



## **European Implementation Network civil society briefing**

**22 November 2019**

Briefing memo

**Aliyev v Azerbaijan (Appl. nos. 68762/14 and 71200/14)**

**Rasul Jafarov v Azerbaijan (Appl. no. 69981/14)**

*(examined as part of Ilgar Mammadov group)*

This briefing note provides a summary of our comments on the Government's Action Plan of 20 September 2019 submitted in this group of cases, with regard to the individual measures in the cases of Intigam Aliyev and Rasul Jafarov<sup>1</sup>, as well as some general observations on the general measures reported on by the Government. It also provides recommendations to the CM.

### **I. Individual measures**

We welcome the CM decision taken at the DH meeting on 23-25 September 2019 and its call for the elimination of all the negative consequences arising from the criminal charges against each applicant:

‘...the above findings of the European Court make it clear that Azerbaijan is required rapidly to eliminate all the remaining negative consequences of the criminal charges brought against each of the applicants, principally by ensuring that the convictions are quashed and deleted from their criminal records’ (para 5).

Below we assess the measures taken so far and set out further steps needed for the ‘negative consequences’ to be eliminated.

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<sup>1</sup> Please also see Rule 9.1 submissions in relation to both cases sent to the Department for Execution of Judgments of the European Court of Human Rights on 14 November 2019 (Aliyev) and 20 November 2019 (Jafarov)

## 1.1. Case of human rights lawyer Intigam Aliyev

In its judgment in the case of Intigam Aliyev, the European Court of Human Rights (the ECtHR or the Court) called upon the CM to supervise the adoption of the following measures in order to provide adequate redress to Mr Aliyev (emphasis added):

*228. Given the variety of means available to achieve restitutio in integrum and the nature of the issues involved, the Committee of Ministers is better placed than the Court to assess the specific measures to be taken in the present case. **It should thus be left to the Committee of Ministers to supervise**, on the basis of the information provided by the respondent State and with due regard to the applicant's evolving situation, **the adoption of measures aimed, among others, at restoring his professional activities**. Those measures should be feasible, timely, adequate and sufficient to ensure the maximum possible reparation for the violations found by the Court, and they should put the applicant, as far as possible, **in the position in which he had been before his arrest....**”*

*Before his arrest*, Mr Aliyev, as the Chairman of the Legal Education Society (LES), managed the organisation's operations (such as running the LES offices, receiving and managing grants for LES human rights activities) and programmatic activities (domestic and international human rights litigation, trainings in-country, advocacy trips to international organisations and partners).

*After his release from 20 months in prison*, Mr Aliyev:

- Is no longer able to run LES's activities or maintain its office due to the impact of the overly restrictive NGO laws which effectively hinder his receipt of foreign funding for LES and which prevent him from carrying out a range of human rights activities in the country;
- Is unable to access and use his personal and LES bank accounts as they have remained frozen since 7 July 2014 (contrary to what is stated in the Government's Action Plan);
- Is unable to travel for work purposes or seek medical treatment abroad due to a travel ban which was imposed on him upon his conditional release on 28 March 2016;
- Has a criminal record as a result of the conviction;

- Has not been able to establish if he has been paid the full amount of damages and legal costs and expenses awarded by the Court in this case, as he has not been provided with any information about the payments made by the authorities to his (new) bank account. Payments of damages and/or legal costs and expenses are pending in over a dozen European Court cases in which Mr Aliyev was an applicant or acted as a legal representative

As a result of the above, he has still not had *'his professional activities restored'*, as required by the Court in its judgment, in accordance with Article 46 of the Convention.

### **Recommendations to the Committee of Ministers:**

- Request the Government of Azerbaijan to provide an update on the status of the proceedings before the Supreme Court (to be concluded no later than 3 months after the receipt of the ECtHR judgment - in this case, by 12 December 2019), together with the copies of all relevant case documents, including a copy of the decision of the Supreme Court to examine Mr Aliyev's case.<sup>2</sup>
- It must be ensured that the re-examination of Mr Aliyev's case is conducted in a fair and transparent manner, in line with European fair trial standards.
- Call upon the Government to have the travel ban imposed on Mr Aliyev lifted immediately and unconditionally.
- As Mr Aliyev continues being denied access to his personal bank account and the one of LES, the Government should be required to provide the CM with copies of the instructions to the banks to release the bank accounts
- Request the Government to confirm which ECtHR cases each payment made to Mr Aliyev relate to and provide documentation which confirms that the damages and costs ordered by the Court have been paid in full, together with simple interest.

### **1.2. Case of human rights defender Rasul Jafarov**

In its Action Plan of 20 September 2019, the Government asserted that it had 'proceeded with payment of just satisfaction to all applicants in this group', including Mr Jafarov (page 2).

