



EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS IN AZERBAIJAN

*STATUS QUO UPON AZERBAIJAN'S CHAIRMANSHIP
OF THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE*





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LIST OF ACRONYMS

CC – Criminal Code of the Republic of Azerbaijan

CEC – Central Election Commission

CoE – Council of Europe

CoM – Committee of Ministers of the Council of Europe

CPC – Criminal Procedure Code of the Republic of Azerbaijan

CPT - European Committee for the Prevention of Torture and Inhuman or
Degrading Treatment or Punishment

ECHR – European Convention on Human Rights

ECtHR - European Court of Human Rights

IDP – Internally Displaced Person

MoJ – Ministry of Justice of the Republic of Azerbaijan

NGO – Non-Governmental Organization

PACE – Parliamentary Assembly of the Council of Europe

EXECUTIVE SUMMARY

The Assembly considers that Azerbaijan is moving towards a democratic, pluralist society in which human rights and the rule of law are respected, and, in accordance with Article 4 of the Statute of the Council of Europe, is able and willing to continue the democratic reforms initiated in order to bring its entire legislation and practice into conformity with the principles and standards of the Council of Europe.

Opinion No. 222 (2000)¹

In acceding to the Council of Europe (CoE) on 25 January 2001, Azerbaijan committed itself to cooperation with Europe in the field of human rights, the rule of law and democracy. Now, after more than 13 years of membership in the European family, Azerbaijan's human rights record is at its lowest: fundamental freedoms are severely limited, and the Azerbaijani authorities continue to act in blatant disregard to their international human rights commitments. The restrictive legislative measures taken to repress freedom of expression, association and peaceful assembly and judicial harassment of critical voices are among the most worrying developments to date.²

On 14 May 2014, Azerbaijan starts its Chairmanship at the Committee of Ministers (CoM), the highest political decision-making body of CoE, consisting of the Ministers of Foreign Affairs of its member states. One of the main functions of the CoM is the supervision of the execution of judgments of the European Court for Human Rights (ECtHR). Its competencies have been expanded in that regard with the entrance into force of the Protocol 14 of the European Convention for Human Rights (the Convention):³

“Respect of the European Convention for the Protection of Human Rights and Fundamental Freedoms and, in particular, of the European Court of Human Rights's judgments, is a crucial element of the Council of Europe's system for the protection of human rights, rule of law and democracy and, hence, for democratic stability and European unification.”⁴

Committee of Ministers

With Azerbaijan holding the Chairmanship at the CoM, this report examines the current status of the government's execution of ECtHR judgments. The report reviews Azerbaijan's efforts to meet its human rights commitments through rule of law, including relevant institutional mechanisms and its cooperation with the CoM in that regard. It presents the key human rights violations revealed by ECtHR in Azerbaijan and provides recommendations to the Government of Azerbaijan how to improve the situation.

¹ Opinion No. 222. (2000) Azerbaijan's application for membership in the Council of Europe.

<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta00/EOPI222.htm>

² See the Commissioner's “[Observations](#) on the human rights situation in Azerbaijan”, CommDH(2014)10, 23 April 2014

³ Protocol 14 entered into force on 1 June 2010, available at [DGHL-Exec/Inf \(2010\)1](http://www.coe.int/t/dghl/Exec/Inf(2010)1)

⁴ http://www.coe.int/t/dghl/monitoring/execution/Default_en.asp

INTRODUCTION

The authors of the report believe in the importance of protecting and respecting human rights through rule of law, and consider the ECtHR as one of the most effective judicial mechanisms in that regard. The situation of fundamental freedoms in Azerbaijan continues to deteriorate, particularly in relation to freedom of expression and freedoms of peaceful assembly and association. The report expresses deep concern over Azerbaijan's poor record over the execution of ECtHR judgments. Azerbaijan is among 12 CoE member states whose ECtHR judgments reveal major structural human rights problems in the national systems.⁵

With the adoption of Protocol 14 of the Convention, which strengthened the role of the CoM and increased the transparency in the execution process of ECtHR judgments, there are also more opportunities for civil society to engage in the process and to effectively assess the efforts taken by their governments. Furthermore, it gives more space for CoM to put pressure on governments to report on the steps taken to execute ECtHR judgments. This is crucial in contexts where political will is otherwise lacking.

The current analysis has been conducted based on the information published on the website of CoM as provided by the Government of Azerbaijan, as well as in-depth interviews and discussions with lawyers litigating human rights cases before ECtHR against Azerbaijan. The authors submitted information requests to the Government Agent of Azerbaijan regarding the execution of several ECtHR judgments; no response however has been received.

The report contains five chapters covering the issue of the execution of ECtHR judgments by Azerbaijan.

Chapter One presents a general overview of Azerbaijan's ECtHR record, outlining the data on applications pending before ECtHR against Azerbaijan, adjudicated cases and judgments pending before the CoM to be implemented by Azerbaijan.

Chapter Two sets out the existing CoE framework aimed at improving execution of ECtHR judgments nationally. It focuses in particular on the role of the CoM, the CoE body responsible for supervising national execution processes, and also touches upon the efforts of the Parliamentary Assembly (PACE).

Chapter Three provides an overview of Azerbaijan's existing national mechanisms for the execution of ECtHR judgments, and presents recommendations to the Government of Azerbaijan on how to improve the efficiency of these mechanisms.

Chapter Four analyses the judgments reached by ECtHR and the main areas in which Azerbaijan is found to be in violation of the Convention. It outlines the main human rights issues that remain despite the ECtHR judgments, and provides recommendations on measures to ensure better execution of judgments and overall respect for human rights. The report pays particular attention to judgments in which the Court identifies systemic and structural human rights issues, and where wider reforms – legal or policy – are needed.

⁵ See 2013 annual report of the Committee of Ministers, p. 61.

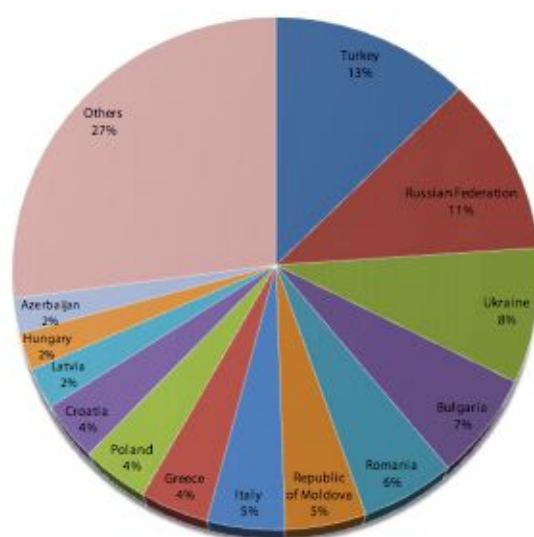
CHAPTER ONE: AZERBAIJAN AND THE EUROPEAN COURT FOR HUMAN RIGHTS

Since Azerbaijan ratified the Convention on 15 April 2002, the ECtHR has issued 80 judgments against Azerbaijan, finding at least one violation in 78 cases.⁶ There have been two cases in which no violation was found. The most commonly violated human rights, as found by the ECtHR, are:

- Right to a fair trial (44 judgments)
- Prohibition of torture, inhuman or degrading treatment or punishment (11 judgments)
- Property rights (11 judgments)
- Right to liberty and security (8 judgments)
- Right to freedom of association (6 judgments)
- Right to free and fair elections (6 judgments)
- Right to effective remedy (5 judgments)
- Right to freedom of expression (3 judgments)
- Right to life (1 judgment)
- Prohibition of re-trial after conviction (1 judgment)

As of 1 May 2014, there are 91 judgments and decisions against Azerbaijan pending, the execution of which remains under the supervision of CoM. The CoM is supervising 42 of these under enhanced procedure, meaning that these judgments have exposed major systemic and structural problems in the national systems. The remaining 49 are being monitored under the standard procedure, where required measures can be identified and implemented quickly. The cases under enhanced supervision can be downgraded to standard one and vice versa.

Of the 47 Council of Europe member states, Azerbaijan has the 12th highest number of judgments under enhanced supervision.



7th Annual Report of the Committee of Ministers on the Supervision of the Execution of ECtHR judgments, 2013

⁶[HUDOC database](#), retrieved on 5 May 2014

STATE OF EXECUTION OF ECtHR JUDGMENTS BY AZERBAIJAN⁷		
Number of judgments and decisions awaiting execution	91 cases	
New cases	10 cases	
Enhanced supervision	42 cases	
Standard procedure	49 cases	
Action plans submitted by Azerbaijan ⁸	9 action plans <ul style="list-style-type: none"> • Case of Ali Insanov against Azerbaijan (Application No. 16133/08) • Namat Aliyev group of cases against Azerbaijan (Application No. 18705/06) • Mahmudov and Agazade group of cases against Azerbaijan (Application No. 35877/04) • Nadir Orujov (Namat Aliyev group) against Azerbaijan (Application No. 4508/06) • Khanhuseyn Aliyev (Namat Aliyev group) against Azerbaijan (Application No. 19554/06) • Najafli (Muradova group) against Azerbaijan (Application No. 2594/07) • Rizvanov (Muradova group) against Azerbaijan (Application No. 31805/06) • Natig Mirzayev against Azerbaijan (Application No. 36122/06) • Soltanov against Azerbaijan (Mirzayev Group) (Application No. 36079/06) 	
State of execution in 2012 and 2013⁹		
	2012	2013
Payment of just satisfaction within deadline	8 cases	1 case
Payment of just satisfaction beyond the deadline	2 cases	
Cases under enhanced supervision	10 cases	11 cases
Final resolutions	1 case	1 case
Pending cases	63 cases	81 cases

⁷ Data provided in the table has been based on the official statistics provided by the Committee of Ministers.

CHAPTER TWO:

THE COUNCIL OF EUROPE FRAMEWORK FOR THE EXECUTION OF ECtHR JUDGMENTS

As a part of the CoE institutional framework, the ECtHR is considered to be one of the most effective human rights protection mechanisms in the world. However, the ECtHR is overloaded with cases, mostly of a repetitive nature. In order to maintain the system's effectiveness, member states have been urged to execute judgments more rapidly. Member states need to cooperate at the international level by engaging with the CoM, and at the domestic level by instituting a proper institutional framework to manage the execution process.

PACE has called upon member states to establish parliamentary committees for the oversight of the execution process on the national level. In addition, the CoM, responsible for the implementation process, has issued a number of resolutions encouraging member states to improve the efficacy of the process. Governments need not only to implement the recommendations in the resolutions, but also respond in a timely manner by preparing action plans and action reports to be submitted to the CoM.

According to Article 46 of the Convention, member states have undertaken

to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the CoM. It follows, *inter alia*, that a judgment in which the Court finds a breach imposes on the respondent state a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the CoM, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects.¹⁰

Article 46 imposes the obligation to take general measures to prevent further violations along with specific measures to remedy the effects of the violation on the individual applicant(s). Individual measures are e.g. speeding up the proceedings, reopening domestic proceedings, or paying the just satisfaction.

General measures need to be implemented in order to prevent further similar violations, which are however sometimes difficult to define and implement. The national authorities must first undertake a detailed examination of the causes of a violation in question. In some cases, the circumstances of a case clearly show that the violation is the result of domestic legislation. Sometimes, it is a gap in the legislation that leads to violation. In such cases, it falls to the state concerned to amend the existing legislation or to introduce new legislation in line with the Convention standards. However, in many cases, the violation is not due to an obvious incompatibility between domestic legislation and the Convention, but rather to a problem of judicial practice, i.e. the way in which the national courts usually interpret domestic legislation and/or the Convention. In such cases it is necessary

⁸ With the adoption of Protocol 14 of the Convention, member states are required to submit an action plan to CoM on the execution each judgment within 6 months from its final date.

⁹ Data provided in the 7th Annual Report of the Committee of Ministers, Supervision of the Execution of Judgments and decisions of the European Court of Human Rights.

¹⁰ Case *Scozzari and Giunta v. Italy*, application no. 39221/98

to change judicial practice along the lines suggested by the Court in order to execute the judgment¹¹.

Role of the Committee of Ministers in the execution of judgments

The duty of CoE member states, including Azerbaijan, to execute the ECtHR judgments arises from Article 46 of the Convention. The CoM is the main CoE body mandated with the supervision of the execution of ECtHR judgments. It operates on the basis of a number of documents, the most important being the Rules of Procedure. The CoM is tasked with supervising the actions the Government has undertaken in order to execute judgments.

CoM conducts its analysis based on the communicated applications and ECtHR judgments and drafts proposals for relevant measures. It also serves as a discussion forum for issues relating to compliance of drafted amendments with the Convention. In this respect, Azerbaijan could face significant consequences in relation to its domestic law.

According to the CoM Rules of Procedure, Governments are bound to prepare action plans in which they present the schedule and the scope of the action required to implement the judgment. Once the judgment is implemented, the Government presents an action report. On the basis of this document, the CoM decides whether to close the examination of the case and to adopt a final resolution.

A number of national actors should play an active role in the execution process: the ministry or other relevant institution in the role of the representation before the ECtHR, parliaments, national courts, constitutional jurisdictions, national human rights institutions (NHRI) and non-governmental organizations (NGOs).¹²

Since 2011, with the adoption of Protocol 14 of the Convention, according to Rule 9 of the Rules of Procedure, such actors as NHRIs, national bar associations and NGOs can present their submissions to the CoM regarding the execution of judgments and in that way engage in the execution process. NHRI and Bar Associations are still not very active in the process in most member states and rarely utilise this procedural option.

Influencing the preparation of the governmental action plans at the domestic level is a key advocacy entry point for NGOs. They can get involved by lobbying the government agents, domestic authorities or the coordination bodies responsible for the execution of judgments. An ambitious action plan presented by the Government would not only pave the way for the more comprehensive execution of ECtHR standards, but would also facilitate the role of the CoM in supervising the process. For a proper execution of judgments at the national level, NGOs should put pressure on the authorities from the moment the judgment becomes final. NGOs can also oppose the closing of a case, after the presentation of the action report.

¹¹Definition available at: http://www.coe.int/t/dghl/monitoring/execution/Documents/MGindex_en.asp

¹² Dia Anagnostou, Alina Mungiu-Pippidi, *Why Do States Implement Differently the European Court of Human Rights Judgments? The Case Law on Civil Liberties and the Rights of Minorities*, JURISTRAS Project, Comparative, April 2009.

The importance of following the Committee of Ministers' recommendations

The CoM has issued a number of recommendations on the execution of ECtHR judgments. Member states need to follow these recommendations in order to more effectively execute the Court's judgments. Scrutiny should be applied at the national level in order to assess the extent to which Azerbaijan complies with the recommendations. Such an analysis could provide the basis for governmental reforms to improve compliance with international obligations. This is particularly urgent with respect to the following recommendations:

1. Recommendation on the re-examination or reopening of certain cases at the domestic level¹³. The CoM recommends the application of measures aimed at *restitutio in integrum* (restoration of the injured party). Moreover, this enables member states to examine their national legal systems with a view to ensuring that there are adequate possibilities for the re-examination of cases, including reopening of proceedings, in instances where the ECtHR has found a violation of the Convention;

2. Recommendations on the improvement of domestic remedies¹⁴. The CoM recommends that member states take all necessary steps to ensure that all stages of domestic proceedings are determined within a reasonable time. This recommendation applies to any case in which there may be a determination of civil rights and obligations, or of any criminal charge, irrespective of its domestic characterisation. Moreover, it is recommended that governments establish a system of redress, whereby compensation is afforded to the victims for any disadvantage they have suffered. In order to prevent the multiplication of complaints pending before the ECtHR the CoM advises the introduction of domestic remedies and redress mechanisms.¹⁵

3. Recommendation on the publication and dissemination of the text of the Convention and of the ECtHR case law in the member states¹⁶. This recommendation encourages member states to translate the text of the Convention and to provide translations of ECtHR case law (not only for cases concerning the given country), and to disseminate these translations widely;

4. Recommendation on the European Convention on Human Rights in university education and professional training¹⁷. Member states are encouraged to create a university curriculum incorporating human rights education, placing particular emphasis on knowledge of the Convention system and the ECtHR case law;

5. Recommendation on the verification of the compatibility of draft laws, existing laws and administrative practice with the Convention standards¹⁸. These recommendations call upon member states to ensure that there are appropriate and

¹³No. R(2000)2.

¹⁴CM/Rec(2004)6 and CM/Rec(2010)3.

¹⁵ On 18 September 2013 the Committee of Ministers adopted a Guide to good practice in respect of domestic remedies addressed to member states.

¹⁶Rec(2002)13.

¹⁷Rec(2004)4.

