



# JUSTICE BEHIND BARS:

The persecution of civil society in Azerbaijan

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# EXECUTIVE SUMMARY

In 2014-2015, an unprecedented crackdown on civil society has taken place in Azerbaijan, in the course of which dozens of human rights defenders, journalists and other critical voices have been imprisoned and key human rights organizations forced to suspend their activities. A number of international NGO reports have already documented these developments. This report is aimed at complementing other reports by focusing on the abuse of the criminal justice system related to the civil society crackdown, providing a detailed analysis of the criminal cases against seven leading civil society figures: Anar Mammadli; Rasul Jafarov; Intigam Aliev; Leyla and Arif Yunus; Emin Huseynov; and Khadija Ismayilova. The report is based on the findings of field and trial monitoring missions carried out by International Partnership for Human Rights (IPHR); interviews with Azerbaijani lawyers, journalists and human rights defenders; as well as thorough analyses of case documents undertaken by lawyers engaged by IPHR.

Against the background of an overview of Azerbaijan's international obligations under applicable United Nations and Council of Europe human rights instruments, the report chronicles the cases against each of the seven civil society representatives, from the opening of the investigation through the arrest, court proceedings, and conviction handed down against them (in one case, the enforced exile). The report demonstrates how Azerbaijan's repressive NGO legislation and the country's pliant judicial system have been used by the authorities in an attempt to punish and silence these well-known advocates of human rights and rule of law and to criminalise their legitimate activities. It highlights the unjust, unfair and politically motivated nature of the charges brought against the civil society leaders, including tax evasion, illegal entrepreneurship, and fraud, and details a range of serious violations of international human rights standards that have characterized the cases against them.

Major concerns documented include: enforcement of restrictive NGO legislation, in particular provisions that set out strict requirements regarding the registration of NGOs and foreign grants received by them, as well as abusive and selective application of such legislation; unfounded criminal charges that do not correspond to the evidence presented; abuse of pre-trial detention as a preventive measure during investigations; gross violations of the right to a fair trial and the principle of equality of arms during court proceedings; holding defendants in cruel, inhuman or degrading conditions of detention; and failure to provide adequate and much needed medical assistance to defendants.

The cases covered in detail by the report are:

- Elections monitor Anar Mammadli was arrested in December 2013 and is now serving a 5.5-year sentence on charges brought on the grounds that the Election Monitoring and Democracy Studies Centre he leads received grants through his personal account and the account of another NGO after its registration was revoked.
- Human rights and peace advocates Leyla and Arif Yunus were arrested in July-August 2014 and sentenced to prison terms of 8 years and 6 months and 7 years, respectively, on charges related to the fact that their Institute for Peace and Democracy received foreign grants through another NGO

after being denied registration. The health of both has seriously deteriorated in detention and on 12 November 2015, Arif Yunus was released under house arrest on health grounds pending appeal hearings.

- Human rights activist and “Sing for Democracy” campaign leader Rasul Jafarov was arrested in August 2014 and is now serving a sentence of 6 years and three months on charges brought on the grounds that the Human Rights Club he leads operated without registration, which it was repeatedly denied, and received grants to his personal account.
- Human rights lawyer Intigam Aliev, who has submitted dozens of cases to the European Court of Human Rights, was arrested in August 2014 and is now serving a sentence of 7 years and 6 months because foreign grants received by his Legal Education Society were allegedly not officially registered, despite evidence to the contrary presented by the defense.
- Media rights activist Emin Huseynov was banned from travelling abroad in August 2014 after being accused of conducting illegal entrepreneurial activities and evading taxes. The Institute for Reporters' Freedom and Safety (IRFS) he heads was fined for allegedly failing to officially register grants received, although it presented evidence to the contrary. Emin went into hiding in early 2014 and is now in de facto exile.
- Investigative journalist Khadija Ismayilova was arrested in December 2014 and was sentenced to 7 years in prison in September this year because she allegedly concluded lower tax rate consultancy agreements rather than employment contracts with co-workers when heading the Baku office of Radio Liberty. All so-called “victims” testified in her favor. She was acquitted of charges of inciting a former colleague to commit suicide, on which she was initially arrested.

The report also draws attention to a trend in which defense lawyers representing human rights defenders whose cases are covered by this report, as well as other civil society activists have been subjected to pressure, including criminal defamation charges; questioning as witnesses in the cases against their clients; and even disbarment. This has had a chilling impact on other lawyers who refrain from taking on cases such as these out of fear of repercussions.

The report concludes that in a situation where most independent civil society leaders are now in prison and key human rights groups are unable to operate in Azerbaijan, the country's international partners must change tactics for how to deal with its authorities. The Azerbaijani authorities have for years systematically failed to implement recommendations of international human rights bodies, as well as rulings of the European Court of Human Rights, and dialogue with them has done nothing to stop the current crackdown. In order to help ensure the release of imprisoned human rights defenders and journalists and restore their rights, the country's international partners must back up dialogue with the threat or use of sanctions.

# 1. INTRODUCTION AND METHODOLOGY

Historically, Azerbaijan is not renowned for its NGO-friendly reputation. Restrictive legislation and burdensome reporting obligations for non-governmental organizations (NGOs) have been used to secure for State control over civil society. However, the events of 2014 have been shocking even compared to the already difficult circumstances. A number of leading civil society figures were arrested on charges ranging from fraud to tax evasion to high treason and many NGOs de facto closed down. By the end of the year Anar Mammadli, a leading expert in election monitoring, was sentenced to 5,5 years imprisonment, leading human rights lawyer, Intigam Aliev, human rights defenders Rasul Jafarov, Leyla and Arif Yunus and journalist Khadija Ismayilova awaited trial in detention and a criminal investigation had been opened against media rights activist Emin Huseynov. By August 2015 all of them (except Emin Huseynov) were found guilty of committing crimes such as illegal entrepreneurship, tax evasion, misappropriation, abuse of power and forgery and sentenced to lengthy prison terms. Their personal and organizational bank accounts were frozen and offices sealed. Tax authorities imposed hefty fines on organizations, which made the NGOs de facto stop their activities. Defence lawyers of imprisoned human rights defenders faced disciplinary proceedings and were otherwise prevented from doing their jobs. The Azerbaijani authorities consistently attempted to present the situation at international and European fora as no more than routine law enforcement against economic crime while boasting about how supportive the state was of NGOs. (They meant only those NGOs who supported state policy and refrained from criticism). They however do not mention the fact that the alleged failure to comply with the NGO regulations does not foresee any criminal punishment.

Against this background the International Partnership for Human Rights (IPHR) decided to dispatch a fact-finding mission to Azerbaijan to establish the facts about prosecutions of civil society activists and to formulate recommendations to European actors on addressing the situation.

The mission took place in Baku between 24 and 29 December 2014. Mission representatives conducted interviews in Russian and English with NGO members, lawyers and relatives of those detained. They attended a judicial review of a fine imposed by tax authorities on the Institute for Reporters' freedom and safety led by Emin Huseynov. They also reviewed a number of official documents containing charges against civil society activists and related court judgments mainly criminal verdicts and detention orders (English translations), as well as trial observation reports from the criminal cases against human rights defenders and activists.

This is by no means the first report on the prosecutions and crackdown on independent human rights NGOs in Azerbaijan in recent months. Amnesty International, International Federation for Human Rights (Fédération internationale des droits de l'homme, FIDH) and Sport for Rights have already published reports. Human Rights Watch documented the tightening of legislation that led to the new wave of arrests, trials and convictions. In order not to repeat the findings, and to complement the effort undertaken by other international NGOs, this report focuses on the issue of criminal justice.

This first part of the report summarises Azerbaijan's international obligations under UN and Council of Europe human rights instruments. The report will then describe the facts of the individual cases and assess the issues raised by them. The report will conclude with recommendations to the international community.

## 2. INTERNATIONAL OBLIGATIONS OF AZERBAIJAN

Azerbaijan is party to multiple international multi-lateral human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights (ECHR). It is also a party to the UN Convention against Torture and the European Convention for the Prevention of Torture.

### *Pre-Trial Detention*

International law specifies a number of important safeguards on placement of defendants in criminal cases into custody. Thus, Article 5 paras. 1 (c), 3 and 4 of the ECHR reads as follows:

“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: ...

(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; ...

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”.

The requirement that there must be reasonable grounds for suspecting someone is guilty of an offence forms an essential part of the safeguard against arbitrary arrest and detention. The fact that suspicion is held in good faith is insufficient (see *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, para. 32, Series A no. 182). While reasonable suspicion must exist at the time of the arrest and initial detention, it must also be shown, in cases of prolonged detention, that the suspicion persisted and remained “reasonable” throughout the detention (*Ilgar Mammadov v. Azerbaijan*, no. 15172/13, 22.05.2014, para. 90). The European Court of Human Rights (ECtHR) was not satisfied with the vague and general references to unspecified “case material” in documents and decisions by the Azerbaijani prosecution and the courts and the absence of any specific statement, information or concrete complaint sufficient to justify the “reasonableness” of the suspicion on which the arrest and detention were based in the *Ilgar Mammadov* case (*ibid.*, para. 97).

