005.

#### **(2) *Rasul Jafarov v Azerbaijan and Aliyev v Azerbaijan (Application Nos 69981/14 and 68762/14)***

In the case of Rasul Jafarov, the Committee of Ministers should call for:

- Payment of full just satisfaction awarded (with interest) without further delay;

- The domestic criminal proceedings should be re-examined.

In the case of Intigam Aliyev, the Committee of Ministers should call for:

- Payment of just satisfaction;
- Criminal case against Mr Aliyev re-examined;
- Return of all documents and equipment seized & ensure unhindered access to the LES offices;
- Ensure access to frozen bank accounts;
- Travel ban lifted.

As for the general measures, the Committee of Ministers should ask the AZE authorities to submit an action plan to include:

- Reform of law and practice relating to status and registration of NGOs and of NGO grants
- Necessary steps to ensure an enabling environment for human rights defenders
- An end to any administrative, fiscal or judicial harassment or stigmatisation of human rights defenders (including eradication of retaliatory prosecutions and misuse of criminal law)
- Effective investigations into all acts of intimidation or reprisal against human rights defenders

**(3) *Namat Aliyev v Azerbaijan and Mammadli v Azerbaijan (Application Nos 18705/06 and 47145/14)***

The Committee of Ministers should request the AZE authorities to ensure that:

- With regard to the election commissions:
  - They should be formed based on the political parity principle in order to ensure their independence;
  - They should carry out an effective and thorough investigation on all complaints;
  - Refused to register candidates should be well-grounded, reasoned and based on facts.
- With regard to the judiciary:
  - An independent judicial-legal council should be established;
  - Judges should be chosen directly by the judicial system and procedural rules should be determined by the court system.
- With regard to an advocacy institute:
  - Admission to the Bar Association should be implemented by the body established by the Bar Association, and the role of the executive power in the admission process should be minimised;
  - Provision related to penalty measures imposed on lawyers should be very clear in legislation and should not give a way to any abuse of power.

In the case of Mammadli v Azerbaijan, the Committee of Ministers should also request the authorities to:

- Pay the amount of just satisfaction due
- Lift the restrictions to his rights and freedoms deriving from his conviction. In particular, Mr Mammadli should have the ability to stand for elections.