¹⁸Rec(2004)5.

effective mechanisms to systematically verify the compatibility of draft laws with the Convention in the light of the case law of the ECtHR;

6. Recommendation on domestic capacity for rapid execution of ECtHR judgments¹⁹. In this recommendation the CoM calls upon member states to designate a co-ordination body responsible for the execution of judgments, to speedily identify general measures in order to implement the judgment, and to provide an action plan in a timely manner;²⁰

7. Recommendation on effective remedies for excessively long proceedings²¹. Similarly to the recommendations cited in point 2, the CoM calls upon member states to establish a system of redress, where compensation is afforded to the victims for any disadvantage they have suffered.

The recommendations made by the CoM highlight the basic steps that should be undertaken by member states in order to implement ECtHR judgments. Only by following these recommendations can member states assure the proper and speedy implementation of judgments at the national level. Without the cooperation of member states in that respect, the CoM risks becoming overloaded with pending judgments, jeopardising the whole European system of human rights protection. Therefore, each member state should monitor progress in relation to each recommendation in order to create the necessary institutional framework for the execution of ECtHR judgments at the national level.

¹⁹CM/Rec(2008)2.

²⁰Azerbaijan has failed to fulfil these recommendations. As of October 2013, 65 Azerbaijani cases were pending before the CoM. The Government of Azerbaijan has presented action plans in just 4 cases (including updates).

²¹CM/Rec(2010)3.

CHAPTER THREE:

NATIONAL MECHANISM FOR EXECUTION OF ECtHR JUDGMENTS IN AZERBAIJAN

Domestic structures play a vital role in the execution of ECtHR judgments. Existing national mechanisms provide institutional support for the execution process, thereby fostering compliance with the respective judgments and international human rights standards in general. The following chapter outlines the main institutions of the Republic of Azerbaijan involved in the national execution of ECtHR judgments, and elaborates on their respective roles in the process.

In its National Human Rights Program adopted in 2011, the Government of Azerbaijan commits itself to effectively execute ECtHR judgments and lists the institutions involved in the process:²²

“1.2. Implementation of the commitments and obligations arising from the international treaties on human rights and freedoms to which the Republic of Azerbaijan is a signatory and ensuring compliance of regulatory and legal acts of the Republic of Azerbaijan with international legal instruments

[...] in the framework of execution of the judgments of the European Court of Human Rights, it is envisaged to undertake measures to improve national legislation.[...]

Implementing institutions: Cabinet of Ministers of the Republic of Azerbaijan, Administration of the President of the Republic of Azerbaijan, Milli Mejlis of the Republic of Azerbaijan, Ministries of Justice and Foreign Affairs of the Republic of Azerbaijan, Scientific Research Institute for Human Rights of the Azerbaijan National Academy of Sciences.”

Additionally, the Government specifically commits to translate and disseminate the judgments and decisions of the ECtHR among relevant agencies as a part of the process.²³

Government Agent

The Presidential decree of the Republic of Azerbaijan of 8 November 2003 establishes the mandate of the Plenipotentiary of the Republic of Azerbaijan to the ECtHR²⁴ (hereinafter – the Office of the Government Agent) with a dual role: to represent the interests of the Republic of Azerbaijan before the ECtHR and to coordinate with relevant executive bodies on the execution of ECtHR judgments.²⁵

The Government Agent is appointed by the President of Azerbaijan, and the Office is a structural body of the Human Rights Defence Section under the Department on Relations with Law Enforcement Agencies of the Presidential Administration. The Government

²² [National Program](#) for Action to Raise Effectiveness of the Protection of Human Rights and Freedoms in the Republic of Azerbaijan, 27 December 2011

²³ Article 4.12 of the National Human Rights Program

²⁴ [Presidential decree](#) on Plenipotentiary of the Republic of Azerbaijan to the European Court of Human Rights, No. 3, 8 November 2003

²⁵ Articles 9.1 and 9.2 of the Regulations approved by the Presidential Decree

Agent is the main executive body tasked with the execution of ECtHR judgments, and the key contact for the CoM in that regard. In order to perform this role effectively, the Agent may establish working groups and invite relevant experts. No information, however, is provided or otherwise available to the public on how the Agent is coordinating the work with other relevant executive bodies. There is no information available on which ministries are involved in the execution process of particular cases, and the role of other ministries is not defined.

In 2008, the CoM adopted a recommendation that called for the designation of a “national coordinator of judgments” and for establishing a mechanism that would “liaise with persons or bodies responsible at the national level for deciding on the measures necessary to execute the judgment.”²⁶

Under the auspices of the Presidential Administration, which holds the highest executive power in Azerbaijan, the Office of the Government Agent holds a strong political standing to wards effective oversight of the execution of ECtHR judgments. It has the full competence to ensure meaningful cooperation among relevant state bodies, and to put pressure on the offices unwilling to cooperate. Political will, however, remains the most important barrier to the effective execution of the ECtHR judgments. Given Azerbaijan’s lack of genuine political commitment for reforms to ensure better protection of human rights and fundamental freedoms, the Office of the Government Agent is largely dependent on the position of the Presidential Administration.

Also, the dual role of the Government Agent (representation of Azerbaijan’s interests and coordination of execution of ECtHR judgments) can be seen both as an asset and as a disadvantage. It may be difficult to convert to upholding the ECtHR judgment that the Government of Azerbaijan has rejected in the litigation process, particularly given the sensitive issues in question, such as freedom of expression or the right to fair elections.

Executive ministries

The Presidential Decree establishes that the Government Agent coordinates the execution process of ECtHR judgments with relevant national executive bodies. There is, however, no further legal or regulatory basis for the involvement of the respective bodies, particularly the Ministry of Justice and the Ministry of Foreign Affairs, both of which play a vital role in this context. No information is available on the online database of legal and normative acts of the Republic of Azerbaijan, nor on the websites of the aforementioned institutions. Their engagement in the process is exclusively based on the prerogative of the Office of the Government Agent, which decides on their involvement on a case-by-case basis.

The Supreme Court of the Republic of Azerbaijan

Once the ECtHR adjudicates a case, its judgment is referred to the Supreme Court of the Republic of Azerbaijan by the Office of the Government Agent. Both the Civil Procedural

²⁶[Recommendation CM/Rec\(2008\)2](#) of the Committee of Ministers to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights

Code and the Criminal Procedural Code establishes that ECtHR judgment is a ground for re-examination of a case and entitles the Plenum of the Supreme Court to decide on the re-consideration of the cases in which the ECtHR has found a violation of the Convention.²⁷

The same provisions establish that the Plenum of the Supreme Court must adopt its respective decision no later than 3 months after the submission of ECtHR judgment to the Court. In practice, however, there are often delays both in referring judgments to the Supreme Court and in adopting decisions on the re-consideration of cases. Moreover, human rights lawyers express concern that while the Supreme Court often quashes the decisions of the first instance and sends the cases for re-investigation, this does not, in reality, ensure the effective re-investigation of those cases. To date, no official information is available on the number of cases re-opened as a result of ECtHR judgments.

The National Assembly of the Republic of Azerbaijan (Milli Majlis)

In Resolutions 1823 (2011)²⁸ and 1914 (2013),²⁹ the PACE called upon all CoE member states to introduce parliamentary structures to ensure rigorous and permanent monitoring of the compatibility and execution of international obligations in the field of human rights, and in particular to ensure that competent parliamentary committees are actively involved in the execution of the Court's pilot judgments and other judgments revealing structural problems. The PACE has emphasised that the competence of these structures should include the introduction of (i) adequate procedures for the systematic verification of the compatibility of legislative initiatives with the Convention, including through monitoring of all ECtHR judgments that might affect the legal system; (ii) the obligation of states to regularly submit reports on the implementation of ECtHR judgments.

Azerbaijan, to date, has not delegated any specific role to its National Assembly in terms of execution of ECtHR judgments. Aside from the general legislative function of the Assembly, no explicit engagement has been established in that regard. Therefore, the National Assembly is not involved in the execution process and conducts no parliamentary oversight over the executive power's efforts to uphold ECtHR judgments.

The importance of the parliamentary control over the execution of ECtHR judgments

To date, the parliaments of the United Kingdom, the Netherlands, Romania and recently Poland have given effect to the PACE recommendations. Special subcommittees have been created in those countries to review the work of their governments on the execution of judgments. The meetings of those committees are open to NGO participants. In Poland,³⁰ discussions of the sub-committee are based on a yearly report produced by the government, containing information on the implementation of specific judgments.³¹

²⁷ Articles 455-456 of the Criminal Procedural Code and Articles 431.1 – 431.3 of the Civil Procedural Code.

²⁸ Resolution 1823(2011), Assembly debate on 23 June 2011 (25th Sitting) (see [Doc. 12636](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pourgourides). Text adopted by the Assembly on 23 June 2011 (25th Sitting).

²⁹ Resolution 1914(2013), Assembly debate on 22 January 2013 (4th Sitting) (see Doc. 13087, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Kivalov). Text adopted by the Assembly on 22 January 2013 (4th Sitting).

³⁰ A Subcommittee have been created in February 2014.

³¹ The annual report for 2012 is available at: <http://www.msz.gov.pl/resource/7ee7b5a9-049c-4dbb-a176-3c3721a0d35e:JCR>

There are several arguments in favour of the parliamentary involvement in the execution process. Firstly, it should be a procedural normality for parliaments to discuss human rights and their public interest limitations. In a democratic state, the parliament constitutes the best forum for such discussions.

Secondly, the permanent sub-commission can effectively monitor the legal and practical problems arising from the ECtHR's decisions. Sometimes these issues arise from systemic problems, such as lengthy trials or problems with mass surveillance practiced by secret services. Sometimes they are less deeply rooted and result from procedural issues— such as the practice of conducting searches and the inappropriate use of force by police. The nature of the problems depends on the specific character of a particular judgment and the issues that it addresses.

Thirdly, parliamentary control increases the transparency of the government's proposals for the execution of judgments. The PACE deputies thus appear in a double role, since some of them also deal with this issue at the European level as members of delegations to the PACE. The meetings of parliamentary commissions can serve to analyse the specific problems resulting from the ECtHR's decisions and to thus increase awareness of these issues. Finally, the parliamentary involvement increases the legitimacy of the ECtHR itself, which is crucial, given that the ECtHR has significant influence on the legal standards in each of the CoE member states.³²

It should be noted that the existence of special sub-committees is only effective when parliaments are formed in a democratic manner and when their members are engaged in the process of upholding CoE standards. Merely establishing a sub-committee without powers or a clear mandate is insufficient.³³

Another method used by some of the governments in order to coordinate the execution of ECtHR judgments is the creation of an interdisciplinary working group, comprised of representatives of different ministries. NGOs are invited and heard during meetings of the working group. During these meetings, different ministries give accounts of the implementation of different judgments according to their competences.³⁴ Minutes from such meetings can serve as background documentation for the parliamentary discussion.

Conclusion and Recommendations

In Azerbaijan, the effectiveness of the existing mechanism for the execution of ECtHR judgments largely depends on the political will of the Government of Azerbaijan to uphold respective judgments. The Office of the Government Agent lacks political influence to push through the reforms needed for the effective execution of judgments. Without any parliamentary control over the process, the executive power operates without checks and balances, and the process is overwhelmingly dependent on the Presidential Administration. No information is available to the public on the actual structure and the

³² Adam Bodnar, Dominika Bychawska-Siniarska, Polish Parliament- Guarding Human Rights?, 3 March 2014, article available at: <http://www.opendemocracy.net/can-europe-make-it/adam-bodnar-dominika-bychawska-siniarska/polish-parliament-guarding-human-rights>

³³ In that respect the system introduced in Ukraine has been criticised by scholars, e.g. Elisabeth Lambert-Abdelgawad, The Execution of Judgments of the European Court of Human Rights, Human Rights Files, No. 19, Council of Europe.

³⁴ Such an interdisciplinary group (Zespół do spraw Europejskiego Trybunału Praw Człowieka) has been established in Poland in March 2013; this group holds regular meetings to discuss progress on the execution of judgments.

functioning of the national mechanisms. This prevents civil society and legal professionals from engaging in and contributing to the execution of ECtHR judgments.

Recommendations to the Azerbaijani authorities on the national mechanism:

- Transparency and visibility of the work of executive bodies responsible for the execution of judgments should be improved through:
 - Introduction of an obligation for the Office of the Government Agent to produce annual reports on its activities and publish them;
 - The translation into Azerbaijani of all action plans and other documents submitted to the Committee of Ministers as relevant to the execution of ECtHR judgments, and their publication on the websites of relevant national bodies;
 - The publication of a financial report on the budgetary expenses of the Office of the Government Agent.
- Coordination among the relevant executive bodies participating in the execution process of ECtHR judgments should be improved; a special commission consisting of various relevant state bodies with a concrete mandate should be established in that regard;
- A mechanism for checks and balances in relation to the execution of ECtHR judgments should be established, including a parliamentary oversight mechanism which would, among others, review the compliance of draft laws with ECtHR standards; national MPs who also participate in PACE should be given particular role in that regard;
- Civil society involvement in legislative processes as a part of the execution process should be increased: through creation of joint working groups, invitations to submit legislative proposals, etc.;
- National courts should develop mechanisms to monitor the execution of ECtHR judgments and the application of ECtHR case law in particular.

CHAPTER FOUR:

MAIN VIOLATIONS OF THE CONVENTION IDENTIFIED BY ECtHR IN AZERBAIJANI CASES: CURRENT SITUATION

4.1. VIOLATIONS OF ARTICLES 2 AND 3 OF THE CONVENTION

Article 2 – Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force, which is no more than absolutely necessary:

a. in defense of any person from unlawful violence;

b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

c. in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3 – Prohibition of torture

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

This chapter discusses cases relating to Articles 2 and 3 of the Convention together, as the violations identified in the Article 2 judgment are also relevant for cases featuring ill treatment and torture.

As of 1 May 2014, ECtHR has found a violation of Article 2 in one case brought against Azerbaijan:

- *Mikayil Mammadov v Azerbaijan, Appl. No. 4762/05, 17 March 2010*

The breach was found due to the authorities' failure to carry out an effective investigation to establish the extent of the state's responsibility for the death of the applicant's wife.

Individual measures: The applicant has been paid just satisfaction; however, an effective re-investigation into the case has still not taken place.

As for Article 3 claims, the ECtHR found Azerbaijan in violation in 11 cases:

- *Layijov v Azerbaijan, Appl. No. 22062/07, 10 April 2014*
- *Chankayev v Azerbaijan, Appl. No. 56688/12, 14 November 2013*
- *Rzakhanov v Azerbaijan, Appl. No. 4242/07, 04 October 2013*
- *Tahirova v Azerbaijan, Appl. No. 47137/07, 3 October 2013*

- *Insanov v Azerbaijan*, Appl. No. 16133/08, 14 June 2013
- *Najafli v Azerbaijan*, Appl. No. 2594/07, 02 January 2013
- *Rizvanov v Azerbaijan*, Appl. No. 31805/06, 17 July 2012
- *Garayev v Azerbaijan*, Appl. No. 53688/08, 10 June 2010
- *Muradova v Azerbaijan*, Appl. No. 22684/05, 02 July 2009
- *Mammadov (Jalaloglu) v Azerbaijan*, Appl. No. 34445/04, 11 April 2007
- *Hummatov v Azerbaijan*, Appl. No. 9852/03, 29 November 2007

Individual measures: In all cases, applicants have been awarded just satisfaction. In *Najafli* and *Rizvanov*, proceedings have been re-opened, but no information on the investigation is has been made available to the applicants. In the case of *Muradova*, the investigation has not been re-opened. In the case of *Insanov*, the initial decision was quashed by the Supreme Court and the case was referred for consideration. In *Mammadov (Jalaloglu)*, the investigation on the facts of the case has been resumed, but no information on its progress has been made available. The remainder of the judgments are pending before the Supreme Court.

General measures: In the judgments listed above, the ECtHR found violations of Articles 2 and 3 based on the following actions attributable to state authorities:

- 1) Non-effective investigation into death;
- 2) Ill-treatment in custody and non-effective investigation, including the lack of adequate medical treatment;³⁵
- 3) Ill-treatment in relation to detention conditions;³⁶
- 4) Excessive use of force by police during demonstrations and non-effective investigation thereof;³⁷
- 5) Extradition posing risk of ill treatment or torture.³⁸

The current chapter is based on the information provided by civil society groups along with human rights lawyers who are litigating cases of right to life, torture and ill treatment. It also draws upon the information submitted by Azerbaijan to the CoM. There are no officially published statistics on allegations of torture. Azerbaijan, moreover, opposes the publication of reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), following the CPT's last three visits to Azerbaijan in 2011, 2012 and 2013.³⁹ Azerbaijan and Russia are the only two CoE member states to take this stance.