According to the ECtHR case-law the presumption under Article 5 is in favour of release. The second limb of Article 5 § 3 does not give judicial authorities a choice between bringing the accused to trial within a reasonable time or granting him/her provisional release pending trial. He/ she must be presumed innocent until proven guilty and the purpose of the provision under consideration is essentially to require his provisional release once his continuing detention ceases to be reasonable (see *McKay v. the United Kingdom*



[GC], no. 543/03, para. 41, ECHR 2006-X, and *Bykov v. Russia* [GC], no. 4378/02, para. 61, ECHR 2009-...) The persistence of reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the lawfulness of the continued detention, but with the lapse of time this no longer suffices, and the ECtHR must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the ECtHR must also be satisfied that the national authorities displayed “special diligence” in the conduct of the proceedings (see, e.g., *Letellier v. France*, judgment of 26 June 1991, para. 35, Series A no. 207, and *Yağcı and Sargin v. Turkey*, judgment of 8 June 1995, para. 50, Series A no. 319-A).

On numerous occasions the ECtHR found violations of Article 5 paras. 3 and 4 for the failure of the Azerbaijani courts to give proper reasoning when extending pre-trial detention of defendants in criminal cases. In the leading case of *Farhad Aliyev v. Azerbaijan* the ECtHR condemned the Azerbaijani judicial decisions that did not go any further than listing the risk of absconding and the gravity of charges brought against the defendant, using a stereotypical formula paraphrasing the terms of the Azerbaijani Code of Criminal Procedure. The ECtHR stated that the municipal courts further failed to mention any case-specific facts relevant to those grounds and to substantiate them with relevant and sufficient reasons. The ECtHR observed that the courts extending the detention repeatedly used the same stereotypical formulae and their reasoning did not evolve with the passing of time to reflect the developing situation nor did they verify whether these grounds remained valid at the later stages of the proceedings (no. 37138/06, 09.11.2010, para. 191). The same findings were reiterated in no less than six judgments given over the last five years.

In particular, the ECtHR found in the *Ilgar Mammadov* case that in all their decisions the Azerbaijani courts limited themselves to copying the prosecution’s written submissions and using short, vague and stereotypical formulae for rejecting the applicant’s complaints as unsubstantiated. In essence, the domestic courts limited their role to one of mere automatic endorsement of the prosecution’s requests and they could be not considered to have conducted a genuine review of the “lawfulness” of the applicant’s detention. This was ruled contrary not only to the requirements of Article 5 para. 4 of the ECHR, but also to those of the Azerbaijani law (*Ilgar Mammadov v. Azerbaijan*, cited above, para. 118).

### *Fair trial*

In criminal cases Article 6 of the ECHR guarantees the right to fair trial in the following terms:

“1. In the determination 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...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

- (b) to have adequate time and facilities for the preparation of his defence;
- (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;
- (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; ...”

While these provisions provide for a common European standard of assessment of the fairness of trial



regardless of the jurisdiction in which they are conducted, in deciding almost every of the multiple issues that arise under Article 6, the ECtHR will have regard to the reasons given by the national authorities, primarily judges, for decisions restricting or even denying the rights of the accused. It was precisely the failure to give reasons for such decisions that led the ECtHR to find violations of Article 6 in the cases concerning Azerbaijan. While the violations found by the ECtHR may have been related to the very specific facts of the cases, the failure to give reasons was a common ECtHR finding and should be regarded as a systemic problem.

The case of Huseyn and others v. Azerbaijan (nos. 35485/05, 45553/05, 35680/05 and 36085/05, 26.07.2011) contains an inventory of problems that criminal defendants face in the country. The applicants were political activists involved in the opposition Popular Front Party and Müsavat Party and were charged with participation in protests at the 2003 presidential election results, where the opposition candidate Mr. Isa Gambar lost. Those events are described in detail in the Human Rights Watch report, entitled *Crushing Dissent: Repression, Violence and Azerbaijan's Elections*<sup>1</sup>. The Assize Court of Baku<sup>2</sup> convicted the defendants of organizing and participating in mass disorders.

The defendants sought the recusal of the two Assize Court judges whose relatives were involved in the criminal investigation of their case. However, defence motions were dismissed on the grounds that the judges' relatives were involved in the pre-trial investigation of a case with a different case-file number. The cases had been initially investigated as one, but were split into several distinct files later. The ECtHR was critical not only of the fact that the impugned judges did not withdraw from sitting of their own motion, but also of the highly formalistic reasons given by the Assize Court to dismiss the motion for recusal (para. 165). The ECtHR also found that the Assize Court had failed to consider factors relevant to the determination of impartiality under Article 6 ECHR, in particular, the fact that the decision to split the investigation into separate case-files had been taken because of the impossibility to conduct a swift trial in respect of all the charges against all the defendants. In addition, the majority, if not all, of the incriminating evidence subsequently used against the defendants at the trial had been collected by the investigation team which included a brother of one of the judges. (paras. 166-167).

The defendants and their lawyers were also denied, despite their repeated requests, time and facilities to prepare the case for the defence: they submitted that they were only given very limited time to examine over 6,000 pages of the prosecution case and that the hearings were conducted with only short breaks, meaning that preparation in the course of the trial was impossible. The Assize Court dismissed those complaints on the grounds that the defence lawyers had signed a 'familiarization record', a certificate stating that they had examined the case-file. The Assize Court also denied the defendants the right to address the court with closing arguments despite the withdrawal of the lawyers from the case in protest that they were unable to provide effective legal assistance under the circumstances.

The ECtHR reiterated that Article 6(3)(b) of the ECHR guarantees the accused “adequate time and facilities for the preparation of his defence” and therefore implies that the substantive defence activity on his behalf may comprise everything which is “necessary” to prepare the main trial. The accused must have the opportunity to organise his defence in an appropriate way and be allowed to put all relevant defence arguments before the

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<sup>1</sup> Human Rights Watch “Crushing Dissent: Repression, Violence and Azerbaijan’s Elections” January 2004 Vol. 16, No. 1(D)

<sup>2</sup> The first instance court responsible for hearing cases involving grave crimes, often referred to as the Serious Crimes Court

trial court and thus influence the outcome of the proceedings (e.g., *Mayzit v. Russia*, no. 63378/00, 20.01.2005, para. 78). Further, the ECtHR found the Assize Court's stance inadequate in that undue weight was attached to the defence lawyers having signed the "familiarisation record". The Azerbaijani courts' relied on this point as confirmation that the defence had studied the case-file, but it was a "procedural formality of minor legal significance" in the eyes of the Strasbourg Court, which took the view that it did not necessarily follow that the signing of such a document attested in any way as to whether the time and facilities for access to the case-file were sufficient or may serve as an unequivocal waiver of any substantive or procedural grievances the defence may have had in connection with the process of consulting the investigation file (para. 176).

The ECtHR criticised in the strongest possible terms the way the Assize Court dealt with the defence's grievances concerning the lack of time and facilities to provide effective legal assistance during the trial. Strasbourg judges highlighted the contradictory and arbitrary nature of the Assize Court's reasoning: it firstly stated, without any relevant explanation, that the lawyers had provided the defendants with adequate and effective assistance throughout the entire proceedings, but immediately followed up with the contradictory remark that the lawyers had allegedly failed to perform their duty to avail themselves of the ample opportunities for them to consult the investigation file (para. 182).

The last and central issue that led the ECtHR to find a violation of Article 6 of the ECHR in *Huseyn and others* was the Azerbaijani courts' failure to properly assess evidence and give reasons for their judgments against the defendants. The effect of Article 6(1) is, *inter alia*, to place a "tribunal" under a duty to conduct a proper examination of the submissions, arguments and evidence, without prejudice to its assessment or to whether they are relevant for its decision, given that the Strasbourg Court is not called upon to examine whether arguments are adequately addressed. Article 6(1) obliges courts to give reasons for their decisions (*Van de Hurk v. the Netherlands*, judgment of 19 April 1994, Series A no. 288, paras. 59 and 61, and *García Ruiz v. Spain* [GC], no. 30544/96, ECHR 1999-I, para. 26).

In *Huseyn* the prosecution heavily relied on statements made by the policemen present at the demonstration. Those policemen were, however, required to provide their overall assessment of the events of 16 October 2003 rather than testify about the acts or omissions of the defendants. The defence pointed out at the trial that some of the policemen's statements appeared to have been taken by the same investigator at the same time (which was either impossible or illegal) as they were identical, almost word for word. However, the Assize Court did not address this objection nor take it into account when relying on these witnesses' testimonies to convict the applicants. It thus failed to properly assess both the question of the admissibility of the depositions and the reliability, credibility and personal integrity of those witnesses who had allegedly signed identical statements (para. 205). Where the statements made by the police witnesses at the trial differed from their pre-trial depositions and the defence objected about this, the Assize Court remained silent on the matter, analysed inconsistencies in the statements of the defence witnesses, and, yet again, failed to provide any reasons as to why the defence's objections concerning the prosecution witnesses were left unexamined or as to why it considered the alleged inconsistencies in the testimonies of prosecution witnesses to be immaterial (para. 206). In upholding the statements directly implicating the defendants, despite credible allegations that those had been obtained under torture, the Azerbaijani courts mechanically referred to previous judgments in which the evidence had been found reliable – instead of analysing its admissibility and credibility (paras. 208, 212).

None of these or the other violations of the right to fair trial were remedied on appeal (para. 214).