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<sup>2</sup> Article 80 of the Law on Courts and Judges and Article 457 guarantee the defendant's participation in such cases

However, we note that Mr Jafarov has not been paid the full compensation due (EUR 25,000 and EUR 7,448 in legal costs and expenses) in a timely manner, as ordered by the Court. Mr Jafarov is still to be paid the remaining EUR 2,448, plus interest on the late payments (the deadline for payment of just satisfaction expired on 4 October 2016).<sup>3</sup>

Mr Jafarov still has a criminal record as a result of the conviction of 16 April 2015.

### **Recommendations to the Committee of Ministers:**

- Call upon the Government to ensure that the remaining part of the damages and costs (together with interest) are paid without further delay.
- Request the Government to provide an update on the status of the proceedings before the Supreme Court (to be concluded no later than 3 months after the receipt of the ECtHR judgment - in this case, by 12 December 2019), together with the copies of all relevant case documents, including a copy of the decision of the Supreme Court to examine Mr Jafarov's case.<sup>4</sup>
- It must be ensured that the re-examination of Mr Jafarov's case is conducted in a fair and transparent manner, in line with European fair trial standards.

## **II. General measures**

We reiterate the Court's explicit references to general measures in its judgment in Mr Aliyev's case and its recognition of 'a troubling pattern of arbitrary arrest and detention of government critics, civil society activists and human-rights defenders through retaliatory prosecutions and misuse of criminal law in defiance of the rule of law' (para 223):

'[general measures] **must focus, as a matter of priority, on the protection** of critics of the government, civil society activists and human-rights defenders against arbitrary arrest and detention' ...and ... must ensure '**the eradication of retaliatory prosecutions and misuse of criminal law against this group of individuals**' (para 226).

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<sup>3</sup> As of 20 November 2019, he has received a total of EUR 27,000, paid in multiple separate transfers on different dates (as described in detail in previous Rule 9.1 submissions), and his legal representative Khalid Bagirov was paid EUR 3000 in respect of his legal fees in 2017. Accordingly, Mr Jafarov is still to be paid the remaining EUR 2,448, plus interest on the late payments (the deadline for payment of just satisfaction expired on 4 October 2016).

<sup>4</sup> Article 80 of the Law on Courts and Judges and Article 457 guarantee the defendant's participation in such cases

We further note that on 7 November 2019, the Court adopted a judgment in the case of opposition politician and Board member of the REAL movement, Natig Jafarov, finding his arrest and detention in violation of Articles 5 and 18 of the Convention.<sup>5</sup> Relying on the wider domestic context, discussed in the judgment of Mr Rasul Jafarov, involving the suppression of many critical voices, the Court established that the ulterior purpose of Mr Natig Jafarov's arrest and detention was 'to punish the applicant for his active political engagement and to prevent him from participating as a representative of the opposition in the referendum campaign' (para 70). The Court further referred to the importance of the public function that critics play through democratic discourse:

'...As such, the restriction in question did not merely affect the applicant alone, or his fellow opposition activists and supporters, but the very essence of the democracy as a means of organising society, in which individual freedom may only be limited in the general interest...'<sup>6</sup> (para 69).

To date, the Court has found violations of Article 18 of the Convention (together with Articles 5 and 8) by the Government of Azerbaijan in six judgments relating to nine individuals who have been arrested and detained in 'bad faith' in recent years.<sup>6</sup>

### **Recommendations to the Committee of Ministers**

We call upon the CM:

- To examine the information provided by the Government on the general measures adopted to date, as set out in its Action Plan of 20 September 2019, in light of the Court's findings (as summarised above), and their relevance and sufficiency. In our view, the Government has not taken sufficient steps to protect human rights defenders and to eradicate retaliatory prosecutions and misuse of the criminal justice system

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<sup>5</sup> *Natig Jafarov v Azerbaijan*, Appl. no. 64581/16, 7 November 2019.

<sup>6</sup> *Ilgar Mammadov v Azerbaijan*, Appl. no. 15172/13, 22 May 2014, *Rasul Jafarov v Azerbaijan*, Appl. no. 69981/14, 17 March 2016; *Rashad Hasanov and Others v Azerbaijan*, Appl. nos. 48653/13, 7 June 2018; *Anar Mammadli v Azerbaijan*, Appl. no. 47145/14, 19 April 2018; *Aliyev v Azerbaijan*, Appl. nos. 68762/14 and 71200/14, 20 September 2018, *Natig Jafarov v Azerbaijan*, Appl. no. 64581/16, 7 November 2019

- To require the Azerbaijani authorities to take the requisite steps to establish a favourable legal and political environment, which enables civil society to effectively and freely exercise their right to freedom of association and to operate without any hindrance:
  - Laws and practice relating to status and registration of NGOs and NGO grants should be reformed
- To require the Azerbaijani authorities to take the necessary measures to ensure that those responsible for the persecution of human rights defenders, civil society activists and Government critics are held accountable.

**European Human Rights Advocacy Centre**

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