Prohibition and criminalization of torture and ill-treatment in national law

The Constitution of Azerbaijan prohibits torture along with cruel, inhuman or degrading treatment or punishment.⁴⁰ The Criminal Procedure Code (CPC) prohibits torture and/or certain practices related to torture, such as the use of coercion or illegal means to obtain

³⁵Case of *Mammadov (Jalaloglu)*, *Hummatov*, *Layijov*.

³⁶Cases of *Insanov* and *Rzakhanov*

³⁷Cases of *Muradova*, *Rizvanov*, *Najafli*, *Tahirova*

³⁸Cases of *Chankayev*, *Garayev*

³⁹<http://www.cpt.coe.int/en/states/aze.htm>

⁴⁰Article 43.3 (“Nobody must be subject to tortures and torment, treatment or punishment humiliating the dignity of human beings”)

confessions or evidence.⁴¹ These provisions are also contained in legislation on prisons and on the police.

The Criminal Code of Azerbaijan (CC) contains two articles on torture. Article 113 specifically addresses the issue of physical pain or mental suffering caused to persons in detention or otherwise deprived of their freedom. The Article, however, does not explicitly establish liability for public officials. Article 133 provides for the general criminalisation of torture, while Article 133.3 specifically addresses official liability. Thus the latter provision is activated when officials are found to have committed such acts in service, with the aim to obtain information or compulsion of recognition, or aimed at punishing a person suspected of a crime.⁴²

The definition of torture in CC, however, expressly excludes acts that cause damage to health – i.e., an act that otherwise meets the definition of torture cannot be prosecuted under Article 133 if it qualifies as deliberate causing of harm to health.⁴³ The scope of this definition fails to recognize the gravity of an incidence of torture. All acts meeting the definition of torture should be prosecuted as torture, and when serious injury is caused, it should be considered an aggravating factor.

III-treatment in custody and in relation to detention conditions

In its National Human Rights Program, the government of Azerbaijan commits itself to ensure “genuine investigation of the violations of law and human rights, abuse, abuse of office and other similar offences during detention, arrest, or pre-trial detention” and further to “implement necessary measures”.⁴⁴ It specifically names the responsible institutions, including the Ministry of Internal Affairs and the Ombudsman Office.

On 22 May 2012, the Parliament of Azerbaijan adopted a new law on the rights of individuals in detention facilities.⁴⁵ The Law establishes the fundamental rights of persons in detention, including the right to inform relatives or persons of their choice upon the arrest, to know the reasons for the arrest and to have access to a lawyer.⁴⁶ It also provides an explicit prohibition of ill-treatment, insulting treatment or punishment. The Law further stipulates that complaints regarding torture, ill-treatment and other degrading treatment, as well as written information about bodily damage as the result of such treatment as revealed during the medical examination (which must be conducted within 24 hours of arrest) is brought to the prosecutor.⁴⁷ The Law also establishes an obligation for the management of the detention facility to immediately record the complaints on torture, ill treatment or inhuman treatment⁴⁸.

The new law provides sufficient safeguards against abuses of the respective rights. However, the implementation of the law in practice remains a major concern. In some cases, such as politically sensitive cases, neither the relatives nor lawyers have access to a detainee for 2-3

⁴¹ Criminal Procedural Code articles 13, 125

⁴² In 2009, the Committee against Torture urged Azerbaijan to amend Article 133 of the Criminal Code. See Committee against Torture, Consideration of reports submitted by States parties under Article 19 of the Convention, Concluding observations on the third periodic report of Azerbaijan, CAT/C/AZE/CO/3, 8 December 2009, para. 8.

⁴³ Criminal Code, Azerbaijan, (Article 133.1). In that case, it is prosecuted under Articles 126 and 127 of the Code on deliberate causing of harm to health

⁴⁴ National Human Rights Program, Article 3.1

⁴⁵ Law on the Rights and Freedoms of Individuals Kept in Detention Facilities, available [here](#)

⁴⁶ Article 15.1.1

⁴⁷ Articles 27 and 22.2-3

⁴⁸ Article 33.3.3

days due to the lack of information on his or her status. The refusal of the relevant authorities to provide that information in advance of charges being brought is another significant barrier to justice. During these periods of official silence, persons who have not received an official arrest order are often subject to torture or ill treatment, without any recourse for complaint.

The situations described above entail violations of a person's right to a lawyer. Moreover, although the law provides for the right to legal representation from the moment of arrest, a lawyer needs to obtain an order authorising him to defend a client. Such an order must be issued by a regional branch of the Collegium of Advocates where the lawyer is registered. In the absence of such an order, no lawyer can provide legal assistance to his/her client in detention. Given its limited working hours (weekdays only), it is very common that a lawyer is unable to access his/her client for 1-2 days. This is particularly relevant in cases of mass arrests resulting from unsanctioned demonstrations, which are often held on weekends, in addition to in other politically motivated or otherwise sensitive cases. In a number of cases, this period has been used to threaten detained persons with torture or actual ill treatment.⁴⁹ That often results in a failure to effectively medically examine and document torture allegations.

Public control over detention facilities

The Law on the rights of individuals in detention facilities establishes a public control mechanism to assess the compliance of relevant authorities with the law. Two monitoring bodies are tasked with monitoring prisons and detention facilities: the Public Affairs Committee and the Ombudsman Office. No individual NGOs or any other institutions have access to prisons in Azerbaijan beyond the two respective bodies.

The Public Affairs Committee is subject to the internal rules of the Ministry of Justice and is only entitled to monitor the situation in prisons. It does not have access to pre-trial detention centres. The Committee invites the participation of NGOs selected annually by a special commission under the Ministry of Justice. A number of critical human rights NGOs applied for membership in the Committee without success where NGOs favourable to the governmental policies dominate. Moreover, the Committee does not publish its reports, ostensibly because they are for internal use by state agencies only.

The above-mentioned law also establishes the National Preventive Mechanism aimed at monitoring of detention facilities, which is run by the Office of Ombudsman of Azerbaijan.⁵⁰ The Ombudsman has access to both prisons and pre-trial detention centres. No NGOs are involved in the structure of the Mechanism and its reports are not available to public.

A rather closed structure of both mechanisms and no access to their findings raise doubts about the transparency, the independence and the effectiveness of the monitoring mechanisms. Independent civil society focusing on detention conditions has no information available in that regard, which can be only received through lawyers of detainees, makes it almost impossible to actively engage in the process and contribute to improving the situation.

⁴⁹ For example, in the case of 8 NIDA youth activists who have been sentenced to 6,5 to 8 years in prison, allegations into torture have been made by detainees upon the arrest when they have been denied of access to a lawyer. Among others, please see the [statement of the Human Rights Watch](#) on the case.

⁵⁰ Article 49

Non-effective investigation into death or allegations of ill treatment

Both Articles of the Convention entail a positive obligation to take all possible efforts to prevent violations of the right to life. Moreover, the Convention entails an obligation to effectively investigate allegations into such violations. Once the ECtHR finds a violation of Articles 2 or 3 of the Convention, its judgment is grounds to re-open a case at the national level to ensure redress for a victim.

“Where an individual raises an arguable claim that he or she has been ill-treated by the police in breach of Article 3, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation.”

Rizvanov v Azerbaijan, § 55

Lack of effective investigation into human rights abuses, including violence by police or security forces, however, remains a major systemic problem in Azerbaijan as those responsible are not brought to justice and restitution of victims’ rights is not ensured. Among others, the investigations into murders of a journalist Elmar Huseynov (2004) and a writer Rafiq Tagi (2011) have brought no perpetrators to justice to date with clear violations of criminal procedural rules.

The following issues have been identified as barriers to effective investigation into violations of the right to life or incidents of ill treatment and torture in Azerbaijan:

a) Competence of the investigating body

Any person who has been tortured or subjected to cruel, inhuman or degrading treatment has the right to file a complaint to the competent authorities, which are required to conduct a prompt and impartial examination of the allegations, and to initiate criminal proceedings if sufficient evidence is found. States also have an obligation to carry out a prompt and objective investigation into all suspected respective cases.

Article 37.5.2 of the CPC establishes that the prosecutor may initiate criminal proceedings if the acts are committed by a representative of the government or other officials of state institutions. The Law however does not establish an obligation for the investigatory bodies to initiate the proceedings on their own initiative. In practice this often results in delays, as in many cases the investigation is not initiated until a complaint by a victim or a representative has been submitted.

In the cases of *Muradova* and *Tahirova*, the ECtHR clearly identified the obligation for the law enforcement authorities to initiate proceedings once they were aware of the claims. The Court found that the state’s failure to do so was a violation of Article 3 of the Convention.⁵¹

Another issue of concern relates to the timing of the initiation of a criminal investigation. The CPC procedure provides that, as a rule, a general preliminary investigation is initiated upon receipt of allegations into the fact of death or torture or ill treatment of a victim, in order to assess the basis of the allegations. The scope of this procedure limits the prosecutor’s capacities, as it does not allow for the collection of evidence, such as interrogation of witnesses, acquiring video documentation, etc. In practice, this stage of the

⁵¹*Muradova*, § 123; *Tahirova*, § 57

procedure may last over a month, which is detrimental to the quality of evidences, given the nature of torture crimes, and, as a result, criminal investigations are rarely pursued.

b) Prohibition of victim access to investigation material during the investigation

The CPC does not provide victims of criminal acts with the right to access criminal case files, documents, testimonies of suspects and witnesses, forensic medical reports and other findings by investigation before the official completion of investigation and decision to send pre-trial investigation materials to court or after the decision to terminate the investigation of an act (Article 87.6.10). In such a case, a victim is prevented from participating in the investigation of the case and from challenging the effectiveness of an investigation. However, the ECtHR has clearly established that in cases relating to alleged violations of Articles 2 and 3, the 'effective remedy' guaranteed by the Convention entails a thorough and effective investigation capable of leading to the identification and punishment of those responsible, *including effective access for the complainant to the investigatory process*⁵².

Recommendations:

Regarding the issue of ill-treatment in custody

- The requirement for lawyers to obtain an order to defend a client should be abolished.
- There should be an option for alternative medical examination in order to ensure effective, objective and timely documentation of possible ill treatment.

Regarding public monitoring of detention facilities

- To ensure the broader participation of NGOs by amending the selection procedure for the Committee so that the same NGOs can only serve a single term (one year);
- To publish the reports of the Committee and the National Preventive Mechanism;
- To establish regional branches of the Committee to ensure systematic monitoring of prisons around the country.

Regarding the effectiveness of investigation into death and ill-treatment

- The CPC's public prosecution procedure should be clearly established as an obligation in cases of alleged torture and ill treatment.
- The CPC should be amended so that the criminal investigation is initiated at the point of the allegation of unlawful death or torture; this amendment should also allow the investigator to collect all the evidence from that specific moment.
- The CPC should be amended to ensure that a victim has the right to access investigation materials in cases of alleged torture or death.

⁵²*Mammadov (Jalaloglu)*, §84; *Najafli*, §48

4.2. VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

Article 5. Right to Liberty and Security

1. *Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*

- a. The lawful detention of a person after conviction by a competent court;*
- b. The lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;*
- c. The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
- d. The detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
- e. The lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
- f. The lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*

2. *Everyone who is arrested shall be informed promptly, in a language, which he or she understands, of the reasons for his arrest and of any charge against him.*

3. *Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*

4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*

5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.*

As of 1 May 2014, the ECtHR has adopted eight judgments against Azerbaijan in which it has found a violation of Article 5:

- *Garayev v Azerbaijan, No. 53688/08, 10 June 2010*
- *Farhad Aliyev v Azerbaijan, No. 37138/06, 9 November 2010*
- *Salayev v Azerbaijan, No. 40900/05, 9 November 2010*
- *Muradverdiyev v Azerbaijan, 16966/06, 9 December 2010*

- *Rafiq Aliyev v Azerbaijan*, 45875/06, 6 December 2011
- *Allahverdiyev v Azerbaijan*, [49192/08](#), 6 March 2014
- *Novruz Ismayilov v Azerbaijan*, 16794/05, 20 February 2014
- *Zayidov v Azerbaijan v Azerbaijan*, [11948/08](#), 20 February 2014

Five of those judgments (*Farhad Aliyev v Azerbaijan*, *Muradverdiyev v Azerbaijan*, *Salayev v Azerbaijan*, *Rafiq Aliyev v Azerbaijan*, *Garayev v Azerbaijan*) are under supervision of the CoM in regard to their execution.

Individual measures

The applicants were paid just satisfaction in the cases where they were awarded compensation.

General measures

ECtHR's findings under Article 5 § 1: In the cases of *Farhad Aliyev* and *Salayev*, the applicants were brought before a judge after the expiry of the period allowed by domestic law. The ECtHR found that continued detention without a judicial order for a time exceeding the period prescribed by domestic law entailed a violation of Article 5 § 1.

In *Farhad Aliyev* and *Allahverdiyev* the ECtHR found violations of Article 5 § 1 due to the applicants' detention without any judicial order, after the applicants' case files had been referred to the trial court and before this court had held a preliminary hearing. The ECtHR held that "detaining defendants without a specific legal basis or clear rules governing their situation – with the result that they may be deprived of their liberty for an unlimited period without judicial authorisation – is incompatible with the principles of legal certainty and protection from arbitrariness."

Accordingly, the ECtHR identified flaws in the national legislation regulating the above-mentioned issues. In particular, some provisions of the Article 158 of CCP paved the way for such problematic practice by national courts.

Status of implementation: In its 10 October 2011 decision on the Interpretation of some provisions of Article 158.3 and Articles 158.4 and 290.3 of the Code of Criminal Procedure,⁵³ the Azerbaijani Constitutional Court stipulated that the legal status of the detention of the detainee under Articles 158.3, 158.4 and 290.3 of the CrCP were not in compliance with the Constitution or relevant international standards. Article 158.4 of CrCP was lifted as of 1 March 2012 pursuant to the abovementioned decision of the Constitutional Court, which declared this provision null and void. The Constitutional Court found that the legislation regarding the right to liberty and security lacked clarity and comprehensiveness. It therefore recommended that Parliament set out - in the legislation – a clear basis for an accused person's detention between the submission of the criminal case to the court and the court's preliminary hearings. But despite this ruling, no further amendments have been made to the relevant legislation.⁵⁴ This, among other things, opens the way for unlawful detentions contrary to the Article 5§1. Although the national legislation provides the national courts with some legal tools for addressing/avoiding these problems, for instance by applying the provisions of the Constitution and/or international

⁵³ <http://huquqiaktlar.gov.az/StatementDetails.aspx?statementId=4756>

⁵⁴ The latest amendments made to the CrPC that entered into force on 1 May 2014 were related to the similar Articles, but did not regulate the issues mentioned in the abovementioned decisions.

conventions,⁵⁵ the domestic courts do not provide recourse to those legal tools. The non-adoption of the law should not serve as a basis for unlawful judicial practice.

ECtHR's findings under Article 5 § 3 of the Convention: In the cases of *Farhad Aliyev, Muradverdiyev, Rafiq Aliyev* and *Zayidov*, the extension of pre-trial detention in the absence of relevant and sufficient reasoning was deemed a violation of Article 5 § 3. The ECtHR concluded that, "by using a stereotyped formula merely listing the grounds for detention without addressing the specific facts of the applicant's case, the authorities failed to give "relevant" and "sufficient" reasons to justify extending the applicant's pre-trial detention..." In *Zayidov*, non-application of the alternative to remanding the subject in custody, i.e. release on bail, was one of the issues addressed by the ECtHR.

ECtHR's findings under Article 5 § 4 of the Convention:

In the cases of *Novruz Ismayilov, Farhad Aliyev* and *Rafiq Aliyev* judgments, the ECtHR found a violation of Article 5 § 4 and decided that the domestic courts' failure to carry out a judicial review of the extension of the detention was not in conformity with the nature and scope required by Article 5 § 4. According to the Court, in those cases the proceedings did not take the form of genuinely adversarial hearings, and the domestic courts had failed to take into account the specific arguments made by the applicants.

Status of implementation: The domestic judicial practice related to the abovementioned findings of the ECtHR under Article 5 still requires significant improvement. The problems in the national judicial practice prompted the Supreme Court to adopt decisions in which it addressed problems relating to the application and extension of preventive measures, as well as insufficient reasoning in the decisions taken regarding those preventive measures. In its decision "on the Application of the Provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Case-law of the European Court of Human Rights in the Administration of Justice" of 30 March 2006,⁵⁶ the Supreme Court mentioned the following:

"The preventive measure of remand in custody must be considered an exceptional measure to be applied in absolutely necessary cases, where the application of another preventive measure is not possible.

The courts should take into account that persons whose right to liberty has been restricted are entitled - in accordance with Article 5 § 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms - to trial within a reasonable time, as well as to release pending trial if it is not necessary to apply the preventive measure of remand in custody."