With specific regard to appeal proceedings, in *Abdulgadirov v. Azerbaijan* (no. 24510/06, 20.06.2013) the Court of Appeal heard the case in the defendant's absence. The latter was found guilty of illegal possession of weapons and appealed the conviction. The Court of Appeal examined the defence appeals "without a judicial investigation", that is, without a full rehearing of the evidence in the case. The hearing was held in the absence of the defendant, but in the presence of his lawyer and of the prosecutor. The ECtHR observed that, under the Azerbaijani legal system, the Court of Appeal had competence to examine points of both fact and law, to conduct a full review of the assessment of an accused's guilt or innocence and, if necessary, to retry the case and directly examine the evidence, question witnesses etc. (para. 41). However, the Court of Appeal's decision did not contain any order in respect of the "court investigation", and was in fact silent on that matter. Importantly, the ECtHR noted that neither in the decision adopted at the preliminary hearing nor in its judgment on the merits did the Court of Appeal provide any justification for its informal decision to proceed in the defendant's absence, or any explanation as to why the appeal did not merit an examination with a "court investigation" (para. 43).

Political interference in criminal justice was forensically established in a case concerning Azerbaijan. The Convention sets a high threshold for proof of this. An applicant alleging that his rights and freedoms were limited for an improper reason must convincingly show that the real aim of the authorities was not the same as that proclaimed, or that which could be reasonably inferred from the context. A mere suspicion that the authorities used their powers for some other purpose than those defined in the Convention is not sufficient to prove a breach of Article 18 (see *Khodorkovskiy v. Russia*, no. 5829/04, 31.05.2011, para. 255). But in *Ilgar Mammadov v. Azerbaijan* the applicant was able to demonstrate that not only were the charges against him not based on "reasonable suspicion", but that they were linked to the blog entries authored by the applicant (cited above, para. 142). Although the charges against the applicant did not refer to the blog entries, mention of them was made in the press-releases of the Office of the Prosecutor-General (*ibid.*) The ECtHR concluded that the actual purpose of putting the applicant in pre-trial detention was to silence or punish him for criticising the Government and attempting to disseminate what he believed was the true information that the Government was trying to hide (para. 143).

### *Freedom of association*

According to Article 11 of the ECHR, everyone has the right to freedom of peaceful assembly and to freedom of association with others. The restrictions to this right are only permissible where they are provided for in accessible and foreseeable law, pursue at least one of the legitimate aims set out in para. 2 of Article 11, and are "necessary in a democratic society" - that is proportionate to the legitimate aim pursued and duly justified by "relevant and sufficient reasons" that the decisions of municipal authorities and courts should contain.

ECtHR found violations of Article 11 of the ECHR in six cases brought against Azerbaijan. In *Nasibova* the authorities failed to reply to an application to register an NGO for more than a year and four months, despite the statutory ten-day time-limit to do so (no. 4703/04, 18.10.2007). In *Ramazanova and others* the documents submitted for the registration of an NGO were on numerous occasions returned to the applicants "for rectification of errors", which resulted in almost a four-year delay of registration. Once a new set of documents was submitted by the applicants, the Azerbaijani Ministry of Justice would delay the registration for months, again in breach of the ten-day statutory time-limit (no. 44363/02, 01.02.2007). Similar violations

were found in Ismayilov (no. 4439/04, 17.01.2008) and Aliyev and others (no. 28735/05, 18.12.2008).

Islam-Ittihad Association and others concerned the dissolution of the group on the grounds that it was engaged in “religious activities”. However, neither the Law on Non-Governmental Organisations, nor the Law on Freedom of Religion, provided any kind of definition of what constituted “religious activity”, and therefore it was not possible to determine what actions or activities specifically might or might not be forbidden. (no. 5548/05, 13.11.2014).

In the above-mentioned cases, the acts and/or omissions of Azerbaijani authorities failed the test of compliance with Article 11 at the “provided by law” stage: either the impugned measures explicitly breached the applicable domestic law or the law was not foreseeable. The only case offering an analysis of proportionality is Tebieti Mühafize Cemiyeti and Israfilov (no. 37083/03, 08.10.2009). The applicant organisation, the Animal Protection Association, was dissolved following the Azerbaijani Ministry of Justice's inspections and warnings on the grounds of “breach of the legal requirements for internal management” and “engagement in unlawful activities”. In that case, the grounds for issuing warnings were not set out in domestic law with the required precision. The ECtHR went on to find that dissolution was not “necessary in a democratic society” rather than merely “not provided for by law”, so the ECtHR went on to assess whether the grounds for dissolution were “relevant and sufficient”. The ECtHR admitted that the failure to convene the general assembly of the Association was a wanton violation of the legitimate requirement to convene it annually (para. 75). However, the ECtHR found that the Association tried to rectify the violation by convening the general assembly, but was only given 10 days to do so, whereas compliance with the applicable procedure would have required two weeks at least (para. 77). The domestic courts dealing with the case unreservedly endorsed the submissions of the Ministry of Justice and failed to critically evaluate them (para. 79). The ECtHR also did not accept that immediate and permanent dissolution was the only sanction for the breach of the legislation established (para. 82). The ECtHR further found that the Ministry of Justice's allegations that the actions of the Association illegally interfered with the “rights of entrepreneurs” (para. 89) were not proven. The case highlights the troubling aspects of Azerbaijan's administrative justice: the courts fail to critically evaluate, and unreservedly accept all the submissions of the executive, even if such submissions have no or little foundations in law or fact. It threatens the very foundations of law.

#### *NGO grant registration under Azerbaijani law*

Besides the stringent rules introduced with regard to registration, activity and dissolution of NGOs, Azerbaijani law provides for a very specific system of registration of grants. Essentially, all foreign grants received by NGOs and even individuals have to be reported by the recipients to the Ministry of Justice in order, according to the Ministry itself, “to increase transparency and to fight against money-laundering”. This requirement has been provided in law since 2007 and regulations on NGO grant registration were adopted by Presidential decree of 21 December 2009 no. 842-IIIQD. No regulations concerning grants to individuals have ever been adopted. As early as in 2010 the Council of Europe Commissioner for Human Rights was “concerned by attempts to control activities of NGOs in an unduly strict manner”.<sup>3</sup>

Further restrictions were introduced by the law adopted by the Parliament on 17 October 2014 and

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<sup>3</sup> Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Azerbaijan from 1 to 5 March 2010, 29 June 2010, CommDH(2010)21, para. 46.

promulgated by the President on 14 November 2014. The law outright excluded donations from foreign sources, unless the foreign donor has a registered representative office in Azerbaijan. But registration of representations of foreign entities is, under Azerbaijani law, a matter to be “negotiated” with the government and is left to the discretion of the latter.<sup>4</sup> The new law also introduced an assessment of “financial-economic responsibility” by the domestic authorities, leaving the very possibility of NGOs receiving funding at the discretion of the government. When assessing these new rules, the Venice Commission concluded that “the wide discretion given to the executive authorities in assessing the reasonableness of donations is such that consistency in the implementation of the laws regarding NGOs seems improbable”.<sup>5</sup>

Whereas the 2014 amendments will only apply after the cases described in this report are decided, they illustrate the sheer disregard of the Azerbaijani authorities for any Council of Europe advice and/or criticism.

## 3. INDIVIDUAL CASES

### ANAR MAMMADLI

**Elections monitor, leader of the Election Monitoring and Democracy Studies Centre  
In prison since 16 December 2013 serving a five-and-a-half year sentence for the reason that  
his NGO's registration was arbitrarily withdrawn by the Ministry of Justice and the NGO had  
to operate as an unregistered NGO.**

Anar Mammadli was born in 1978. He is a well-known civil society activist and chairman of the Election Monitoring and Democracy Studies Centre (“the Centre”), a non-governmental organisation specialised in election monitoring. The Centre was registered in 2008, but shortly afterwards its registration was withdrawn by the Ministry of Justice.

As a part of its monitoring work, the Centre conducted monitoring of the presidential elections, which were held on 9 October 2013. In what was to be its final report, the Centre concluded that the presidential elections had not complied with democratic standards.<sup>6</sup> OSCE and the US State Department referred to the Centre's reports in their assessments of the elections.

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<sup>4</sup> The procedure for registration of representation of foreign organisations has been criticised at length by the Venice Commission: Opinion no. 636/2011 on the Compatibility with Human Rights Standards of the Legislation on Non-Governmental Organisations of the Republic of Azerbaijan, 14-15 October 2011, CDL-AD(2011)35, pp. 13-17. It is also discussed at length in: Council of Europe Conference of International NGOs Expert Council on NGO Law, Opinion on the NGO Law of the Republic of Azerbaijan in the Light of Amendments Made in 2009 and 2013 and Their Application, OING Conf/Exp (2014)1, paras. 95-104.

<sup>5</sup> Venice Commission, Opinion no. 787/2014 on the Law on Non-Governmental Organisations (Public Associations and Funds), as amended, of the Republic of Azerbaijan, 12-13 December 2014, CDL-AD(2014)43, para. 68.

<sup>6</sup> Report of 21 October 2013

## INVESTIGATION AND PRE-TRIAL DETENTION

On 29 October 2013, criminal proceedings were instituted against various persons involved in the election monitoring activities at the Centre. On 31 October 2013, law enforcement officials conducted a search the Centre's offices, as a result of which all the documents and electronic data storage devices were seized.

On 16 December 2013 Anar Mammadli was charged under the following articles of the criminal code: 192.2.2 (illegal entrepreneurship); 213.1 (large-scale tax evasion) and 308.2 (abuse of power).

On the same day, the prosecutor lodged a request with the court asking for permission to remand Anar Mammadli in custody. The prosecutor justified his request by the gravity of the charges against Anar Mammadli, the fact that he did not live in the place where he was officially registered as a resident, and said that there was a risk of him absconding and obstructing the investigation. In particular, the prosecutor submitted that the fact that Anar Mammadli had studied abroad frequently travelled to foreign countries and was in constant contact with people abroad constituted grounds for the risk of absconding from the investigation. On 16 December 2013 the Nasimi District Court, relying on the official charges brought against Anar Mammadli and the prosecutor's request, ordered his detention for a period of three months. The court referred to the gravity of the charges and the likelihood that if released Anar Mammadli might abscond and obstruct the investigation.

On 18 December 2013 Anar Mammadli appealed the detention order as unlawful. He submitted that there was no reasonable suspicion that he had committed a criminal offence and that there was no justification for his remand in custody. He stated that he had always complied with the investigation's requests.

On 23 December 2013 the Baku Court of Appeal dismissed Anar Mammadli's appeal, finding that the detention order was lawful.

On 20 December 2013 Anar Mammadli requested the Nasimi District Court to release him on bail or to place him under house arrest in lieu of being remanded in custody. He argued that there was no reason justifying his continued detention.

On 25 December 2013 the Nasimi District Court dismissed the request. On 30 December 2013 the Baku Court of Appeal upheld the ruling of the court of first-instance.

On 6 March 2014 the Nasimi District Court granted the motion of the Office of the Prosecutor-General and extended Anar Mammadli's remand in custody by three months, until 16 June 2014. The court based its decision on the complexity of the case and the fact that a number of investigative steps needed to be carried out and thus more time was needed to complete the investigation.

On 7 March 2014 Anar Mammadli appealed against this court order, claiming that the court had failed to justify the extension of his pre-trial detention. On 14 March 2014 the Baku Court of Appeal dismissed the appeal and upheld the first-instance court's decision.

On 31 March 2014 Anar Mammadli again requested the Nasimi District Court to release him on bail or to place him under house arrest in lieu of custody.

On 1 April 2014 the Nasimi District Court dismissed the request. On 7 April 2014 the Baku Court of Appeal upheld the decision of the court of first-instance of 1 April 2014.

## **CHARGES**

On 16 December 2013 Anar Mammadli was charged under Articles 192.2.2 (illegal entrepreneurship), 213.1 (large-scale tax evasion) and 308.2 (abuse of power) of the Criminal Code. He was further charged under Articles 179 (misappropriation) and 313 (official forgery). The Centre's executive director Bashir Suleymanli was also charged under those provisions.

The factual basis for the charges related to Anar Mammadli having received money transfers under the grant agreements to his personal bank account and to the bank account of the registered International Volunteer Cooperation Organisation ("IVCO"), as the Centre was not a registered legal entity. According to the bill of indictment, Anar Mammadli and Bashir Suleymanli conspired with the IVCO chairman Elnur Mamedov to receive a 276,010 USD grant, 163,250 USD of which were cashed in by Anar Mammadli and used to pay for salaries, office rent, office hardware etc. This was regarded by the investigation as entrepreneurial activities subject to VAT (grants to NGOs are not normally subject to VAT). The failure to pay VAT in the sum of 27,517.61 AZN from the grants received to Anar. Mammadli's personal bank account and to that of the IVCO was described as tax evasion.

18 persons were granted victim status in the criminal proceedings against Anar Mammadli. One of them testified that he had been employed by the Centre, but Anar Mammadli had in fact paid him less than the sums that were transferred to his account from that of Anar Mammadli. The person stated that he had had to return the difference to Anar Mammadli in cash. According to the bill of indictment, Anar Mammadli forced other persons to register as individual entrepreneurs, collected their bank checks, then cashed in the money under sham contracts for translation, advocacy, event organisation etc. According to the investigation, Anar Mammadli thus misappropriated 64,203.59 AZN.

## **TRIAL AND JUDGMENT**

Anar Mammadli was tried before Baku Assize Court together with Bashir Suleymanli. At the trial only one person granted victim status testified against Anar Mammadli.

Anar Mammadli was found guilty as charged and sentenced to 5 years and 6 months in prison. The sentence began on 16 December 2013. His co-defendants Bashir Suleymanli and Elnur Mammedov were each sentenced to 3 years and 6 months in prison. Bashir Suleymanli was arrested in the courtroom while Elnur Mammedov was set free with two years on probation. Bashir Suleymanli was released on 18 March 2015.

The Baku Court of Appeal dismissed Anar Mammadli's appeal. He was transferred to the Qaradag prison. The defence appealed on points of law to the Azerbaijani Supreme Court,<sup>7</sup> but the appeal was dismissed on 26 August 2015.

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7 <http://www.contact.az/docs/2015/Social/050600115207ru.htm#.VWLtS0bNOXo>



## LEYLA AND ARIF YUNUS

**Leyla and Arif Yunus are well-known human rights and peace building veterans. Leyla Yunus, in jail since 30 July 2014, serving an 8 year and 6 month sentence. Arif Yunus was jailed since 5 August 2014 and served a sentence of 7 years until he was released under house arrest on 12 November 2015 due to poor health. Leyla and Arif were accused of treason because of their contacts with civil society in Armenia, but convicted of economic crimes stemming from the Government's failure to register their NGO.**

Leyla Yunus, born in 1955, is a prominent human rights and democracy activist, and director of the Institute for Peace and Democracy (IPD) in Azerbaijan. She has been actively working on political persecution, corruption, human trafficking, gender issues, violations of property rights, monitoring of court proceedings, and peace initiatives around the Nagorno-Karabakh conflict for many years. In the last few years, she has been the driving force behind the preparation of a list of political prisoners in Azerbaijan. Since 2012, Leyla Yunus has been working with Armenian civil society counterparts to promote dialogue between societies in conflict. In 2013, she received the National Order of the French Legion of Honor for her outstanding work.

Arif Yunus, born in 1955, is a well-known historian and Head of the Conflictology department of the IPD. Before joining IPD, he worked at the History Institute at the Azerbaijani National Academy of Sciences for twenty years. He wrote several books and academic research papers on the history of Azerbaijan, as well as on various aspects of the Nagorno-Karabakh conflict, religious issues, ethnic minorities and refugees in Azerbaijan and abroad.

Both Leyla and Arif Yunus are in very poor health. Leyla Yunus suffers from severe form of diabetes mellitus type 2, hepatitis C, arterial hypertension and other conditions. Arif Yunus suffers from high blood pressure and chronic hypertension and has experienced several hypertensive crises in the past. The couple did not receive adequate medical treatment in detention, which further aggravated their health condition.

### INVESTIGATION AND PRE-TRIAL DETENTION

On 28 April 2014, at the prosecutor's request, the Yasamal District Court ordered a search at the Yunuses' flat and at the IPD office in relation to criminal case no. 142006022. The couple was not informed of this decision.

On 29 April 2014, Leyla Yunus and Arif Yunus attempted to travel to Qatar but were prevented from leaving Azerbaijan at Baku International Airport. They were informed that they were subjected to a travel ban and their passports were seized without any explanation.

*Leyla Yunus:*

On 30 July 2014 Leyla Yunus was arrested by the police and was taken to the Serious Crimes Department of the Prosecutor General's Office and charged under Articles 178.3.2 (large-scale fraud), 192.2.2 (illegal entrepreneurship), 213.1 (large-scale tax evasion), 274 (high treason), 320.1 and 320.2 (falsification of official documents) of the Criminal Code. The same day, the Nasimi District Court ordered her detention for a period of three months. The court justified the application of the preventive measure of remand in custody by the gravity of the charges and the likelihood that if released she might abscond from the investigation.

On 1 August 2014, Leyla Yunus appealed against this decision, claiming that her detention was unlawful. She submitted, in particular, that there was no reasonable suspicion that she had committed a criminal offence and that there was no justification for the application of the preventive measure of remand in custody. She argued that the court failed to consider her personal circumstances, such as her social status, her state of health and her age, when it ordered her remand in custody.

On 6 August 2014 the Baku Court of Appeal dismissed the appeal arguing on the necessity of remand in custody.

On 24 October 2014 the Nasimi District Court extended the remand in custody by four months, until 28 February 2015. The court substantiated its decision by the fact that it needed more time to complete the investigation and that the grounds for the accused's detention had not changed. On the same day the Nasimi District Court also dismissed Ms Yunus's request to release her on bail or to place her under house arrest.

On 27 October 2014 Leyla Yunus appealed against these decisions, arguing that the court of first-instance had failed to justify her continued detention.

On 30 October 2014 the Baku Court of Appeal upheld the court of first instance's decisions of 24 October 2014.

*Arif Yunus:*

On 30 July 2014 Arif Yunus was questioned by an investigator at the Serious Crimes Department of the Prosecutor General's Office. Following the interrogation, he was charged under Articles 178.3.2 (large-scale fraud) and 274 (high treason) of the Criminal Code. The same day, he was placed under police supervision taking into account his state of health as he was suffering from chronic hypertension.