In the light of these ongoing problems, in its decision "on the Practice of the Application of the Legislation by the Courts during the Examination of Requests for the Application of the Preventive Measure of Remand in Custody in Respect of an Accused" of 3 November 2009, the Supreme Court elaborated further on the remand in custody:⁵⁷

" ... when deciding to apply the preventive measure of remand in custody, the courts must not be content with only listing the procedural grounds provided for by Article 155 of the CCrP, but must verify whether each ground is relevant in respect of the accused and whether it is supported by the materials in the case file... "

⁵⁵Articles 12, 149, 151 of the Constitution, Articles 10, 12 and 14 of the CrCP

⁵⁶§§ 13-14

⁵⁷<http://www.supremecourt.gov.az/?mod=2&cat=3019&id=1578&c=7&lang=az&f=1>

The unfortunate lack of any significant positive developments in relation to the extension of detention orders at preliminary hearings was also highlighted in the OSCE Trial Monitoring Report.⁵⁸ Furthermore, the designation by Amnesty International of Ilgar Mammadov, Tofiq Yaqublu, Anar Mammadli, and the NIDA Movement activists as "prisoners of conscience" clearly show that in all those cases the court decisions on the selection/extension of the preventive measures had not been in compliance with Article 5.

According to official information,⁵⁹ the domestic courts grant 98% of the submissions/motions of the prosecutors on selection/extension of remand in custody as a preventive measure. In addition, in its interview of January 2014, the chairman of the Supreme Court admitted that national judicial practice on application of remand in custody has not improved:⁶⁰

"...Unfortunately our judges apply remand in custody as the first alternative... Unfortunately, to date, we have not been able to solve this problem... It should be mentioned that in comparison with previous years there are some improvements. However, we cannot claim that "we have achievements or that we have huge improvements in this field". We shall continue carrying out our activities in this area."

The recent Article 5 judgments against Azerbaijan also indicate that the abovementioned problems remain in play, since they address similar problems to those highlighted in earlier ones.

It should be mentioned that the specific problems relating to judicial practice on the application of Article 5 are part of the general problems inherent in the national judicial system. Among various other legacies of the Soviet system, judicial independence remains a key challenge for Azerbaijan; the courts are still dependent on decisions of the prosecuting authorities. Thus, in general, the courts simply serve to confirm the acts/decisions of the legal enforcement bodies/prosecutor's office. Furthermore, there are serious problems around the right to defence, including the scarcity of skilled advocates. There are few advocates active in defending the rights of the defendants in Article 5 cases.⁶¹ In this sense, the status of the implementation of Article 5 depends on large-scale systemic reforms across the whole legal system.⁶²

Additional problems include the capacity of judges and prosecutors, and heavy workload of law enforcement officers and judges. In this respect, raising awareness and building capacity among judges, law enforcement officers and other legal professionals must be improved. As part of this task, translation of judgments into Azerbaijani and their dissemination among those groups is important. Translations should be provided in a timely manner and be made publicly available, including through the relevant government supported websites.

As part of the reporting on the execution of *Farhad Aliyev* case, the Azerbaijani authorities informed CoM of the adoption of the law on the rights and freedoms of individuals kept in detention facilities, which entered into force on 11 July 2012. However, the abovementioned law does not address the specific issues mentioned in the relevant ECtHR judgments with regard to Article 5, but instead refers to the CrCP on those issues.

⁵⁸ <http://www.osce.org/baku/100593?download=true>

⁵⁹ According to the public speech made by Mr Shahin Yusifov, the judge of the Supreme Court and http://www.mia.az/w100374/Ali_M%C9%99hk%C9%99m%C9%99nin_hakimind%C9%99n_h%C9%99mkarlar%C4%B1na_a%C4%9F%C4%B1r_ittiham_-_%C6%8Fli_%C4%B0nsanovun_i%C5%9Fi/

⁶⁰ <http://www.supremecourt.gov.az/?mod=1&partid=2&c=1&date=2011-01-31&id=3&lang=az>

⁶¹ OSCE trial monitoring report 2011, <http://www.osce.org/baku/100593?download=true>

⁶² More information on needed reforms with regard Article 6 can be found in the chapter 4.3

Other findings under Article 5

In the case of *Garayev v Azerbaijan*, the ECtHR found that infringement of the applicant's right to liberty and security on account of his placement in custody pending extradition on the basis of a law which was neither precise nor foreseeable and fell short of the "quality of law" standard required under the Convention (Art. 5 §1 (f)). Additionally, the ECtHR found that throughout the applicant's detention pending extradition, he did not have at his disposal any procedure for a judicial review of its lawfulness. There has therefore been a violation of Article 5 § 4 of the Convention.

It should also be mentioned that the relevant legislative amendments regarding the rights of detained persons pending extradition with a view to extradition have still not been undertaken.⁶³ Moreover, in its action plan, the Government made reference to the translation of judgments into Azerbaijani and dissemination among prosecutors. Note, however, that these documents should also be disseminated among legal professionals and judges as well as prosecutors in order to raise their awareness on this issue.

Recommendations concerning the implementation of national legislation

- The investigative authorities are requested to discontinue their current practice of extending accused's pre-trial detention without judicial authorisation pending the beginning of trial proceedings.
- The courts should discontinue the systematic use of pre-trial detention as a restrictive measure pending the beginning of trial proceedings, as well as the practise of automatically extending the use of pre-trial detention as a restrictive measure;
- The courts should find alternative measures to remand in custody;
- The courts should pay particular attention to the reasoning of the decisions on application/extension of the preventive measures. They should provide the defence, including the defence counsels, with access to the case files on application/extension of the preventive measures, as submitted to the court by the prosecutor;
- Relevant measures under national legislation should be taken against officials/officers who violate the right to liberty and security;
- Judges, law enforcement officers and legal professionals need to receive regular training in the field of ECtHR standards concerning Article 5 issues. The trainings should address the specific problems identified by the ECtHR.
- The Supreme Court needs to act proactively and to improve the relevant decisions/instructions on the application of Article 5 by

⁶³ This commitment has been established in Article 1.2.3. of the National Human Rights Program

taking into account the case law of the ECtHR not only in relation to Azerbaijan, but other countries as well.

Recommendations concerning the national legislation

National legislation should be brought into line with the Constitution as well as the Convention, as detailed below:

- The Parliament should adopt the relevant legislative amendments to regulate the grounds for the detention of a detainee without a judicial order following the referral of the case file to the trial court, pending the trial court's preliminary hearing;
- The CrCP should include clear and specific legal provisions regulating detention pending extradition;
- The Parliament shall proactively address the issues mentioned by the ECtHR under its Article 5 case law.

4.3. VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

Article 6. Right to a fair trial

1. *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*
2. *Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
3. *Everyone charged with a criminal offence has the following minimum rights:*
 - o *(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
 - o *(b) to have adequate time and the facilities for the preparation of his defence;*
 - o *(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
 - o *(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
 - o *(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.*

As of 1 May 2014, the ECtHR adopted forty-four judgments against Azerbaijan, in which it has found a violation of Article 6 of the Convention.

Currently, the CoM is supervising the execution of the following cases:

- Hummatov v. Azerbaijan, 9852/03, 29 November 2007 - a right to a public hearing
- Tarverdiyev, 33343/03, 26 July 2007; Efendiyeva, 31556/03, 25 October 2007; Akhundov, 39941/07, 03 February 2011; Mirzayev, 50187/06, 03 November 2009; Gulmammadova, 38798/07, 22 April 2010; Hajiyeva and Others, 50766/07, 08 July 2010; Hasanov, 50757/07, 22 April 2010; Isgandarov and others, 50711/07, 08 July 2010; Ismayilova, 18696/08, 09 December 2010; Jafarov, 17276/07, 11 February 2010; Soltanov, 41177/08, 13 January 2011; Humbatov, 3652/06, 03 December 2009; Safarova, 35507/07, 14 October 2010; Faber Firm and Jafarov, 3365/08, 25 October 2010; Heydarova v. Azerbaijan, 59005/08, 18 December 2012; Bakhshiyev and others v Azerbaijan, 51920/09, 03 May 2012; Avsharova v. Azerbaijan, 30944/09, 22 May 2012 - enforcing final domestic judgment/decision;
- Farhad Aliyev, 37138/06, 9 November 2010, Muradverdiyev, 16966/06, 9 December 2010 – a breach of the applicants' right to presumption of innocence;

- *Huseyn and Others v. Azerbaijan*, 35485/05, 26 July 2011 - violation of Article 6§§1 and 3 (b), (c) and (d), Article 6.2;
- *Asadbeyli and Others v. Azerbaijan*, 3653/05, 11 December 2012 - violation of Article 6§§1 and 3 (b), (c) and (d));
- *Abbasov*, 38228/05, 17 January 2008; *Maksimov*, 8460/07, 08 October 2009; *Pirali Orujov*, 38073/06, 3 February 2011; *Mammad Mammadov*, 11 October 2011 - violation of Article 6§1;
- *Hajibeyli v. Azerbaijan*, 16528/05, 10 July 2008, *Rahimova v. Azerbaijan*, 21674/05, 17 January 2008 - Excessive length of hearing
- *Fatullayev v Azerbaijan*, 40984/07, 22 April 2010- violation of Article 6§1 and 6§2;
- *Insanov v. Azerbaijan*, 16133/08, 14 March 2013 - violation of Article 6§1 taken together with Article 6§3 (c) and (d).

Individual measures

The applicants in general have received just satisfaction, as adjudicated by the ECtHR.

As regards re-examination of the cases/re-investigation into those cases, there are some serious problems with implementation of this individual measure. It appears that in general, re-hearings of the cases are delayed, in breach of the requirements of the relevant national legislation regulating re-examination of the case. In the case of *Huseyn and Others v Azerbaijan*, re-hearing of the case by the Plenum of the Supreme Court was significantly delayed. The Plenum of the Supreme Court examined this case on 24 January 2014, despite the fact that the mentioned judgment of the ECtHR became final on 26 October 2011. However, according to the CCP,⁶⁴ the Supreme Court must deliver the decision within 3 months of the receipt of the judgment. In *Insanov v Azerbaijan* case, the re-hearing of the case was also delayed; the ECtHR judgment became final in June 2013 and the Plenum of the Supreme Court examined the case in November 2013 and remitted the case to the Baku Appeal Court for re-hearing.

Moreover, the applicants as well as the defence lawyers involved in these cases claim that in practice, re-hearing of those cases cannot be assessed as 'effective investigation' into the cases, since the national authorities do not redress the findings of the ECtHR as required. In *Huseyn v Azerbaijan*, the Supreme Court quashed the judgments of the lower courts and remitted the case to the first instance court for full re-hearing of the case on merits. However, the defense party in that case expressed their concern that the findings of the ECtHR provided reasonable grounds for the Plenum of the Supreme Court to redress violations found by the ECtHR in other ways, including by addressing the possibility of acquittal of the applicants. According to P.Huseyn, one of the applicants in the case, the preliminary hearing of the case, pending with the first instance court, had been postponed seven times due to different reasons. This, among other things, cause questions on the effectiveness of the re-hearing of the case. The similar problems were observed in *Insanov v Azerbaijan*, in which, according to the applicant, the Plenum of the Supreme Court did not properly address the findings of the ECtHR. The applicant and his defense counsels stated that the proceedings before the Baku Court of Appeal, which re-heard the case did not comply with requirement of

⁶⁴ Articles 455-460

fairness and the court judgment was not compatible with the conclusions set out in the ECtHR's judgment.

Furthermore, Azerbaijani legislation, in particular the Law on Courts and Judges⁶⁵, envisages the possibility of disciplinary measures against the national judges whose judgments are found to comprise Convention violations. However, information on measures taken against the judges or law enforcement officers involved into the cases is not available to the public. According to some of the applicants and defense lawyers, the law enforcement officers and judges who were related with their cases have not faced any disciplinary measures.

General Measures

The proper execution of the ECtHR judgements requires holding far-reaching reform of the whole justice system in Azerbaijan. The reforms should address both national legislation and the judicial practice and encompass the full scope of the fair trial standards as outlined below.

Equality of arms and principle of adversiality

In the case of *Ali Insanov*, the ECtHR found violation of Article 6§1 on the grounds that the applicant was denied the opportunity to attend the hearings in the civil proceedings he brought concerning the conditions of his detention and the alleged lack of adequate medical assistance. Besides, in the case of *Natig Mirzayev v. Azerbaijan*, the ECtHR came to the similar conclusion, since the proceedings brought by the applicant against the prison authorities had been held in his absence.

In the cases of *Abbasov, Maksimov, Pirali Orujov and Mammad Mammadov*, the ECtHR found violations of the applicants' right to a fair trial on the grounds that they had not been duly informed about the hearing of their cassation appeal before the Supreme Court and, therefore, could not be present at the hearing.

The observation of some cases, as well as interviews with some defense counsels indicate that the court practice on this issue has not changed so far and even new applications on the similar violations are pending with the ECtHR. In other words, the state have not taken serious measures to prevent similar violations in light of the European Court's findings, as is demonstrated further by the new judgments on similar issues as well. In this regard, in the case of *Abdulgadirov v Azerbaijan*, the Court held that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention, since the applicant was deprived of the opportunity to effectively argue his points of appeal in a manner complying with the principles of equality of arms and adversarial proceedings, and was denied the right to be heard in person in connection with points of appeal that, at least prima facie, required him to be heard directly.

In *Huseyn v Azerbaijan* and *Asadbeyli and Others v. Azerbaijan*, the ECtHR held that there has been a violation of Article 6 § 1 taken together with Article 6 § 3 (b), (c) and (d) of the Convention (right to a fair trial/right to adequate time and facilities for preparation of defence/right to legal assistance of own choosing/right to obtain

⁶⁵ Article 111

attendance and examination of witnesses). Moreover, in the case of *Ali Insanov* the ECtHR found a violation of Article 6§1 taken together with Article 6§3 (c) and (d) on the grounds that the criminal proceedings did not meet the requirements concerning the defense rights to have witnesses examined and to effective legal assistance.

In addition to the OSCE Report on Trial Monitoring Project in Azerbaijan 2003-2004, the subsequent OSCE reports on fair trial standards in Azerbaijan⁶⁶ also highlighted that the abovementioned problems regarding the equality of arms and principle of adversiality have not been eliminated. Interviews with defence counsels also reveal the absence of progress on the abovementioned issues.

Right to a reasoned judgment

In *Huseyn and Others v Azerbaijan*, the ECtHR found violation of the right to a reasoned judgment. According to OSCE Trial Monitoring Report 2011⁶⁷ in Azerbaijan:

"...the Project Team reported that in selected judgments, judges failed to address specific issues raised by the defence during court's hearings, leaving key motions and objections raised by the defence unanswered. In such cases, the position of the judges regarding the motions and issues brought by the defence remained unclear and the courts' judgements lacked any explanation regarding the conclusions drawn by the court. For instance, in one case the final judgement did not refer to the motions the defence submitted during trial proceedings in connection with irregularities and inconsistencies in the testimony of prosecution witnesses. In addition, the defence raised a substantiated motion regarding the medical expert's opinion, noting that it was inconsistent and therefore the court should exclude it from the evidence. In reply to the objections raised by the defence, the judge noted that he would address this issue in the final judgement. However, the judgement only referred to the testimonies of prosecution witnesses as well as the medical expert's opinion in question and convicted the accused.."

It should be mentioned that the problems with the equality of the arms and principle of adversiality, as well as reasoning of the decisions is pertinent to Article 5 cases as well, as was described in the previous chapter on Article 5.

Presumption of innocence

In the cases of *Farhad Aliyev, Muradverdiyev, Huseyn and Others v. Azerbaijan, Fatullayev v Azerbaijan*, the ECtHR found a breach of the applicants' right to presumption of innocence under the Article 6.2 on account of statements, made to the press by law-enforcement authorities, lacking the necessary qualifications or reservations and containing wording amounting to declarations that the applicant had committed certain criminal offences.

Observation of cases along with monitoring of the media indicates that unfortunately significant progress has not been made in this field. Among numerous others, the cases

⁶⁶ <http://www.osce.org/baku/106677>

⁶⁷ *Ibid.*

of Ilgar Mammadov⁶⁸ and the members of NIDA civic movement have involved violations of the presumption of innocence.

Execution of the court judgments/decisions

The implementation of the cases such as *Mirzayev v Azerbaijan*, which concerns the non-enforcement of final judicial decisions ordering the eviction of internally displaced persons, appears particularly problematic. An interview with the defense counsels in those cases indicates that the state failed to take adequate measures to enforce the domestic court decisions in those cases. Besides, it has not introduced effective remedies for those who are in the same legal situation as the applicants or have not provided adequate compensation in this respect.

Independence and impartiality of justice

In *Fatullayev v. Azerbaijan*, the ECtHR found a violation of the right to an impartial tribunal within the meaning of Article 6 (1) of the ECHR on the ground that the judge who heard the criminal case against the applicant was the same judge who previously examined the civil action against him. In *Huseyn v Azerbaijan*, the Court concluded that the composition of the Assize Court was not such as to guarantee the appearance of its impartiality and that it failed to meet the Convention standard under the objective test.

According to the OSCE Trial Monitoring Report⁶⁹, "the Project Team reported on some instances when the judges' behaviour gave rise to doubts regarding their independence and impartiality while adjudicating court cases. These instances included cases in which:

- the judges granted all motions the prosecutor raised and refused many of the motions the defence counsel raised without any sound reasoning, unless the prosecutor was in agreement with them;
- the judges did not ensure an effective investigation of sound and serious allegations by the defendants regarding fair trial violations that allegedly took place during the pre-trial investigation phase of the case although this is an obligation incumbent on the judge under the CPC.21
- the judges questioned the accused in a manner that could lead to an appearance of prosecutorial bias. For instance, in some instances, the presiding judges interrogated the accused and defence witnesses using leading questions, including questions, which appeared to violate the principle of the presumption of innocence.
- During the monitoring monitors also observed cases where judges appeared as predetermining the guilt of the accused before the trial proceedings were completed...".

Moreover, pursuant to the abovementioned report, the ratio between convictions and acquittals remained extremely low with convictions comprising up to 99.8% of all the judgements the courts rendered during the relevant reporting period. This factor

⁶⁸ <http://hudoc.echr.coe.int/webservices/content/pdf/003-4755862-5785190>

⁶⁹ <http://www.osce.org/baku/100593?download=true>

should also be taken into account while assessing the independence and impartiality of the judiciary.

Accordingly, reform to strengthen judicial independence and impartiality is urgently needed.

The establishment of the Judicial - Legal Council and the Judges Selection Committee

The Government of Azerbaijan has reiterated that several measures have been taken to ensure the independence of judicial system, including the revision and improvement of the laws regulating the activity of courts. As a result, the Judicial – Legal Council has been established with the aim of preventing external interference with judicial independence. Moreover, a Judges Selection Committee has been created and the rules on selection of candidates for judge positions have been adopted.

However, the structure and management of the two bodies raises many concerns in terms of their independence from the executive power. The Minister of Justice is the Chairman of the Judicial – Legal Council. 4 out of 15 members of the Council, made up of representatives of judges, legislative and executive power, are appointed by the President, the Parliament, the Ministry of Justice and the Prosecutor's Office.⁷⁰ This selection procedure contradicts the Law on Courts and Judges, which defines the Council as the independent and self-governing body of judicial power. Other members are appointed by the Supreme Court, the Collegium of Advocates, and Association of Judges. But no information is available on how the whole selection process is being conducted, including the nomination and appointment of candidates. Civil society has on several occasions attempted to access that information, but without result.

The new rules on selection of judges raise many concerns about the transparency and neutrality of the whole selection mechanism. The Judges Selection Committee is established by the Judicial-Legal Council, and chaired by the Minister of Justice. The judges of the Constitutional Court, Supreme Court and courts of appeal are appointed by Parliament upon the submission of the President (Art. 95 and 109 of the Constitution). All other judges of other courts are appointed by the President (Art 109 of the Constitution). The chairmen of the Supreme Court, Nakhchivan Supreme Court, appeal courts, courts of Grave Crimes and Nakhchivan Grave Crimes Court are appointed by the President. The chairmen of other courts are appointed by President upon the suggestion of the Judicial Legal Council (Article 94 of the Law on Courts and Judges).

Azerbaijan has a strong presidential system with wide powers vested in the Presidency. It also appoints and chairs the Cabinet of Ministers and appoints all executive authorities at the central and regional levels. The New Azerbaijan Party, chaired by the incumbent President, holds the majority of seats in the Parliament.

⁷⁰Article 6 of the Law on Judicial Legal Council

Recommendations:

- To bring the national legislation in line with the findings of the ECtHR under Article 6 of the Convention
- To bring the court practice into compliance with the ECtHR findings under Article 6 of the Convention
- To enforce the judgments of the ECtHR as required under the national legislation
- To act proactively by also taking into account the ECtHR's Article 6 judgments against other countries;
- To act proactively by considering the ECtHR judgments on Article 6 against other countries as well
- To raise awareness and build capacity of the judges, law enforcement officers, as well as legal professionals on fair trial standards

4.4. VIOLATIONS OF ARTICLE 10 OF THE CONVENTION

Article 10 – Right to Freedom of Expression

1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

To date, ECtHR has adopted three judgments against Azerbaijan on violations of Article 10 of the Convention:

- *Mahmudov and Agazade v. Azerbaijan, Application No. 35877/04, 18 December 2008*
- *Fatullayev v. Azerbaijan, Application No. 40984/07, 22 April 2010*
- *Najafli v Azerbaijan, Application No. 2594/07, 2 January 2013*

The following State actions were found to comprise violations of Article 10 by ECtHR:

- Imprisonment of a journalist as a sanction for criminal defamation (*Mahmudov and Agazade; Fatullayev* case)
- Violence against journalists by security forces during protests as a violation of their freedom of expression (*Najafli* case)

The execution of all three judgments is being conducted under the enhanced procedure, meaning that it requires general measures to be taken by the Azerbaijani authorities, such as legislative or policy reforms, in addition to individual measures.

Imprisonment as a sanction for criminal defamation

In both cases, the ECtHR found violations of Article 10 of the Convention. The Court condemned the imprisonment of journalists as a sanction for defamation, and stated that

“the imposition of a prison sentence for a press offence will be compatible with journalists’ freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in cases of hate speech or incitement to violence.”⁷¹

⁷¹ Fatullayev v Azerbaijan, para 103.

Individual measures. The respective journalists have now been released, and just satisfaction has been paid by the Azerbaijani Government. It is, however, important to note that national courts failed to re-open investigations into any of these cases. Fatullayev was released on the basis of a presidential pardon, while the sentencing of Mahmudov and Agazade was expunged by an official amnesty.

General measures

Criminal defamation and imprisonment

New Law on Defamation and decriminalization of defamation

Back in 2011, the Azerbaijani Government adopted a Law on Defamation as a important step towards improving the environment for freedom of expression and media freedom in Azerbaijan. In December 2011, the President of Azerbaijan approved the National Program for Action to raise effectiveness of the Protection of Human Rights and Freedoms in the Republic of Azerbaijan, submitted to the Committee of Ministers in relation to the execution of the relevant judgments.⁷² Article 1.2.7 of the National Program reads as follows:

1.2.7. Elaboration of proposals on improving the legislation in order to decriminalize defamation.

Implementing institution: Administration of the President of the Republic of Azerbaijan. Time-limit: 2012

Article 1.2. entails a general commitment of the Government of Azerbaijan with regard to judgments of the European Court of Human Rights: "[...] *in the framework of execution of the judgments of the European Court for Human Rights, it is envisaged to undertake measures to improve national legislation [...]*".⁷³

Unfortunately, however, these promised reforms have been overshadowed by regressive acts that actually limit the freedoms in question. In September 2012, after having agreed with the European Commission for Democracy through Law (also known as the Venice Commission) on assistance in developing the law, the version of the draft law submitted by the Government had eliminated the provisions on decriminalisation of defamation.⁷⁴ The draft law failed to include the provisions of the bill that had been designed in cooperation with civil society institutions and the OSCE Office in Baku in

⁷²Communication from the government of Azerbaijan in the Mahmudov and Agazade group of cases against Azerbaijan (Application No. 35877/04), 2 March 2012.

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2043229&SecMode=1&DocId=1864750&Usage=2>

⁷³ Ibid, Article 1.2.

⁷⁴ <http://www.venice.coe.int/webforms/documents/?opinion=725&year=all>

2012.⁷⁵Specifically, the provisions repealing the Criminal Code providing for heavy penalties for libel and insult and determining the maximum amount of compensation for damage caused by defamation were removed.⁷⁶

The Venice Commission produced its opinion on the draft Law on the Protection Against Defamation in Azerbaijan Defamation Law on 14 October 2013. It concluded that 'the Draft Law is, in many respects, not in line with the applicable ECHR principles and case law and fails to ensure adequate implementation of the country's obligations in this field. Moreover, it seems to have been prepared in complete isolation from other parts of domestic law and no progress has been made towards decriminalizing defamation.'⁷⁷The Venice Commission emphasised two key requirements of reform:

- Ensuring that regulations dealing with defamation are formulated in a way that prevents unduly severe rules and sanctions and is of the view that strong and effective remedies - while proportionate - can be provided through civil law.
- Providing a comprehensive and consistent approach - development of strong and efficient civil law provisions, coupled with the removal/substantial amendment of the relevant criminal provisions - is necessary to ensure the compatibility of the legislation with the requirements of the ECHR⁷⁸.

In May 2013, however, the Criminal Code of Azerbaijan was amended to include penalties for slander and insult posted on the Internet.⁷⁹This move has already been condemned by the Committee of Ministers in its decision of 6 June 2013 regarding the execution of *Mahmudov and Agazade*.⁸⁰ The government of Azerbaijan argues that criminal liability for defamation is a means of combatting cybercrime in Azerbaijan. Human rights groups, however, are concerned that such provisions can be used to silence all critical voices.

On July 30 2013, the first conviction on charges of criminal defamation online was handed down by the Astara Criminal Court, against Facebook user Mikayil Talibov. Talibov received a one-year public labour sentence for his allegedly libellous Facebook posts. He was later acquitted by the same court, after his case was referred to the Baku Appeals Court⁸¹.

The removal of provisions limiting compensation for moral damage is of particular concern given the recent court practice of imposing excessive and disproportionate fines against journalists and newspapers critical of the government. This has forced some

⁷⁵The draft law on defamation that was prepared by civil society and OSCE Baku office and presented to the Presidential Administration for its consideration

http://www.mediariights.az/docs/pa_defamation_law_eng.pdf

⁷⁶Please see the joint statement of the Institute for Reporters' Freedom and Safety and the Media Rights Institute <http://www.irfs.org/news-feed/azerbaijani-government-blocks-media-reform-by-watering-down-the-draft-defamation-bill/>

⁷⁷Para 117, [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)024-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)024-e)

⁷⁸Ibid 3, para 120

⁷⁹<http://www.mediariights.az/index.php?lngs=eng&id=77>

⁸⁰[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2013\)1172/4&Language=lanFrench&Ver=original&Site=&BackColorIntranet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2013)1172/4&Language=lanFrench&Ver=original&Site=&BackColorIntranet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679)

⁸¹Media Rights Institute [statement](#) on the case

individuals and groups to cease their activities. This practice evolved after the government declared an unofficial moratorium on the use of imprisonment as a criminal sentence for defamation in 2011.

In its decision of 21 February 2014, the Plenum of the Supreme Court noted that 249 complaints were lodged under the private prosecution procedure against 401 individuals in 2012-2013. 44 complaints have been lodged against journalists, whereas no single journalist has been convicted by a court. In one case the court acquitted the journalist, in ten cases the proceedings have been terminated and in 33 cases the courts refused to admit the complaint and hold its judicial examination⁸².

Here is some statistics on civil defamation cases to illustrate the expressed concern⁸³:

Year	Total # of cases	# of cases rules in favor	Total amount claimed/approved by courts (AZN)*	Examples of cases
2010	40	35	875 000 / 55 000	MP Novruz Aslan v. Agency "Tribuna" (20 000 AZN) Head of Presidential Administration Ramiz Mehdiyev v. newspaper "Xural" (10 000 AZN)
2011	32	21	2 700 000 / 86 500	Director of Xirdalan Brewery v. newspaper "Xural" (25 000 AZN) Chairman of the State Council for Support of Mass Media V.Safarov v. Xural newspaper (5 000 AZN)
2012	35	31	5 000 000 / 200 000	Anar Mammadov v. newspapers Azadliq and Yeni musavat (8 000 AZN) Deputy Novruz Aslan v. newspaper Azadliq (12 000 AZN)
2013	43	31	4 900 000 / 140 000	Gilan Gabala Preservation factory v newspaper Yeni Musavat (50 000 AZN); Chief of Baku Metro v. newspaper Azadliq (30 000 AZN)

*1 AZN = approx. 1 EUR

As this data demonstrates, the number of civil defamation cases has gradually increased over the last few years. The main targets are opposition newspapers, while the courts have dismissed claims against other newspapers courts. The fines are disproportionate, and the heavy financial burden they entail threaten the existence of these independent outlets, as in the case of the country's largest opposition newspaper, Azadliq.⁸⁴ In addition to hefty fines, newspapers face problems printing their newspapers, as many printing houses are state-controlled.

⁸² Decision of the Plenum of the Supreme Court of 21 February 2014, No. 4

⁸³ Data is published in annual/biannual reports of Media Rights Institute <http://www.mediarights.az/index.php?lngs=eng&id=80>

⁸⁴ <http://www.azadliq.info/english/347-meqaleen/22768-azadliq-newspaper-can-be-closed-due-to-court-fines-.html>

Detention and imprisonment of journalists and bloggers on charges not directly linked to their professional activities

With the recourse to criminal defamation decreasing over recent years, more and more critical voices are facing charges not directly linked to their professional activities. As of 1 May 2014, 10 journalists and 6 bloggers and online activists are behind bars under charges such as hooliganism, bribery, tax evasion, weapons possession and creating public disorder. This marks a new trend in the suppression of Azerbaijan's few critical voices:

- Avaz Zeynalli, Editor-in-Chief of Khural Newspaper (charges of bribery, contempt of court and tax evasion) - *sentenced to 9 years imprisonment*
- Hilal Mammadov, Editor-in-Chief of Tolishy-Sado Newspaper (charges of drug possession, high treason and incitement of hatred) – *sentenced to 5 years imprisonment*
- Nijat Aliyev, Editor-in-Chief of www.azadxeber.com news website (charges of drug possession, distribution of religious literature without authorisation, appeal to violent capture of authority and incitement of hostility) – *sentenced to 10 years imprisonment*
- Araz Guliyev, Director of Xeber44.com news website (charges of possession of firearms, public disorder, incitement of animosity, resistance to a public official and insulting the national flag) – *sentenced to 8 years imprisonment*
- Faramaz Novruzoglu, freelance journalist (charges of mass disorder and illegal border crossing) – *sentenced to 4.5 years imprisonment*
- Fuad Huseynov, freelance journalist (hooliganism charges) – *sentenced to 6.5 years imprisonment*
- Tofiq Yagublu, columnist of Yeni Musavat newspaper (charges of incitement of public disorder) – *indetention*
- Serdar Alibeyli, Editor in Chief of newspaper Note Bene (hooliganism using a weapon) – *sentenced to 4 years imprisonment*
- Parviz Hashimli, journalist of Bizim Yol (Our Way) newspaper (charges of possession of firearms) – *sentenced to 8 years of imprisonment*
- Rauf Mirkadirov, Ankara correspondent of the Baku-based Russian-language Zerkalo (Mirror) daily (charges of treason and spying for Armenia) – *in detention*

- Ilkin Rustamzade, blogger and online activist (hooliganism charges, organisation of public disorder) – *indetention*
- Rashad Ramazanli, blogger (drug possession charges) – *sentenced to 9 years imprisonment*
- Abdul Abilov, online activist (drug possession charges) – *in detention*
- Omar Mammadov, blogger (drug possession charges) – *in detention*
- Bakhtiyar Quliyev and Mammad Azizov, online activists (charges of drug possession, illegal possession, carrying, transportation of firearms, explosives and facilities, and organisation of public disorder) – *indetention*

Recommendations

- To amend the Criminal Code to abolish imprisonment as a sanction for criminal defamation, including defamation online;
- To continue the dialogue with the Venice Commission and include its all recommendations into the new law in order to ensure conformity with ECHR standards;
- To immediately review all on-going criminal prosecutions against journalists and bloggers, to release those who are imprisoned unjustly, and cease the practice of launching selective criminal prosecutions of government critics.

VIOLENCE AGAINST JOURNALISTS

In the *Najafli* case, the ECtHR found that physical ill-treatment by State agents of journalists while the latter are performing their professional duties seriously hampers their ability to exercise of the right to receive and impart information, and therefore amounts to a violation of Article 10.

Individual measures. In its communication to the CoM, the Government of Azerbaijan stated that the Office of the Prosecutor General had overturned the decision of the Sabail District Prosecutor's Office to suspend criminal proceedings and had reopened the investigation into the case on 2 April 2013.⁸⁵ But to date, neither the applicant nor his lawyer has been able to access information on the new proceedings.

General measures

As of 1 May 2014, the Government of Azerbaijan has taken general measures to avoid committing similar violations in the future. The judgment was translated into Azerbaijani and sent to the Supreme Court and the Office of Prosecutor General. In the same communication, the authorities stated that the judgment would be published in the Bulletin of the European Court of Human Rights.