On 5 August 2014, however, Arif Yunus was arrested and the Prosecutor Office asked for his detention as he allegedly failed to comply with the requirements of the preventive measure of placement under police supervision. The Nasimi District Court upheld the request and ordered the detention for a period of three months. It justified the need for remand in custody by the gravity of the charges and the likelihood that if released he might abscond from the investigation.

On 8 August 2014 Arif Yunus appealed against this decision arguing that the prosecutor office failed to demonstrate reasonable suspicion that he had committed a criminal offence and that there was no justification for the replacement of the preventive measure of placement under police supervision by the preventive measure of remand in custody. On 11 August 2014 the Baku Court of Appeal dismissed the appeal, finding that the detention order was justified.

On 29 October 2014 the Nasimi District Court extended the remand in custody by four months, until 5 March 2015. The court substantiated its decision by the fact that it needed more time to complete the investigation and that the grounds for the accused's detention had not changed.

On 30 October 2014 the Nasimi District Court dismissed the request to release Arif Yunus on bail or to place

him under house arrest in lieu of being remanded in custody.

On 3 November 2014 Arif Yunus appealed against these decisions. On 6 November 2014 the Baku Court of Appeal upheld the court of first instance's decisions of 29 and 30 October 2014.

*Medical condition: lack of adequate treatment and poor detention conditions*

*Leyla Yunus*

On 31 July 2014 Leyla Yunus was transferred to the Baku Pre-trial Detention Facility of the Ministry of Justice where a doctor confirmed the diagnoses of diabetes mellitus type 2 and chronic hepatitis C. As Leyla Yunus needed to follow a strict diabetic diet and take medicine, her husband Arif Yunus provided her with necessary food and medicine from 31 July to 5 August 2014. Following Arif Yunus's arrest on 5 August 2014, Leyla Yunus was deprived of necessary food and medicine until 23 August 2014 when the detention administration allowed her friends to deliver a parcel. The poor detention conditions with bad ventilation, little access to fresh air and space for exercise, necessary for diabetics, further aggravated her health.

Leyla Yunus was also subjected to psychological and physical pressure by her cellmates and prison officials. Despite numerous complaints, no action has been taken by the authorities to address this.

On 22 August 2014, concerned about lack of adequate medical supervision and treatment, Leyla Yunus lodged a request with the detention facility to allow her medical examination by an independent doctor of her choice. On 4 September 2014, the deputy head of the detention facility dismissed the request arguing that her health condition was under constant control of the doctors at the detention facility.

*Arif Yunus*

Arif Yunus was detained in the temporary detention facility of the Ministry of National Security since 5 August 2015 where his state of health has significantly deteriorated. He suffers from chronic hypertension and was at high risk of a hypertensive crisis before his detention.

On 25 and 30 April 2014, Arif Yunus experienced two hypertensive crises and was diagnosed with the third-degree and second-degree chronic hypertension. Despite the fact that third-degree hypertension is determined as grounds for release of a prisoner in the list of diseases approved by the Ministry of Justice, Arif Yunus was placed in detention, which has greatly aggravated his health situation.

On 12 November 2015, after spending 15 months in the detention facility of the Ministry of the National Security, Arif Yunus was released under house arrest following the request of his doctors in detention.

*Request for interim measures before the European Court of Human Rights*

On 29 August 2014, fearing irreversible harm to their health while in detention, Leyla Yunus and Arif Yunus appealed to the ECtHR requesting it to order the government to take urgent interim measures to address Leyla's health issues. On 1 October 2014, the ECtHR instructed the government to provide Leyla Yunus and

Arif Yunus with adequate medical treatment or to transfer her to a medical institution. It also asked the government to provide monthly reports on their state of health.

To date, the government of Azerbaijan reports - on a monthly basis - that the health of the Yunuses is 'under constant supervision', 'evaluated as satisfactory' and that 'no deterioration in the health has been noticed', failing to provide any medical justification for the basis on which such conclusions are made.

## **CHARGES**

Leyla Yunus was charged with crimes under Articles 178.3.2 (large scale fraud), 192.2.1 (illegal entrepreneurship in large amounts), 213.2.2 (large-scale tax evasion), 274 (treason) 320.1 and 320.2 (falsification of official documents) of the Criminal Code.

Arif Yunus was charged with crimes under Articles 178.3.2 (large-scale fraud) and 274 (treason).

The charges and the prosecution of Leyla and Arif Yunus are part of a broader criminal case initiated by the Prosecutor's office against a number of domestic and foreign NGOs in Azerbaijan on 22 April 2014. The basis for the case is alleged "irregularities found in the activities of a number of NGOs, and branches or representative offices of foreign NGOs" pursuant to Articles 308.1 ('abuse of power') and 313 ('service forgery') of the Criminal Code of Azerbaijan.

The prosecution argued that the charges against Leyla Yunus stem from the fact that she acted as Chairwoman of the IPD, which operated as a legal entity under the status of a non-governmental organization without a state registration and received grants from foreign donors through another NGO. It also claimed that the official documents of that NGO authorising Leyla Yunus to use funds from foreign donors were forged and the funds were misappropriated by her.

The spouses were also accused of treason in relation to their cooperation with civil society in Armenia but these charges were dropped by the court.

## **TRIAL AND JUDGMENT**

The trial at the Baku Serious Crimes Court began on 15 July 2015, after Leyla and Arif Yunus had spent almost a year in pre-trial detention. The case was examined for less than a month when a judgment was delivered.

The trial did not meet internationally accepted fair trial standards and was marked by was gross procedural violations in particular regarding the principle of equality of arms. Just as in the cases of other convicted human rights defenders analysed in this report, the Baku Serious Crimes Court largely referred to the evidence provided by the prosecution and dismissed the evidence provided by the defence without due consideration or providing reasoned grounds for rejection.

Defence petitions were routinely dismissed by the court without adequate justification and this was documented by the lawyers and trial observers as confirming the tendency in trials of all human rights defenders analysed in this report.

For example, in refuting accusations of fraud, the defence claimed that there was no victim, and presented

letters from the foreign donor organisations identified in the case as victims confirming that they had no claims against Leyla Yunus or her organization and that all projects were implemented in accordance with grant agreements. The court however did not accept such documentation as evidence.

The defence also argued that the charges of illegal entrepreneurship or tax evasion are not substantiated by adequate evidence and have no basis in domestic law as grants and donations are not taxable, and cannot be automatically qualified as profit.

During the court hearings, Leyla and Arif Yunus stood behind glass which prevented them from effective and confidential communication with their defence lawyers. The lawyers had to speak to the couple through a microphone which was at times turned off, preventing the defendants from following and participating in the court process. The court failed to explain the reason for keeping the defendants isolated from those in the court room.

Although the court hearings were public, journalists, human rights defenders, diplomats, trial observers and friends of Leyla and Arif Yunus were not always able to enter the court room as the room was often filled with people who neither the defendants nor their lawyers recognised. It is widely believed that this was a deliberate tactic to prevent observers from attending the trial.

On 13 August 2015, Leyla Yunus was found guilty of crimes under Articles 178.3.2 (large scale fraud), 192.2.1 (illegal entrepreneurship in large amounts), 213.2.2 (large-scale tax evasion), 274 (treason) 320.1 and 320.2 (falsification of official documents) and sentenced to 8 years and 6 months imprisonment with confiscation of all her property without regard to the time of acquisition. Arif Yunus was convicted and sentenced to 7 years imprisonment under Article 178.3.2 (large scale fraud). Both Leyla Yunus and Arif Yunus were acquitted charges of treason. Their appeals before the Baku Court of Appeal are pending at the time of writing of this report.

## **RASUL JAFAROV**

**Human rights campaigner, founder and leader of the NGO Human Rights Club and the “Sing for Democracy” campaign**

**Jailed since 2 August 2014, serving a sentence of 6 years and three months because the Government refused to register his NGO**

Rasul Jafarov was born in 1984. He is a well-known human rights defender and campaigner, and the Chairman of the NGO Human Rights Club (HRC). He has led multiple efforts to draw international attention to the worsening situation in his country, to educate Azerbaijani youth about their rights, and to ensure that political prisoners receive effective legal representation. He has been undertaken advocacy towards the Council of Europe (CoE) on behalf of political prisoners in Azerbaijan and has worked on the list of political prisoners. Rasul Jafarov also coordinated an outreach campaign entitled “Sing for Democracy” that used the Eurovision Song Contest 2012 in Baku as a platform to attract attention to human rights situation in Azerbaijan. The campaign generated wide international interest and was later transformed into a broader Art for Democracy campaign aimed at using artistic freedom of expression for human rights advocacy.

## INVESTIGATION AND PRE-TRIAL DETENTION

### *Institution of criminal proceedings*

On 22 April 2014, the Prosecutor General's Office initiated a criminal case against a number of domestic and international NGOs pursuant to Articles 308.1 ('abuse of power') and 313 ('service forgery') of the Criminal Code on the grounds of alleged "irregularities found in the activities of a number of NGOs, and branches or representative offices of foreign NGOs".

During his visit in Kiev on 6-11 July 2014, Rasul Jafarov learned that his personal bank account was frozen by a decision of the Sabail District Court of 7 July 2014 in relation to the above-mentioned joint criminal case against NGOs. On 29 August 2014, on the way to the conference in Tbilisi by train, he was stopped at the Azerbaijani border and informed that the Prosecutor's office had imposed a travel ban on him. He later learnt that the travel ban was imposed on 25 July 2014 although he had not been informed at the time.