In June 2013, the CoM "invited the authorities to include in their consolidated action plan information on the specific measures envisaged to prevent such impediments to the exercise of journalistic activity."⁸⁶ No concrete measures have been taken by the authorities in that regard to date. Moreover, violent attacks against journalists and media workers, followed by non-effective investigation and impunity for their attackers, remain one of the most significant obstacles to freedom of expression in Azerbaijan. This culture of impunity has resulted in widespread practices of self-censorship in the country, as many journalists fear crossing certain lines, and avoid "taboo" topics, such as corruption and the business interests of the president's family.

According to the Institute for Reporters' Freedom and Safety, more than 100 journalists were victims of pressure in 2013.⁸⁷ Instead of upholding their duty to ensure the safety of journalists and citizens, the police exerted pressure on journalists.

Examples of violent attacks against journalists

It is noteworthy that on 10 November 2012, at a workshop on journalist safety organised by the OSCE, high-ranking government officials assured participants that journalists wearing illuminated press jackets would not encounter police violence. In violation of that public commitment, Azerbaijani police have subsequently demonstrated increased levels of violence against journalists.

The safety of journalist became a burning issue ahead of the 2013 presidential elections. The year's first deliberate and calculated attack on the media took place during the January 12th public protest over the deaths of young conscripts in the Azerbaijani army. The Azerbaijani police used violence against up to ten journalists, despite the fact that all of them were clearly identifiable as press workers, with cameras and press jackets.

⁸⁵ [Communication](#) of the Government of Azerbaijan to the Committee of Ministers concerning the case of Najafli against Azerbaijan of 26 April 2013

⁸⁶ [CoM decision](#), 1172nd meeting, 4-6 June 2013

⁸⁷ www.irfs.org

During the January 26 protest, police officers once again used force to expel journalists - with or without press jackets - from the demonstration area. Several media representatives were briefly detained. Among the detainees were 1news.az reporter Zaur Rasulzadeh and blogger Fuad Hajiyev who was also filming the protest. On both occasions, the journalists identified themselves and their professional roles.

In April 2012, journalist Idrak Abbasov, winner of the Guardian Journalism Award at the Index on Censorship Freedom of Expression Awards was attacked by a group of employees of the State Oil Company of Azerbaijan (SOCAR) while he was filming the destruction of residential properties near an oilfield outside of Baku. Abbasov was severely beaten, knocked unconscious for several hours, sustaining broken ribs, eye injuries, and head trauma.

Interference with the professional activities of journalists entails a violation of the right of access to information, which is protected under Article 50 of the Azerbaijani Constitution⁸⁸ (freedom of information) as well as Article 10 of the European Convention on Human Rights (freedom of expression).⁸⁹ Not least, impeding the professional work of a journalist gives rise to liability under Article 163 of the Constitution.⁹⁰ Article 163 of the Criminal Code prohibits any obstacle to the implementation of professional obligations by the representatives of mass media and the legal professional activity of journalists, and requires that State agents act without considering the political position or press authority represented by journalists.⁹¹

Furthermore, Article 46.8 of the Law on Mass Media stipulates:⁹²

“By presenting their press IDs, journalists are entitled to be at the scene of an accident or natural disaster, places where state of emergency has been declared, and locations of demonstrations”.

While Azerbaijani legislation does not include special provisions to ensure the safety of journalists, international practice supports a very different approach to this matter.

On 30 April 2014, the CoM adopted its Declaration on the protection of journalism and safety of journalists and other media actors:

“States must not only refrain from interference with individuals’ freedom of expression, but are also under a positive obligation to protect their right to freedom of expression against the threat of attack, including from private individuals, by putting in place an effective system of protection”.⁹³

⁸⁸ See <http://en.president.az/azerbaijan/constitution/>

⁸⁹ See http://en.wikipedia.org/wiki/Article_10_of_the_European_Convention_on_Human_Rights

⁹⁰ See <http://en.president.az/azerbaijan/constitution/>

⁹¹ 163.1. Impeding journalists from carrying out their legal professional activities by forcing them to disseminate or not to disseminate information, with use of violence or with threat of its application is punishable by a penalty of one hundred up to five hundred of the nominal financial unit or corrective service for a term of up to one year.

163.2. The same act committed by official in his or her service position is punishable by corrective service for a term of up to two years or with imprisonment for up to one year, with deprivation of the right to hold the certain posts or to engage in certain activities for the term up to three years or without it.

⁹² http://azerbaijan.az/portal/Society/MassMedia/massMedia_e.html

⁹³ [CoM Declaration](#) on the protection of journalism and safety of journalists and other media actors, adopted on 30 April 2014 at the 1198th meeting of CoM

Recommendations

Put a stop to violence against journalists and impunity for their attackers:

- End all forms of impunity for those who attack or kill journalists and ensure that all cases of violence against journalists are resolved, and all guilty parties are punished in accordance with the law.
- Make public all information related to journalists' murders.
- Fully investigate all threats against journalists and establish adequate protection mechanisms.
- Put an end to physical pressure on journalists during demonstrations and mass riots; ensure lawful and appropriate police behaviour in relation to journalists during demonstrations and similar events.
- Enact legal safeguards against illegal surveillance on the Internet, and against other types of digital surveillance, e.g. phone tracking/hacking.

Improve media legislation and policies:

- Strengthen national laws including criminal laws, and overhaul the justice system to end impunity and to provide judicial and legislative assistance to prevent the targeting of journalists.
- Establish an independent Press Ombudsman in line with international standards.

4.5. VIOLATIONS OF ARTICLE 11 OF THE CONVENTION

Article 11 – Freedom of assembly and association

1. *Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*

2. *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.*

As of 1 May 2014, ECtHR has found violations of Article 11 of the Convention in 6 cases against Azerbaijan:

Freedom of association:

- *Ramazanova and Others v Azerbaijan, Application No. 44363/02, 1 February 2007*
- *Nasibova v Azerbaijan, Application No. 4307/04, 18 October 2007*
- *Ismayilov v Azerbaijan, Application No. 4439/04, 17 January 2008*
- *Aliyev and Others v Azerbaijan, Application No. 28736/05, 18 December 2008*
- *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan, Application No. 37083/03, 10 May 2010*

Freedom of peaceful assembly

- *Tahirova v Azerbaijan, Application No. 47137/07, 3 October 2013*

All five freedom of association judgments are being examined by CoM under the standard supervision, while the *Tahirova* judgment is awaiting examination as a new case.

FREEDOM OF ASSOCIATION CASES

In the cases on freedom of association, the ECtHR found that the following actions of the Azerbaijani authorities entailed Article 11 violations:

- The failure by the Ministry of Justice to respond within the statutory time-limit to a request for state registration of an association established in Azerbaijan amounted to a *de facto* refusal to register the association;⁹⁴
- The dissolution of an association by the Ministry of Justice for reasons which were “not necessary in a democratic society”, i.e. neither compelling nor proportionate to the legitimate aim pursued.⁹⁵

⁹⁴Ramazanova and Others v Azerbaijan, Nasibova v Azerbaijan, Ismayilov v Azerbaijan, Aliyev and Others v Azerbaijan

⁹⁵Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan

Individual measures

Failures to register associations were deemed Article 11 violations by the ECtHR in *Ramzanova and Others v Azerbaijan*, *Nasibova v Azerbaijan* and *Ismayilov v Azerbaijan* have been eventually registered by the Ministry of Justice.

In the case of *Aliyev and others*, the NGO "Azerbaijan Lawyers' Forum" remains unregistered. The respective ECtHR judgment remains unimplemented as far as individual measures are concerned.

In the case of *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, the association has been re-registered.

General measures

Since 2010, the Government of Azerbaijan has failed to provide the CoM with any information on measures being taken to improve the conditions for freedom of association and to prevent similar cases in the future. On the contrary, the authorities have taken regressive steps to further limit the right to freedom of association, on both the legislative and policy level.

The observations provided below cover both legislative and policy regulations on the registration of NGOs and operation of non-registered NGOs.

Lengthy, burdensome and arbitrarily applied registration procedures

Under current domestic legislation, NGOs are not required to be officially registered in order to operate in Azerbaijan. In practice, however, acquiring legal personality is crucial for an NGO to operate effectively. Without this status, NGO's cannot receive grants or open a bank account. Thus any NGO seeking to operate effectively in Azerbaijan is subject to state registration requirements within the purview of the Ministry of Justice.

The Law on Non-Governmental Organizations (Public Associations and Foundations) (hereinafter the Azerbaijani NGO Law) of 2009 regulates the establishment and operation of non-governmental organizations in Azerbaijan. The Law on State Registration and State Register of Legal Entities (hereinafter – Azerbaijani State Register Law) sets out the rules and procedures for registration. The national legal framework on the registration of local NGOs appears to be compliant with international standards. The 2009 amendments to Azerbaijani State Register Law extended the time-limit for registration of NGOs to forty days, with the additional proviso that in exceptional cases, where further investigation is deemed necessary, that period can be extended by an additional thirty days. The Law established a mechanism whereby organisations automatically obtain legal entity status if the Ministry of Justice does not respond to their applications within the legal time limit. In addition, it required that the Ministry of Justice define and present any and all shortcomings in the application to the applicant.

However, the practical implementation of this Law often results in selective and arbitrary application of the procedures towards NGOs deemed critical of the government's policy. In most cases, human rights NGOs are subject to lengthy delays, and are often refused state registration following extensive resubmissions in response to shortcomings presented by the Ministry of Justice.

In its opinion of 11 October 2011, the Venice Commission emphasised that "the Azerbaijani authorities should strive to reduce the number of cases treated in this way and they should also, ideally in an amendment to the 2003 law, define the features of an "exceptional case", which is often applied to critical NGOs."⁹⁶

Moreover, in January 2012, amendments to the Code of Administrative Offenses inserted a penalty of 4,000 AZN (approximately 4,000 EUR) for providing false information during the registration process. The Code, however, does not define the term "false information", opening up the possibility of arbitrary or selective application of such fines to NGOs whose work may be at odds with state policies.

Restrictions on registration of international NGOs in Azerbaijan

In June 2009, amendments to the law on NGOs increased government control over this sector. The 2009 Amended Law on NGOs contains a special provision (Article 12.3) providing that state registration of branches and representations of foreign NGOs in the Republic of Azerbaijan shall be carried out on the basis of an agreement signed with such organisations.

Decree No. 43 of the Azerbaijani Cabinet of 16 March 2011 further specifies the rules for the registration of foreign NGOs, and lists the relevant criteria. An NGO must inform the authorities of its purpose, its activities and their significance for Azerbaijani society. It subsequently lists the conditions that NGOs must meet in order to conclude an agreement with the authorities:

- Compliance with the Constitution of the Republic of Azerbaijan, the laws and other normative legal acts;
- Respect for national moral values;
- Non-involvement in political and religious propaganda; etc
- Commitment not to conduct activities in the occupied territories due to of the Nagorno-Karabakh conflict and no contact with the separatist regime of Nagorno-Karabakh;
- Provision of required information to state registry within the timeframe established by the Law on NGOs.

The language of the regulations is, however, vague and provides for the possibility of arbitrary and excessively strict application. For instance, the Law does not provide a clear definition of "national moral values" or "political and religious propaganda". Moreover, there is no specific timeframe within which the negotiations should be concluded and the

⁹⁶ Venice Commission opinion No. 636/2011 of 11 October 2011 on the compatibility of human rights standards of the legislation on non-governmental organizations of the Republic of Azerbaijan, para 63

agreement signed. The concern is that this gap in procedural regulation will result in lengthy delays, as has happened with national NGOs, described above.

As Venice Commission has concluded, the above mentioned amendments and the 2011 Decree "unfortunately overturn the previous efforts to meet with the requirements of international standards."⁹⁷The evaluation pointed to the registration of NGOs in general and the registration of branches and representatives of international NGOs as particularly problematic.

The Azerbaijan Human Rights House acting as the international branch of the Human Rights House Foundation, registered in Norway, have been subject to application of such restrictive provisions and remains closed to date. In March 2011, the Azerbaijan Human Rights House, which was registered in Azerbaijan before the new Decree came into force, in 2007, was ordered to cease all activities and its registration was suspended until an agreement with the authorities was concluded. In spite of regular communication with the Azerbaijani authorities and the submission of a new registration application on 3 November 2011, no further progress of further instructions have been made and the organisation is still closed.⁹⁸

New restrictive amendments on receiving funding

In addition to the complicated and burdensome registration procedures, legislative amendments over recent years have placed significant constraints on the operation of non-registered NGOs.

In February 2013, the government took significant measures in this regard by introducing legislative amendments increasing sanctions for NGOs that receive funding from a donor without concluding a grant agreement registered with the Ministry of Justice. The highly punitive nature of the fines could serve as a pretext for government harassment of NGOs. The amendments also make it practically impossible for unregistered groups to fund their work through donations and grants.

The following amendments were introduced in the Code of Administrative Offences:

- Failure to submit copies of grant agreements to the Ministry of Justice within 30 days of the signing of the agreement may result in a fine between 5,000 and 7,000 AZN; a founder may be held personally liable and fined from 1,000 to 2,500 AZN;
- Absence of a grant agreement may result in fines between 8,000 to 15,000 AZN and/or property confiscation of an NGO; individual may be held personally liable and fined between 2,500 to 5,000 AZN;
- Failure to include required information in financial reports submitted to relevant government agencies on donations received by an NGO or information on persons

⁹⁷*Aliyev and others v Azerbaijan*, para 117

⁹⁸<http://humanrightshouse.org/Articles/16055.html>

donating the funds can now lead to a fine ranging from 5,000 to 8,000 AZN for NGOs, while NGO managers could be liable for fines of 1,500 to 3,000 AZN;

- A cash donation higher than 200 AZN would lead to a fine of 7,000 to 10,000 AZN for an NGO manager, while the NGO itself would be fined between 1,000 to 2,500 AZN;
- Donors who make gifts by cash may face fines ranging from 250 to 500 AZN if a donor is a private person; 750 to 1,500 AZN if a donor is a manager of a legal entity, and 3,500 to 7,000 AZN if a donor is a legal entity.

The amendments will be particularly damaging for unregistered NGOs and groups. Previously, individuals affiliated with unregistered groups could sign grant agreements and, without threat of sanction, use the funds to support activities conducted by the unregistered organisation. The latest amendments were swiftly adopted without any consultations with civil society, and have been condemned by many national and international human rights groups as particularly restrictive and particularly damaging to freedom of association in Azerbaijan.

Current national legislation regarding NGO registration in Azerbaijan increases administrative burdens for NGOs willing to register, and provides for discriminatory regulation with regard to certain NGOs and therefore restricts their rights in relation to their registration. As such it does not support respect for the right to freedom of association and to the development of civil society. Moreover, the punitive elements of the existing NGO regulations in Azerbaijan, as well as the recent amendments, are seen as contradictory to Azerbaijan's obligations under the European Convention of Human Rights to respect freedom of association. Azerbaijan holds a positive obligation to protect and ensure full exercise of freedom of association, not only a negative duty to avoid interfering with this right.

In 2013 alone, more than 20 complaints on violations of the right to freedom of association were sent to the European Court of Human Rights. In all of these cases, applicants had faced repeated rejections of their NGO registration applications. The Ministry of Justice, in contravention of national law, repeatedly rejected applications due to alleged deficiencies in the organisations' constitutive documents. In most cases, the grounds for refusal were not contained in the relevant legislative provisions.⁹⁹

On February 3, 2014, new amendments placing additional restrictions on independent NGOs were signed into law. The Law has introduced a number of new obligations for Azerbaijani and foreign organizations.¹⁰⁰ It includes such changes as the requirement for individual recipients of grants to register grants with the MoJ in the same way as organisations, the registration of sub-grants along with original grants, and the agreement which foreign NGOs must sign with the MoJ in order to register must include an expiration date. Significantly, the application of all provisions of the NGO law will also apply to branches and representations of foreign NGOs. The new Law lays out additional grounds for suspension of a NGO's activity: when impeding measures to resolve emergency situations; when the NGO has been penalised for failure to rectify deficiencies identified by the Ministry and has not done so; and when violating the rights of organisation members.

⁹⁹For detailed list of cases, please see the [NGO communication](#) submitted to CoM by the Legal Education Society, Azerbaijan, on 27 November 2013

¹⁰⁰ The analysis of the recent amendments is based on the research done by the European Center for Not-for-Profit Law, published on 14 January 2014, available [here](#).