On 30 July, Rasul Jafarov was invited to the Department for Investigation of Serious Crimes of the Prosecutor General's Office to be questioned as a witness. A search was conducted at the address where HRC was registered. As no documents were kept there, over the next two days 31 July and 1 August, Rasul Jafarov himself handed the requested documents related to HRC activities to the authorities.

### *Remand in custody*

On 2 August 2014, Rasul Jafarov was once again summoned for further questioning as a witness and delivered the last documents. Upon arrival, he was informed that he was a suspect in the crime and that the Nasimi District Court had approved his remand in pre-trial detention for three months on charges of illegal business (Art. 192.2 of the Criminal Code), tax evasion (Art. 213.1) and abuse of authority (Art. 308.2) (Annex 1). No case material as evidence for the charges was provided to the Rasul Jafarov or his lawyer.

On 4 August 2014, Rasul Jafarov submitted an appeal to the Baku Court of Appeal against the decision on remand in custody, arguing the lack of reasonable and substantiated grounds for such a restrictive measure. On 8 August 2014, the court dismissed the appeal.

On 19 August 2014, Rasul Jafarov lodged a request with the Nasimi District Court to change the preventive measure of remand in custody to house arrest or release on bail. On 20 August 2014, the court dismissed the appeal as unfounded referring to the danger to the public that the accused's actions incurred, the probability of him hiding from investigation bodies and the risk of him interfering with the investigation proceedings. On 28 August, Baku Court of Appeal also dismissed the appeal.

On 17 October 2014, the Tax Authorities found Rasul Jafarov in violation of the provisions of the Tax Code for failing to pay 6162,24 AZN.

On 23 October 2014, the period of pre-trial detention was extended for an additional three months, until 2 February 2015. The investigative authorities justified this by the fact that Rasul Jafarov had long-term contacts in foreign countries ('Ukraine, Germany, Great Britain and others') and therefore he would have tried to leave the country if released from pre-trial detention during the investigation stage. It also stated that Rasul Jafarov

might influence individuals involved in the case as Jafarov had been ‘the co-founder and chairman of the Human Rights Club for quite long and was influential among the persons, who cooperated with the organisation’.

Rasul Jafarov appealed against the decision of Nasimi District Court but it was dismissed by Baku Court of Appeal on 29 October 2014.

On 12 December 2014, new charges were filed against Rasul Jafarov. In addition to the previous charges, he was indicted with charges under Articles 179.3.2 (misappropriation of property in large amount) and Article 313 (service forgery) of the Criminal Code.

## **CHARGES**

Rasul Jafarov was charged with crimes under Articles 179.3.2 (misappropriation), 192.2.2 (illegal entrepreneurship by organised group), 213.2.2 (large-scale tax evasion), 308.2 (abuse of power) and 313 (official forgery).

The prosecution argued that the charges against Rasul Jafarov stem from his position as Chairman of the Human Rights Club, which operated as a legal entity under the status of a non-governmental organization without state registration. It also claimed that Rasul Jafarov received twelve grants from foreign donors that were not registered by the Ministry of Justice and used other – registered – NGOs to receive grants. It calculated that Rasul Jafarov misappropriated 150170, 62 AZN as profit from the unregistered grants received in 2010-2014, and thereby evaded taxes of 6,257 AZN.

The prosecution claimed that Rasul Jafarov failed to provide full documentation on the expenditure of the received funds, and that signatures in a number of official documents were forged, according to the Ministry of Justice Forensic Examination Center. Referring to the conclusions by this body, the prosecution included five individuals as victims in the case. All were involved in Human Rights Club projects and were reimbursed for their services. The prosecution claimed that the individuals had not been paid in full the amounts indicated in service contracts. Although the individuals filed official requests to be removed as victims in the case and stated that they had no claims against Rasul Jafarov, the prosecution and the courts used their testimonies and the forensic examination results as evidence against the accused.

## **TRIAL AND JUDGMENT**

The trial began on 15 January 2014 where Rasul Jafarov stood inside a metal cage in the dock of the Baku Serious Crimes Court. His defence lawyers requested the court to allow Rasul Jafarov to sit next to them in order to communicate with his lawyers, and argued that the cage was not necessary given the economic nature of the charges as he was not a threat to the public. However, the court dismissed the petition.

The defence also filed five other motions during the preliminary hearing requesting the court to terminate the charges against Rasul Jafarov; to terminate the victim status of two individuals; to summon state experts who prepared the opinion on Human Rights Centre operations as witnesses in the case; to change the restrictive measure of detention to house arrest; to allow audio and video recordings to be made of the hearing.

The judges dismissed all the petitions bar one without indicating any specific grounds for the decision. The



petition on witnesses was postponed for consideration during the next hearing.

On 27 January 2014, Rasul Jafarov was again brought handcuffed to the court and placed in the dock in a metal cage. As this again denied him effective and confidential communication with his lawyers, the court upheld their petition to allow him to sit next to the defence team.

During the same hearing, lawyers filed four more motions requesting the termination of victim status of four individuals; to release Rasul Jafarov from detention and place him under house arrest; to be allowed to use a microphone in the court; and to exclude expert opinions of state bodies from the body of evidence as they lacked the competence to conduct the relevant investigations.

All four petitions were dismissed by the court as unfounded without any clear justification for such a refusal.

During the same hearing, one of the victims filed a request to remove his victim status but the petition was dismissed. Three more victims filed the same requests during the hearing of 10 February 2015. They were questioned by the court during the same hearing but their status as victims was left unchanged.

On 16 April 2015 Rasul Jafarov was found guilty on all counts and was sentenced to 6 and a half years imprisonment. He was also banned from holding an official position in state or municipal bodies for 3 years.

The evidence referred to by the court was based on the testimonies of victims and witnesses, expert opinions on operation and documentation of the HRC, forensic expertise report and other related documents.

On 5 May 2015, Rasul Jafarov appealed against the decision to the Baku Court of Appeal, which, on 31 July 2015 decreased the sentence to six years and three months under the same charges following the payment of 6162, 24 AZN for tax evasion.

On 20 October 2015, Rasul Jafarov filed a cassation complaint with the Supreme Court, which is pending at the time of writing of this report.

## EMIN HUSEYNOV

**Media rights activist, founder and leader of the Institute for Reporters' Freedom and Safety (IRFS). In de facto exile in Switzerland. The Government deliberately deleted information about his registered grants from the public domain.**

Emin Huseynov is one of the Azerbaijan's best known media-freedom activists. He leads the Institute for Reporters' Freedom and Safety ("IRFS"), a media rights watchdog. He also worked as a reporter for the Turan Information Agency; the agency runs a renowned news web-site [www.contact.az](http://www.contact.az)

In June 2008 Emin Huseynov was arrested by the police at the gathering of the "Che Guevara Fan Club" which was celebrating Che Guevara's eightieth anniversary, and taken to the Nisami Police Station in Baku where he was beaten by police officers. No investigation into the beating was opened because preliminary investigations by the prosecution failed to establish evidence of the police involvement in the beatings, and Emin Huseynov's claims for compensation were dismissed as the courts ruled that the police dispersal had

acted lawfully in dispersing the gathering. .

Emin Huseynov complained to the European Court of Human Rights about the June 2008 events. In its judgment of 7 May 2015 (application no. 59135/09), the European Court of Human Rights found that Azerbaijan had violated the prohibition of torture, prohibition of arbitrary detention and freedom of assembly in respect of Emin Huseynov. The ECtHR also made an award of non-pecuniary damage and of costs and expenses to the applicant.

## PROCEEDINGS

On 5 August 2014 Emin Huseynov was prevented from travelling to Istanbul<sup>8</sup> by border police at Baku Heydar Aliyev International Airport. He was informed that the Office of the Prosecutor-General had imposed a travel ban on him.

On 18 July 2014 a tax inspection of IRFS started. The IRFS and Emin Huseynov's bank accounts have been frozen. The IRFS refused to produce documents for inspection. The inspection nevertheless concluded that the IRFS had engaged in entrepreneurial activities and failed to pay the applicable VAT. On 17 October 2014, IRFS was fined a total of 143,557.41 AZN, which included unpaid tax, penalties and fines.

The IRFS applied for judicial review of the decision to fine the organisation. It relied, inter alia, on the screenshots of the Ministry of Justice's web-site showing that the IRFS grants had been registered, but that this information had subsequently been removed from the Ministry's web-site. At the preliminary hearing in December 2014, which was attended by IPHR monitoring mission representatives, the judge of the Baku Administrative-Economic Court dismissed the motion to include the screenshots in the case-file.

On an unspecified date Emin Huseynov went underground. It was reported in early 2015 that he was granted asylum on humanitarian grounds by the Swiss Embassy.<sup>9</sup> He was eventually taken from the embassy to Switzerland on 13 June 2015, the day after the opening ceremony of the Azerbaijan-hosted European Games.<sup>10</sup>

## CHARGES

It is understood from the tax inspection documents that Emin Huseynov allegedly conducted entrepreneurial activities without having registered for or paid VAT.

The factual basis for the charges was that the 44 grant agreements concluded in 2010-2014 by the IRFS had not been registered with the Azerbaijani Ministry of Justice. The total sum of the allegedly unregistered grant agreements was 654,250.52 AZN. The alleged failure to register the grant agreements resulted, in the opinion of the Azerbaijani authorities, in that the funds received by the IRFS were obtained through entrepreneurial activity and were subject to VAT. The allegedly unpaid tax collected at source totalled 24,397.70 AZN and the

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8 Request for Enhanced Supervision of the ECtHR Judgments Establishing Violations of the Right to Freedom of Association, CoE doc. DD-DH(2014)1163, 5 September 2014, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2611588&SecMod e=1&DocId=2188924&Usage=2>

9 <http://www.kavkaz-uzel.ru/articles/257153/>

10 <http://www.svoboda.org/content/article/27070504.html>

allegedly unpaid VAT 76,535.13 AZN.

## INTIGAM ALIYEV

**Prominent human rights lawyer taking cases against Azerbaijan to the European Court of Human Rights, Council of Europe legal expert, and Chairman of the Legal Education Society. In jail since 8 August 2014 and serving a prison sentence of seven years and six months after the Government refused to recognise him as a Chairman of his NGO and deleted information on his NGO's grants from the public domain.**

Intigam Aliyev was born in 1962. He is a lawyer and the Chairperson of the Legal Education Society ("LES"), an NGO which organised trainings for lawyers, human rights defenders and journalists, prepared reports relating to various human rights issues and specialised in taking cases to the European Court of Human Rights. He represents applicants in about 130 cases pending before the ECtHR<sup>11</sup> and, to date, has obtained 16 ECtHR judgments in the applicants' favour, one fifth of all ECtHR judgments concerning Azerbaijan.

Intigam Aliyev is an expert for the OSCE, the Council of Europe HELP programme, the American Bar Association Rule of Law Initiative (ABA-ROLI), the Netherlands Helsinki Committee, Gesellschaft für technische Zusammenarbeit (German Technical Cooperation Organisation, GTZ) and numerous other international organisations and projects. He received the 2012 Homo Homini award from the Czech human rights organisation "People in Need" and the 2015 International Bar Association Award.

### INVESTIGATION AND PRE-TRIAL DETENTION

On 22 April 2014 the Office of the Prosecutor-General instituted criminal proceedings under Articles 308.1 (abuse of power) and 313 (official forgery) of the Criminal Code for alleged irregularities in the financial activities of a number of non-governmental organisations, including LES.

On 7 July 2014 the Sabail District Court ordered Intigam Aliyev's and LES's bank accounts to be frozen.

Intigam Aliyev was arrested on 8 August 2014 at the Office of the Prosecutor-General following interrogation and was charged under Articles 192.2.2 (illegal entrepreneurship), 213.1 (large-scale tax evasion) and 308.2 (abuse of power) of the Azerbaijani Criminal Code. The interrogation started at 9 am on that day and lasted for approximately 30 minutes and related to his biography and family situation and his human rights work rather than the criminal case he was supposed to be questioned about.

#### *Remand in custody*

On 8 August 2014 the Nasimi District Court, relying on the official charges brought against Intigam Aliyev and the prosecutor's request to remand him in custody, ordered his detention for a period of three months. The court referred to the gravity of the charges and the likelihood of him absconding from the investigation and influence other participants in the criminal proceedings if released from custody.

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11 ECtHR, Intigam Aliyev v. Azerbaijan, no. 68762/14, lodged on 16 October 2014, communicated on 19 November 2014.

On 11 August 2014 Intigam Aliyev appealed the detention order, stating that there was no reasonable suspicion that he had committed a criminal offence and that his remand in custody was unjustified. He pointed out that the court had failed to give reasons for the detention on remand and to take into account his personal circumstances, such as his social and family status, his state of health and his age.

On 13 August 2014 the Baku Court of Appeal dismissed Intigam Aliyev's appeal, finding that the decision of the court of first-instance lawful. The Court of Appeal agreed that there had been grounds to remand Intigam Aliyev in custody and added that the contacts Intigam Aliyev had with Ukraine, Germany and Georgia were to be regarded as evidence that he could flee abroad. The Court of Appeal did not comment on whether the possibility of travelling abroad could easily be ruled out simply by withholding the defendant's passport.

On 3 September 2014 Intigam Aliyev asked the Nasimi District Court to release him on bail or to place him under house arrest in lieu of being remanded in custody. On 12 September 2014 the Nasimi District Court dismissed the request, finding that there was no need to change the preventive measure of remand in custody. On 22 September 2014 the Baku Court of Appeal upheld the decision of the court of first-instance.

On 24 October 2014 the Nasimi District Court extended Intigam Aliyev's pre-trial detention by three months, until 8 February 2015. The court referred to the fact that more time was needed to complete the investigation and that the grounds for the accused's detention had not changed. On the same day the Nasimi District Court also dismissed Intigam Aliyev's request to release him on bail or to place him under house arrest in lieu of being remanded in custody.

On 27 October 2014 Intigam Aliyev appealed against the order of the Nazimi Court, arguing that the first-instance court had failed to give sufficient reasons for the continued detention. On 29 October 2014 the Baku Court of Appeal upheld the court orders of 24 October 2014.

#### *Searches of Intigam Mr. Aliev's home and the LSE's offices*

On 7 August 2014 the Nasimi District Court granted the prosecutor's request to order a search of the LSE's offices and "other places of storage evidence".

On 8 August 2014 the investigation carried out a search at Intigam Aliyev's home. According to the search record, the search was carried out in the presence of Intigam Aliyev's lawyer, members of his family and two attesting witnesses. The investigation seized documents, computers, USB flash drives and other electronic data storage devices.

On 9 August 2014 the investigation carried out a search at the LSE's offices. The search record indicates that all documents found in the office, including the case files and documents relating to the applications pending before the Court and the domestic courts, were taken by the investigation. Case-files of at least 29 applications pending before the European Court of Human Rights were also seized.<sup>12</sup>

Intigam Aliyev complained to the Nasimi District Court that the searches had been unlawful, that there had been no legal basis for them, that the investigator had failed to register each document seized and to make

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12 ECtHR, *Annagi Hajibeyli v. Azerbaijan* and 28 other applications, nos. 2204/11, communicated on 5 February 2015.

an inventory of documents seized. He further complained about the seizure of numerous documents and files relating to the ongoing court proceedings before the ECtHR and the domestic courts.

On 12 September 2014 the Nasimi District Court dismissed the claim. It held that the searches had been conducted in accordance with the applicable law. As to the seizure of the documents relating to the cases pending before the ECtHR and the domestic courts, it found that they could not be returned to Intigam Mr. Aliyev at this stage of the proceedings.

Intigam Aliyev appealed further, but on 23 September 2014 the Baku Court of Appeal dismissed the appeal and upheld the first-instance court's decision of 12 September 2014.

### *Conditions of detention and transportation*

Following his arrest, Intigam Aliyev was taken to the Baku Pre-trial Detention Facility of the Ministry of Justice situated in Kurdakhani.

From 8 to 12 August 2014 he was detained in a small cell with eight other detainees, all of whom were smokers except Intigam Aliyev but there was no designated place for smoking. It was very hot in the cell and there it was not adequately ventilated. There was no bathroom and the sanitary conditions were very bad. Water was available for only two hours per day. The light was on permanently.

On 12 August 2014, following a visit of an International Committee of the Red Cross delegation, Intigam Aliyev was transferred to another cell. He was then detained in a cell measuring 12 sq. m. with three other detainees. The cell was not adequately ventilated and it was very hot in August and September and very cold during the cold season because the central heating was only switched on after 15 November. Hot water was available only twice a week. The light was never switched off which made it difficult to sleep.

The food was meagre and of poor quality and was supplemented with food sent by Intigam Aliyev's family. However, he was entitled to receive only one food parcel per week and the absence of a refrigerator meant it was impossible to keep food fresh.

Intigam Aliyev was transported to court for trial several times to and from the Baku Pre-trial Detention Facility. The distance between the detention facility and the courthouse is about 15-20 kilometres. The detainees were transported in special vans and the journey usually lasted about one hour. There was no appropriate place to sit or stand inside the vans. No ventilation or air conditioning was available. On one occasion Intigam Aliyev and nine other detainees were transported in a van designed for eight persons.

The cell in the Nasimi District Court where Mr. Aliyev was held on the days of the hearings was not ventilated and was deprived of daylight. There was one small window which had metal bars and was not open. The room was small and measured 4-5 sq. m. He shared this room with four detainees while waiting for his hearing. He was not provided with food or water.

## **CHARGES**

Intigam Aliyev was charged with crimes under Articles 179.3.2 (misappropriation), 192.2.2 (illegal

entrepreneurship), 213.1 (large-scale tax evasion), 308.2 (abuse of power) and 313 (official forgery) of the Azerbaijani Criminal Code. The factual basis for the charges is as follows.

In the bill of indictment of 29 December 2009, the prosecution claimed that Intigam Aliyev failed to register the fact of his re-election as a Chairman of LES, which in turn allegedly means that all his actions in a position of the Chairman of LES during the period of 2009-2014 were illegitimate. The prosecution claimed that Intigam Aliyev did not have a right to sign any grant agreements conduct any financial operations and in that way abused his power and engaged in illegal entrepreneurship and misappropriated the grant funds.