In addition, the new amendments establish penalties for the existing and newly enshrined obligations. The amendments introduce new administrative offences punishable by fines, which have now increased to 2500-3000 AZN (approximately 2600-3100 EUR) for the NGO and between 1000-2000 AZN (approximately 1000- 2100 EUR) for the directors of national and foreign NGOs. The amendments entail a number of new sanctions, including:

- New penalty for failure of NGOs, including foreign NGOs, to submit information necessary for state registration of legal entities.
- Responsibility for signing contracts based on non-registered grant agreements as well as realisation of 'other organisational measures'.
- New penalty for failure to adjust constitutive documents of NGOs (including foreign NGOs) in accordance with local legislation, conducting any activity on the changes made to the constitutive documents before such changes have been registered, failure of NGOs to maintain a registry of members, failure to conclude contracts with volunteers, failure to direct income from commercial activity to statutory purposes, and any operation contrary to statutory purposes.
- New penalty for impeding the investigation into the compliance of NGO activity (including the activity of representatives of foreign NGOs in Azerbaijan) with the legislation; for failing to answer information requests and requests for documents from the relevant state body; and for submitting false information.
- New penalty for local and foreign NGOs if they do not address the deficiencies as identified in the notification by relevant state body.
- New penalty for violation of rules on the operation of branches or representations of foreign NGOs (i.e. operating without registration).

The international community has expressed its deep concern over these repressive amendments:

“These amendments increase the control exercised by the Ministry of Justice over both Azerbaijani and foreign NGOs operating in the country”

Commissioner for Human Rights of the Council of Europe, Nils Muižnieks¹⁰¹

“The new amendments are seen as restricting the environment for an independent and critical civil society, especially in the field of human rights and democracy”

Spokespersons of EU High Representative Catherine Ashton and Commissioner Štefan Füle¹⁰²

Recommendations:

To the Government of Azerbaijan:

- Stop the practice of selective application of NGO registration regulations to certain NGOs (particularly human rights groups), along with the lengthy delays and/or refusal to register them;
- Clarify registration procedure for international NGOs and their branches by indicating clearly defined requirements and time-frame for concluding the agreement;
- Repeal punitive amendments on disproportionate fines in the Law on Non-Governmental Organizations (public associations and foundations), the Law on Grants, and the related changes in the Code of Administrative Offences.

To the Committee of Ministers:

- Examine the execution of the five cases on freedom of association under the enhanced supervision procedure, in light of the repressive legal environment for the exercise of this right and the arbitrariness of its protection in Azerbaijan.

¹⁰¹[Observations](#) of the Commission for Human Rights of the Council of Europe on the human rights situation in Azerbaijan: An update on freedom of expression, freedom of association, freedom of assembly, and the right to property

¹⁰²[Statement](#) issued on 12 February 2014.

FREEDOM OF ASSEMBLY CASES

In the *Tahirova* case, ECtHR found that the forcible dispersal of a peaceful demonstration by the police and their treatment of the applicant constituted a violation of Article 11.¹⁰³

The *Tahirova* judgment is still under examination in relation to which procedure should apply to its execution under CoM supervision.

Given the widespread legal and policy restrictions on the right to freedom of peaceful assembly in Azerbaijan, as provided below, we call upon the CoM to supervise the execution of the judgment under enhanced supervision and to closely monitor the process.

Use of force against peaceful protestors

The suppression of peaceful protests, followed by excessive force of use by police and security forces, continues to be a feature of political activism in Azerbaijan. Despite the fact that laws stipulate that groups can assemble freely conditional on advance notification, in practice authorities require groups to obtain a permit from local authorities. Because many of these requests are refused, police are legally entitled to use violence against protestors in order to break up the so-called unsanctioned rallies.

In 2013, demonstrations in the capital city Baku were followed by a crackdown on peaceful protestors. For instance, on 10 March 2013, a protest against death of soldiers in non-combat situations brought thousands of people onto the streets of central Baku. Although the demonstrators behaved peacefully, without causing public disorder, police used excessive force, firing rubber bullets and deploying water cannons to disperse crowds. Dozens of protestors were arrested and over 20 people were either sentenced to six to seven days' detention, or fined 300-600 AZN.¹⁰⁴

On 7 March 2013, ahead of the demonstration, three members of the NIDA civic movement, Mahammad Azizov, Shahin Novruzlu and Bakhtiyar Guliyev, were arrested by Ministry of National Security officers in relation to the planned rally. A large quantity of illegal drugs and Molotov cocktails were allegedly found in their apartments. On 9 March, national television stations broadcasted a video that showed the three youths stating their plans to organize a riot and to use violence in this riot. The confession was reported to have been made under threat of torture.

On 6 May 2014, over 150 supporters of the convicted NIDA Civic Movement activists gathered outside the Baku City Grave Crimes Court to protest against their verdicts. This prompted plainclothes and uniformed police officers to use force to break up the crowd. At least 26 individuals were dragged into a waiting bus and driven to a nearby police station. Some were released the same day with warnings and fines, but 17 activists were kept in

¹⁰³Tahirova v Azerbaijan

¹⁰⁴Human Rights Watch report 'Tightening the Screws: Azerbaijan's Crackdown on Civil Society and Dissent', p. 75

custody overnight. On 7 May, Nasimi District Court handed down detention terms under Article 298.2 (participation in a gathering not organised in accordance with the law) of the Administrative Code: 30 days for Kemale Benenyarli; 20 days for Orkhan Eyyubzade; and 15 days for Tural Abbasli, Shefi Shefiyev and Haji Zeynalli. The remaining 12 activists received fines ranging from AZN 300-600 (USD 382-764) on the same charge.

Repressive legal amendments limit the right to peaceful assembly

In November 2012, amendments were made to the Law on Freedom of Peaceful Assembly, the Criminal Code and the Code of Administrative Offenses to increase penalties for participants and organisers of unsanctioned protests. The maximum fine for participation in an unsanctioned protest increased hundredfold, from 7-13 EUR to 500-1400 EUR, while organisers can face fines of up to 3000 EUR. If a demonstration is organized by a legal entity like an NGO or a political party, the fine can reach 28,000 EUR.

Further amendments to the Code of Administrative Offenses were passed on 14 May 2013, increasing the maximum period of administrative detention, a tool often used to punish participants of unsanctioned rallies. The maximum jail sentence for violating rules for organising, holding and attending unauthorised assemblies increased from 15 to 60 days, while a sanction for disobeying a police order was raised from 15 to 30 days.

Moreover, in June 2013, the President of the Republic of Azerbaijan gave a speech to the Azerbaijani police in which he gave the green light for any measures deemed necessary - including use of force - to suppress unsanctioned rallies:

"I remember 2005, when some forces wanted to stage the notorious "orange revolution" in Azerbaijan, but the decisive actions of the police stopped those negative things. Then, in 2005, the situation was not the same as now. In some cases Azerbaijan came under pressure from international organizations. Now, of course, nobody can put pressure on us, and I can say that such attempts have been exhausted. But then the pressure on us was quite strong to condemn the actions of the police who were allegedly overzealous, and to punish them. In other words, we were left with a choice. I said back then and I want to say again now that not a single policeman will be punished."¹⁰⁵

The developments outlined above clearly demonstrate that the Government is unwilling or unable to prevent the use of excessive use of force during demonstrations. The President's speech runs exactly counter to therequests made of him by the Committee of Ministers and other CoE bodies. In his recent report on Azerbaijan, the Commissioner for Human Rights of the Council of Europe referred to the three respective judgments and expressed concern over the excessive use of force by law enforcement officials during demonstrations and the lack of effective investigations in that respect.¹⁰⁶

¹⁰⁵The full speech can be found here <http://en.president.az/articles/8669>

¹⁰⁶ Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, 6 August 2013, CommDH(2013)14, para 60

Recommendations for the general measures to be taken:

- Repressive laws limiting freedom of assembly should be repealed, including:
 - Overturning regressive amendments to the freedom of assembly law providing for heavy fines for organisers and protesters in unsanctioned protests.
 - Overturning regressive amendments to the administrative code increasing the maximum period of administrative detention.
- The practice of denying permission for peaceful assemblies in central parts of the capital must be halted. As stipulated in ECtHR case law, place, time and manner are the essential elements of freedom of assembly;
- Steps must be taken to prevent excessive use of force by police and security officers against peaceful protesters and journalists engaged in their professional work, and those engaging in such actions must be punished through effective judicial prosecution;
- The judicial proceedings in the above mentioned cases adjudicated by ECtHR must be re-opened and fully and effectively re-investigated as provided for in the national law.

4.6. VIOLATIONS OF ARTICLE 1 OF PROTOCOL 1 OF THE CONVENTION

Article 1 – Protection of Property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

The ECtHR has found violations of Article 1 of Protocol 1 of the Convention in the following cases:

- *Mirzayev, 50187/06, 03 March 2010*
- *Isgandarov and others, 50711/07+, 08 October 2010*
- *Gulmammadova, 38798/07, 22 July 2010*
- *Hajiyeva and others, 50766/07+, 08 October 2010*
- *Jafarov, 17276/07, 11 May 2010*
- *Hasanov, 50757/07, 22 July 2010*
- *Ismayilova, 18696/08, 09 March 2011*
- *Soltanov, 41177/08, 13 January 2011*
- *Zahid Mammadov and others, 3172/08+, 06 December 2011*

All of these cases concern the non-enforcement of domestic decisions ordering the eviction of internally displaced people (IDPs) who unlawfully occupied the applicants' apartments. The applicants are the lawful owners or tenants of the apartments.

The ECtHR held in all cases that within three months of the date on which the judgments become final, the respondent state should secure the enforcement of the domestic court decisions.¹⁰⁷

Individual measures

According to the action plan of the Government on the individual measures, all domestic court decisions have been enforced apart from the judgments in the cases of *Soltanov* and others, *Zahid Mammadov and others*, *Bakshiyev and others*, *Gasimova* and *Gurbanova*.¹⁰⁸

General measures

According to the Government reports, the following general measures have been taken within the framework of the cases listed above:¹⁰⁹

- Translation of judgments into Azerbaijani and dissemination among judges and officers of the Execution Department of the Ministry of Justice;

¹⁰⁷The issue of non-execution of judgments is addressed in the Chapter on Article 6, while this Chapter covers the issue of property rights with regard to ECtHR judgments in Azerbaijan.

¹⁰⁸[Action plan](#) of the Government of Republic, submitted to CoM on 28 February 2011

¹⁰⁹[Action report](#) of the Government of Republic, submitted to CoM on 27 April 2012

- Adoption of the Order of the President of the Republic of Azerbaijan "On additional measures to improve the housing conditions of the internally displaced families".¹¹⁰ The Order sets a plan for building housing facilities for IDPs in the capital Baku and Sumgait city throughout 2011-2015.

The execution process was last examined by CoM in June 2012, where it outlined the recommendations pursuant to the action plan:¹¹¹

"The Deputies

1. noted that the Azerbaijani authorities are in the process of finding solutions to the housing problems of internally displaced persons so that domestic court decisions ordering the eviction of unlawfully occupied apartments can be enforced and that the apartments in question are reinstated to their legal owners or tenants;

<...>

3. in order to prevent similar applications brought to the European Court, encouraged the authorities to introduce effective remedies for those who are in the same legal situation as the applicants and to provide adequate compensation in this respect."

Current national legal framework

The Constitution of the Republic of Azerbaijan guarantees the property and housing rights in Azerbaijan:

"Property is inviolable and protected by state" (Article 13.1).

"Everyone has the right to own property" (Article 29.1).

"Nobody shall be deprived of his/her property without a court decision. The confiscation of the property is not permitted. Expropriation of property for state or public needs is permitted only after preliminary reimbursement at market value." (Article 29.4)

The Constitution therefore clearly establishes property rights as constitutional, which can be limited in exceptional cases only, approved by a court decision. The huge influx of IDPs that followed the Nagorno-Karabakh war, however, led to new regulations on the protection of IDPs that resulted in a violation of property rights. Thousands of IDPs occupied dwellings of legal owners during 1992-1994 and settled there. The IDP Resettlement Regulations of 1999 provided that in cases where the temporary settling of IDPs breaches the housing rights of other individuals, the former must be provided with other suitable accommodation¹¹². With the Presidential Decree of 2004, the state authorities were explicitly instructed that until the return of the IDPs to their native lands or until their temporary settlement in new houses, the eviction of the IDPs from the public apartments, flats, land and other premises, regardless of their ownership, that they resided in from 1992 to 1998 shall not be allowed¹¹³. As a result, legal owners of occupied dwellings appealed to national courts where violations of their property rights have been acknowledged.

The regulations set by the Presidential Order of 2004 have generated the practical problem of implementation of court decisions ordering the eviction of IDPs to redress property rights

¹¹⁰ [Order](#) of the President of the Republic of Azerbaijan "On additional measures to improve the housing conditions of the internally displaced families", No. 1346, 21 February 2011

¹¹¹ [CoM decision](#) taken at the 1144th meeting (June 2012)

¹¹² Article 4 of the Regulations on Resettlement of Internally Displaced Persons in Other Accommodation, adopted by the Cabinet of Ministers Resolution No. 200 of 24 December 1999

¹¹³ Order of the President of the Republic of Azerbaijan of 1 July 2004 on Approval of the State Program for Improvement of Living Conditions and Increase of Employment of Refugees and Internally Displaced Persons, para 21.

of legal owners as the responsible authorities would refer to the Presidential Order opposing the implementation of court decisions. As the law sets two conditions as to when IDPs could be evicted, namely, upon the return to their homelands, which does not seem immediate, given the status of a frozen conflict, or until alternative housing is provided, it imposes the direct responsibility on the government to ensure the new housing for IDPs and in that way ensure the protection of property rights of legal owners of occupied dwellings.

The legality of such a decree itself is questionable. Property rights enjoy the constitutional protection, which entails that all other laws must be in compliance with the constitutional norms. The Presidential Order, which enjoys lower hierarchical status as a source of law is clearly in contradiction with the Constitution of Azerbaijan as it violates the rights enshrined in the Constitution.

To address the existing conflict of rights, the President of Azerbaijan adopted a new decree on additional measures, which sets a timeline for additional housing to be built for IDPs¹¹⁴. It, however, cannot be seen an effective or comprehensive means of dealing with the occupation of private houses by IDPs. The action plan focuses mainly on providing accommodation for IDPs who have temporarily resettled in administrative buildings, vocational schools or half-constructed buildings. While a significant number of IDP families live in dormitories originally designed for university students, in schools, administrative buildings and half-constructed buildings, it is also reported that around 70,000 IDPs occupied properties officially owned by other private persons. The Decree therefore fails to effectively address the issue of supporting those IDPs who are most at risk. The Presidential order does not provide for effective monitoring and assessment mechanisms with regard to how it addresses the situation of IDP families who are temporarily settled in apartments belonging to other citizens.

Widespread property rights violations in Azerbaijan: the current situation

The violations of property rights continue to evolve in Azerbaijan on a broader scale¹¹⁵. Starting in 2006, the government of Azerbaijan launched a major urban renewal initiative, mostly in the capital Baku. Fuelled by its huge oil revenues, the Azerbaijani government allocates nearly 30-35% of its annual state budget to infrastructure projects, including the construction of new buildings, and preparation for international events. It often results in numerous evictions of hundreds of families and the demolition of houses without fair compensation being paid to owners. The country's hosting of massive international events such as the Eurovision Song Contest in 2012, the upcoming European Olympic Games in 2015 or the Formula One Grand Prix in 2016 have acted as further triggers for this construction boom, resulting in high numbers of property rights violations. In 2009-2011 alone, 3930 houses were affected by the government's urbanization policies¹¹⁶.

The on-going expropriation and demolition of property both in central Baku and its outskirts is in violation with both Azerbaijani law and Azerbaijan's international human rights commitments. Demolitions and evictions require legal justification in line with current law, and thus the current evictions are being conducted in an arbitrary manner. Citizens in affected areas have no access to effective remedies in regard to obtaining fair compensation

¹¹⁴ [Order](#) of the President of the Republic of Azerbaijan "On additional measures to improve the housing conditions of the internally displaced families", No. 1346, 21 February 2011

¹¹⁵ The Ombudsman's Office of Azerbaijan received 12,470 complaints from individuals in 2012, and 12,680 complaints in 2011. The top three issues were property rights (18%), rights (13%), and social guarantees (8%).

¹¹⁶ Property rights in Azerbaijan: restrictions and challenges. [Policy paper](#), 2014, Public Association for Assistance to free Economy

or adequate housing. The government's approach towards compensation is unfair as homeowners are unable to purchase housing of the same standard as their previous – and now demolished - properties. The above-mentioned practices have already received the international attention and criticism¹¹⁷.

Many ordinary citizens are subject to such violations, however, IDPs are put in the extremely vulnerable situation in that regard. According to Public Association for Assistance to Free Economy, an Azerbaijani NGO focusing on protection of property rights, dozens of complaints from IDPs settled in the Bayil and Khutor residential areas that are subject to eviction were addressed to them complaining about the discriminatory treatment in comparison to other residents of the areas. While legal owners would have the alternative of choosing either compensation or a new housing, IDPs are placed in dwellings around Baku without any documentation provided, given that the housing is offered to them on the temporary basis (namely, until they can be relocated to their homelands). The current city renewal programmes have led to demolitions across several residential areas where IDPs and other citizens resettled 15-20 years ago.

The violations of property rights arising from the on-going urbanization projects of the Government of Azerbaijan have already been addressed to ECtHR in over 100 applications. It is highly expected that with its case law, ECtHR will set the standards to be upheld by Azerbaijan to ensure the protection of property rights in the country. ECtHR has already ruled that any deprivation of property, including by expropriation, must comply with the principle of lawfulness, be in the public interest, and pursue a legitimate aim in a proportionate manner. The ECtHR has also held that failing to pay compensation reasonably related to the value of the property is an excessive interference with an individual's rights.

Recommendations:

- The decisions of national courts ordering the eviction of IDPs occupying private property of legal owners, the applicants in ECtHR judgments, that are not yet implemented should be immediately enforced;
- The Presidential order providing for additional measures to improve the situation of IDPs does should provide for effective monitoring and assessment mechanisms to address the issue of IDPs temporarily settled in apartments belonging to other citizens
- IDPs should not be subject to discriminatory treatment when offered accommodation upon decision for eviction, including the provision of documentation proving their residence

¹¹⁷Among others, the Commissioner for Human Rights of the Council of Europe has voiced his concern over ongoing property rights violations in Azerbaijan in his recent [observations on the human rights situation in Azerbaijan, 23 April 2014](#)

4.7. VIOLATIONS OF ARTICLE 3 OF PROTOCOL 1 OF THE CONVENTION

Right to free elections

“Since Azerbaijan’s accession to the Council of Europe, not a single parliamentary or presidential election has fully met democratic standards, as has also been confirmed by the judgments of the European Court of Human Rights.”

PACE resolution 1917 (2013) on the Honouring of Obligations and Commitments by Azerbaijan

The ECtHR has adopted seven judgments in which it found violations of the right to free elections in Azerbaijan. Seven more cases were struck out by ECtHR on the basis of the unilateral declaration of Azerbaijan recognizing the violation of the right to free elections.¹¹⁸

Currently, the CoM is supervising the execution of the following cases (also called the Namat Aliyev group):

- *Namat Aliyev v Azerbaijan, No. 18705/06, 8 July 2010;*
- *Abil v Azerbaijan, No. 16511/06, 21 February 2012;*
- *Atakishi v Azerbaijan, No. 18469/06, 28 February 2012;*
- *Hajili v Azerbaijan, No. 6984/06, 10 January 2012;*
- *Kerimli and Alibeyli v Azerbaijan, No. 18475/06 and 22444/06, 10 January 2012*
- *Kerimova v Azerbaijan, No. 20799/06, 30 December 2010*
- *Khanhuseyn Aliyev v Azerbaijan, No. 19554/06, 21 February 2012;*
- *Mammadov v Azerbaijan (No.2), No. 4641/06, 10 January 2012;*
- *Orujov v Azerbaijan, NO. 4508/06, 26 October 2011*

All these cases concern the parliamentary elections of November 2005. The applicants were members of the opposition parties or independent candidates, and the ECtHR found various violations of Article 3 of Protocol No. 1 due to actions by the electoral commissions and the courts deemed arbitrary and without motivation and/or through procedures that did not provide safeguards against arbitrariness. Specifically:

- Rejected complaints regarding irregularities or breaches of electoral law¹¹⁹;
- Cancellation of candidate registration¹²⁰ or election of the applicants¹²¹;
- The Constitutional Court annulled the elections in the electoral constituencies of certain applicants without sufficient and relevant reason, without affording procedural

¹¹⁸Yagub Mammadov (application no. [24506/06](#)), Mirmahmud Fattalyev (application no. [40318/06](#)), Fuad Mustafayev (application no. [19552/06](#)), Isa Gambar (application no. [4741/06](#)), Elchin Rzayev (application no. [22457/06](#)), Eldar Namazov (application no. [22564/06](#)), Ilham Huseyn (application no. [36105/06](#)) v. Azerbaijan

¹¹⁹Namat Aliyev case

¹²⁰Orujov, Khanhuseyn Aliyev, Abil and Atakishi cases

¹²¹Kerimova, Mammadov (No. 2), and Hajilicases

safeguards to the parties (including the inability to participate in the hearing) and lacking transparency¹²².

Individual measures

The applicants have received just satisfaction, as adjudicated by ECtHR. At its September 2013 meeting, the CoM decided that all individual measures have been exhausted, given that the elections results were confirmed as final.

General measures

The CoM started its examination of the cases in its September 2013 meeting. Ahead of the meeting, the Government of Azerbaijan informed the CoM of the general measures taken so far: the translation of the judgments and dissemination among relevant bodies, as well as trainings and awareness raising activities for members of elections commissions and other relevant bodies.¹²³

After examining the information provided, CoM concluded that the measures to date did not provide sufficient protections against arbitrariness. It therefore invited the Azerbaijani authorities to provide a consolidated action plan based on the measures taken or underway, including legislative or statutory, to put in place such safeguards¹²⁴. The CoM noted that the following issues remain to be addressed:

- The excessive formalism of the actual system following the application of the code of civil procedure;
- The impact of the Electoral Code reform, in particular in regard to the appeal procedure;
- The impact of training activities including in relation to the inclusion of the Convention requirements in the practice of courts and the electoral commissions;
- The impact of the 2004 and 2006 reforms setting up new mechanisms aimed at improving judicial independence (the Judicial Legal Council and the Judicial Selection Committee)
- The impact of these various reforms on the prevention of shortcomings identified by the Court regarding the procedure before the Constitutional Court.

In December 2013, in response to the CoM, the Government of Azerbaijan submitted its communication to CoM containing information on the establishment on the Legal Judicial Council in charge of all questions relating to the career of the judges and on the Judicial Selection Committee responsible for the appointment of judges.¹²⁵ It also noted that since the judicial reform in 2011, which included the Administrative Procedure Code, election complaints are heard by the newly established Administrative and Economic chambers in appellate court and the Supreme Court.

¹²²*Kerimli and Alibeyli* cases

¹²³[Government communication](#) of 4 July 2013 to CoM on the Namat Aliyev group of cases

¹²⁴[CoM decision](#) adopted at its 1179th meeting held on 26 September 2013

¹²⁵[Government communication](#) of 2 December 2013 to CoM on the Namat Aliyev group of cases

In the December meeting, the CoM recalled its invitation to the Government of Azerbaijan to submit a comprehensive action plan.¹²⁶ The Government of Azerbaijan subsequently submitted its plan on measures to secure the individuals' right to free elections and judicial independence.¹²⁷

Legislative framework and necessary reforms

The primary legislation governing the elections in Azerbaijan consists of the Constitution of the Republic of Azerbaijan (1995, last amended in 2009) and the Election Code (2003, last amended in April 2013). The 2010 amendments shortened the election period from 75 to 60 days, including a reduction of the campaign period to 22 days, which limits candidates' opportunities to reach out to voters. It also eliminated the possibility for candidates to receive state funding for their campaign.

In terms of positive developments, the amendments to the Code of Civil Procedures enacted after the 2008 presidential election eliminated the conflict with the Election Code with regards to the jurisdiction of courts in election-related disputes, and the relevant provisions were streamlined.

The main legislative reforms called for by the OSCE/ODIHR, the Parliamentary Assembly,¹²⁸ the Venice Commission,¹²⁹ and civil society aimed at ensuring its compliance with the international standards remain unaddressed:

Composition of election commissions

According to the Election Code, the composition of all election commissions reflects the representation of political forces in the parliament: three equal quotas are reserved for members nominated by the parliamentary majority, parliamentarians elected as independent candidates, and the parliamentary minority (defined as the remaining political parties represented in parliament).

This formula remains highly contentious, since in practice it means that the election administration is dominated by pro-government forces, which have a decisive majority in all commissions. Moreover, the chairpersons of all election commissions are by law nominees of the parliamentary majority. This domination undermines confidence in the independence and impartiality of election administration bodies, and fails to ensure public confidence.

Registration of candidates

The verification of registration documents is carried out by a CEC working group of experts. The process of verifying the signatures collected in support of candidates is the most commonly cited reason for rejecting registration applications. However, in many cases there are major concerns about the integrity of the official verification process. In some cases, the

¹²⁶[CoM decision](#) adopted at its 1186th meeting held on 5 December 2013

¹²⁷[Government communication](#) of 27 February 2014 entailing the comprehensive action plan in Namat Aliyev group of cases

¹²⁸[PACE resolution](#) 1917 (2013) on the Honouring of Obligations and Commitments by Azerbaijan, para 18.

¹²⁹[Joint opinion](#) on the Draft Law on Amendments and changes to the electoral code of the Republic of Azerbaijan by the Venice Commission and OSCE/ODIHR adopted by the Council for Democratic Elections at its 25th Meeting (Venice, 12 June 2008) and by the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008)

reasons for rejection were the alleged invalidity of the voter's IDs, the opinion on the authenticity of submitted signatures, incomplete information on voters, etc. The Election Code states that a decision on the denial of registration should be proportionate to the mistake (shortcoming, violation) is not respected, as prospective candidates often failed in their attempts to register due to minor technical errors in their documents.¹³⁰

Appeal system for candidates

Candidates and those submitting candidate nominations have the right to file complaints to higher-level election commissions on any decision, action or inaction that violates electoral rights. Decisions of the Central Elections Commission (CEC) can be challenged before the Baku Court of Appeals, with the Supreme Court as the court of last instance.

Unfortunately, the review of election appeals is not impartial and fails to provide sufficient guarantees of effective redress to appellants. Among the most relevant issues is the composition of expert groups for the review of appeals. In the last several elections, CEC has appointed its own members and staff to the expert group for election appeals, as opposed to identifying external experts as provided by law. It should be a requirement that external experts form a part of the expert group for election appeals.

Further, complaints are assigned to one expert who reviews the matter and then advises the CEC on the action. Complainants are not always given the full opportunity to be present while experts review evidence, or allowed to explain their case in person.

CEC decisions often lack reasoned and detailed argumentation. For example, as for the invalidation of results in constituencies, the CEC decision would indicate "irregularities", which are not specified in the decision.¹³¹ The complainants usually complain about such irregularities as unlawful interference, undue influence, ballot-box stuffing, the harassment of observers, inaccuracies in the electoral rolls and discrepancies in electoral protocols. Following the 2011 judicial reforms that included the adoption of the Code of Administrative Procedures, election complaints and appeals are heard by the newly established Administrative and Economic Chambers in appellate courts (Baku) and the Supreme Court.

Monitoring of such hearings has revealed that the courts have repeatedly denied appellants' motions to provide additional evidence without justification, or if accepted, failed to properly investigate the material, limited appellants' lines of questioning, challenged appellants' arguments while barely questioning the CEC' arguments, and did not address all the appellants' arguments in their decisions.¹³² The court decisions are often based on arguments that lack proper legal reasoning.

The Election Code should ensure that the final results protocol is compiled by the CEC and forwarded to the Constitutional Court for validation only after the expiry of the appeals deadlines, and after all appeals are heard by the courts. The practice in the recent elections of

¹³⁰ Article 60.3 of the Election Code

¹³¹ Also addressed in the OSCE/ODIHR Election Observation Mission Final Reports on [parliamentary elections](#) of 7 November 2010, page 22

¹³² Also addressed in the OSCE/ODIHR Election Observation Mission Final Reports on [parliamentary elections](#) of 7 November 2010 and [presidential elections](#) of 9 October 2013

2010 and 2013 demonstrate that several appeals were heard after the protocol was referred to the Constitutional Court.¹³³

On the reforms to strengthen judicial independence and particularly the establishment of the Judicial - Legal Council and the Judges Selection Committee, please see Chapter 4.3 of the report.

Recommendations

- The OSCE/ODIHR and the Venice Commission have repeatedly recommended that the formula be revised to ensure that the election commissions are not dominated by pro-government forces and enjoy public confidence, in particular the confidence of political parties contesting the elections.¹³⁴
- The implementation of existing legal provisions on candidate nomination and registration should be improved by:
 - Increasing the transparency of verification rules and procedures;
 - Inviting prospective candidates and their authorized representatives to be present during the verification process;
 - Offering information to candidates about the results of the verification and possible deficiencies in their documentation in a timely manner, and providing a genuine opportunity to correct them;
- Decisions to reject candidacies should be well-grounded and reasoned. Minor technical mistakes or inaccuracies should not be grounds for restricting the fundamental right of citizens to stand for office.
- The review of complaints should be amended to ensure that complaints are reviewed by a multi-person expert panel. Complainants should be invited to attend the review in person, state their case, and to participate while the evidence is being considered by the experts. Review by the expert group should be open to observers.
- Election Code should impose the following obligations upon all election commissions:
 - To provide all the facts of each complaint;
 - To provide a brief outline on what measures and actions were taken in regard to the investigation of complaint;
 - To provide a sound basis of reasoning substantiating the decision to accept or reject the complaint in part or in full.
- Appellants' arguments should be addressed by the court in hearings and written decisions. In accordance with the law, decisions should include the courts' argumentations in order to fully explain the legal basis for the decision.

¹³³OSCE/ODIHR Election Observation Mission Final Reports on [parliamentary elections](#) of 7 November 2010 and [presidential elections](#) of 9 October 2013

¹³⁴ Among others, see OSCE/ODIHR Election Observation Mission Final Reports on [parliamentary elections](#) of 7 November 2010 and [presidential elections](#) of 9 October 2013

Rejections of appellants' motions to review additional evidence should have a strong legal basis.

- The Election Code should be amended to guarantee that the time for appeal is fully exhausted before the results are forwarded to the Constitutional Court, and the Constitutional Court should not confirm results before the end of the appeal period and before the resolution of all pending appeals.

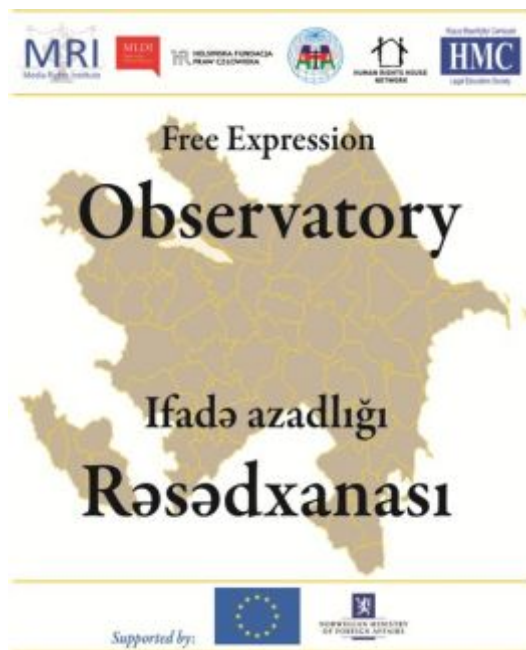
CONCLUSIONS

The ECtHR is seen as the most effective judicial human rights mechanism in the world. Yet, its effectiveness is contingent on compliance: the proper execution of its judgments by the CoE member states. By signing the Convention, the member states have committed to uphold and protect human rights in line with international human rights standards. Without this compliance, the legitimacy of the ECtHR mechanism itself – first and foremost, whether it truly serves its stated purpose of enhancing respect for human rights and democracy in member states - is challenged.

The situation of fundamental freedoms in Azerbaijan, sadly, continues to deteriorate, particularly in relation to freedom of expression and freedoms of peaceful assembly and association. The Azerbaijani government continues to act in blatant disregard to its international human rights commitments, despite the fact that it has now undertaken the Chairmanship of the Committee of Ministers. As of May 2014, 30 human rights defenders, journalists, bloggers and political activists are behind bars on politically motivated charges in connection with freedom of expression. The legal persecution and ongoing harassment of critical voices has intensified and poses a major threat to human rights in Azerbaijan.

Now, after more than 13 years of membership in the Council of Europe, Azerbaijan is among 12 CoE member states whose ECtHR judgments reveal major structural human rights problems in the national systems. That means that human rights violations are systemic, reflecting widespread and deeply entrenched repressive practices. Violations of civil and political rights crucial to genuine democracy and independent rule of law pose particular risks.

As the report shows, Azerbaijan needs to increase its political efforts and improve its domestic institutional capacities to better execute ECtHR judgments, thereby strengthening human rights protection. Human rights groups strongly believe that in countries like Azerbaijan, which continue to demonstrate serious vulnerabilities in their still-young democratic systems, political will is the defining factor in implementing human rights protections. Given that this political will is lacking in Azerbaijan, the role of the CoE bodies - the ECtHR and the CoM in particular - is crucial. These bodies must persistently encourage Azerbaijan to execute ECtHR judgments and thereby uphold its human rights commitments.



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EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS IN AZERBAIJAN

STATUS QUO UPON AZERBAIJAN'S CHAIRMANSHIP OF THE
COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE

MAY 2014