The bill of indictment further listed 13 grant agreements with 7 different donors, including Human Rights House Foundation, OSCE Office in Baku, the Netherlands Helsinki Committee, ABA CEELI and the Embassy of the Czech Republic in Azerbaijan, concluded between 2008 and 2013 and seized during the search of LES offices. The investigation, referring to the letters from the Ministry of Justice of Azerbaijan, asserted that none of the grant agreements were registered with the Ministry of Justice. The total sum of the grant agreements, as appeared in the bill of indictment, was 496,729.25 AZN and the unpaid taxes totalled 65,636.85 AZN.

According to the same bill of indictment, from 2009 Mr. Aliyev as the chairperson of LES, instructed LES's chief accountant Ms. Gulshan Orujova to open a bank account in the name of her sister Ms. Afsana Orujova and to employ the latter as a translator and computer operator for LES. A salary was then paid to Afsana Orujova's account which she was instructed to cash in and hand back to Intigam Aliyev. According to the bill of indictment, a total of 119,025 AZN was transferred Afsana Orujova's account.

Despite the fact that the prosecution refers to Gulshan and Afsana Orujova as involved in the alleged commitment of criminal acts, both of them were granted victim status in the criminal proceedings against Intigam Aliyev. Gulshan Orujova testified that she was instructed by Intigam Aliyev to open the bank account in her sister's name "in order to make the expenditure [of the money received through various grants] official".

The bill of indictment did not specify which specific acts attributed to Mr. Aliyev constituted each of the crimes he was charged with.

## **TRIAL AND JUDGMENT**

On 23 January 2015 the trial of Intigam Aliyev began at the Baku Serious Crimes Court. At the preparatory hearing held on that day Intigam Aliyev moved that he be released from the metal cage in the dock where he was kept in the courtroom during the proceedings and be allowed to sit alongside his lawyers. He claimed that he was not able to consult with his lawyers from the cage and that keeping person in a metal cage at the trial was a violation of human dignity. The motion was dismissed.

However, at the next hearing held on 3 February 2015, the judges allowed him to sit outside the metal cage together with his lawyers. Furthermore, the judges decided not to call his lawyers for cross-examination who had been questioned in the course of the pre-trial investigation of his case, namely Fariz Namazli, Anar Gasimli, Alayif Hasanov and Adil Ismayilov.

The trial court dismissed all other motions of the defence, namely, to appoint forensic graphologist to

examine certain signatures on the documents contained in the case-file claimed as falsified by the victims; to allow audio and video recording of the trial; and to admit the screen shots of the Ministry of Justice grant register provided by defence. The decision on the return the case-files of the ECtHR cases to the LES was deferred until the end of the trial.

On 17 February 2015 victim Gulshan Orujova was questioned in court and stated that she did not remember any instructions given to her by Intigam Aliyev regarding money transfers but that overall she was acting under his supervision. At the hearing of 3 March 2015 she made further contradictory statements when pressed by the defence to indicate the exact circumstances of the orders to transfer money to Afsana Orujova were given. The presiding judge interrupted the defence questioning of Gulnara Orujova and concluded that she stated that she had been given orders to transfer money to her sister's bank account.

On 10 March 2015 Afsana Orujova gave evidence to the court and said she did not remember how many accounts she had and at which banks. The presiding judge disallowed defence questions when the defence pressed her to give exact circumstances in which she had received payments from the LES. The presiding judge declared the questioning over, so that the defence was not able to ask the questions it considered necessary.

The court of first instance also dismissed the defence submission that the Ministry of Justice had confirmed the registration of the impugned grants by having published statements to that end on their web-site. The defence produced a cached version of the relevant page of the Ministry's Internet web-site certified by a Georgian notary. This piece of evidence was dismissed on the grounds that it was allegedly impossible for the court to establish the origin of the document.

In the closing submissions to the trial court the victims said that Intigam Aliyev was an Armenian spy.

On 22 April 2015 Intigam Aliyev was convicted as charged. The court referred to allegedly unregistered grants and transactions and relied on Intigam Aliyev's alleged failure to have his re-election as LES chairman registered by the Ministry of Justice. According to the judgment, this was brought to Intigam Aliyev's attention in 2014, but he, "as the leader of the Legal Education Society, signed grant contracts with donor organizations, carried out grant activities, employed employees to various positions, organized payment of money under the name of salary and honoraria, violated the provisions of the legislation regulating the activity of non-governmental organizations". In assessing the damage the court of first instance relied on the audit report presented by a commission which had been appointed by the prosecution".

As regards the return of the case-files of the applications pending before the ECtHR, the court ruled that the defence was not able to provide a list of all documents it sought return of, so the motion was dismissed. This disregarded the fact that the investigation had seized the documents without compiling an exhaustive list of them either at the time of seizure not at any other occasion.

After the delivery of the judgment the presiding judge, Mr. Sadykov, stated Intigam Aliyev had brought a hundred of cases to the ECtHR, but none of them concerned "refugees or internally displaced persons"<sup>13</sup>, which is a reference to people from the Nagorno-Karabakh region.

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13 <http://www.azadliq.org/content/article/26972206.html> (last accessed on 18 November 2015).



Intigam Aliyev was sentenced to 7 years and 6 months in prison and banned on holding any official position for three years after his release, but he was not ordered to pay fines or damages.

On 12 May 2015 the defence appealed.

On 21 July 2015 the Baku Court of Appeal heard and dismissed the appeal. The Court of Appeal decided to dispense with the re-hearing of evidence and only heard the parties' submissions. At the appeal hearing Intigam Aliyev stood in a glass cage in the dock, (colloquially referred to as "aquarium"), after the court refused his request to be allowed to sit alongside his lawyers. The glass cage prevented him not only from consulting with his lawyers, but also from effectively hearing what was going on in the courtroom and from addressing the court. He could only speak through the microphone that was turned on and off on instructions from the presiding judge, Mr. Mirali Abbasov. The appeal hearing was held in a small courtroom, which could not accommodate the observers and no alternative (such as a live broadcast to a larger room) was arranged.

The cassation appeal before the Supreme Court is pending at the time of writing of this report.

## **KHADIJA ISMAYILOVA**

**Investigative journalist, former Chief of the Baku Bureau of the Radio Free Europe/Radio Liberty. In detention since 5 December 2014, serving a sentence of 7 years on absurd charges with no evidence provided and all alleged "victims" testifying in her favour at the trial.**

Khadija Ismayilova is an award-winning independent journalist in Azerbaijan. She started working as a journalist in Baku in 2005 and has since become an internationally renowned investigative journalist. She worked as a Chief of Baku Bureau from 1 July 2008 to 1 October 2010, and later as radio host for the Azerbaijani service of Radio Free Europe / Radio Liberty (Azadliq Radio, "RFE/RL"), and cooperated with the Organised Crime and Corruption Reporting Project.

In the last several years, Khadija Ismayilova has uncovered and written about serious cases of corruption in Azerbaijan. In 2010 and 2011, she published and contributed to several newspaper articles that revealed corruption by the Azerbaijani Presidential family. She continued her work as a journalist despite receiving numerous threats, blackmail attempts and coming under pressure from the authorities. Both before and after her arrest, Khadija Ismayilova received several awards for her outstanding work, including the Gerd Bucerius Free Press of Eastern Europe Award by the Norwegian Fritt Ord Foundation and the German ZEIT Foundation, the Courage of Journalism Award by the International Women's Media Foundation, and the Anna Politkovskaya Award.

### **CHARGES**

Khadija Ismayilova was initially accused of inciting her former colleague Tural Mustafayev to commit suicide, which led to her arrest on 5 December 2014 as such actions are criminalised in Azerbaijan (Article 125 of the Criminal Code). The investigation was initiated following a letter from Tural Mustafayev to the Prosecutor's Office accusing Khadija Ismayilova.

On 13 February 2015, four additional charges were filed against her: large-scale misappropriation (Art. 179(3)(2) CC), illegal entrepreneurship (Art. 192(2)(2) CC), tax evasion (Art. 213(1) CC), and abuse of power (Art. 308(2) CC). She was accused of illegally gaining 335.880,54 AZN and evading taxes of 45.145,53 AZN.

The charges allegedly relate to Khadija Ismayilova's work as a Chief of Baku Bureau with RFE/RL during the period of 1 July 2008 to 1 October 2010. Khadija Ismayilova was accused of illegally entering into service agreements rather than employment agreements with a number of journalists and allegedly forcing them to work as individual tax payers, a status which carries lower taxes (14% and 4%), and in that way avoided paying income tax. Despite the fact that the RFE/RL Baku office was a content provider and not a broadcaster, she was also accused of operating the radio's without a license from the domestic authorities and of having signed contracts with individuals as a representative of a foreign press agency without accreditation from the Ministry of Foreign Affairs.

## **INVESTIGATION AND PRE-TRIAL DETENTION**

### *Institution of criminal proceedings and remand in custody*

On 26 November 2014, Tural Mustafayev, former colleague of Khadija Ismayilova, sent a letter of complaint to the General Prosecutor's Office of Azerbaijan accusing her of inciting him to commit suicide. On 20 October 2014, Tural Mustafayev allegedly attempted to commit suicide. An investigation was launched four days later, on 24 October 2014.

On 5 December 2014, Khadija Ismayilova was summoned to the Prosecutor's Office for questioning following the complaint. She was questioned in the presence of Tural Mustafayev. She explained that she had no involvement in the case and that there had not been any contact between her and Tural Mustafayev since 9 March 2014. Nonetheless, after an hour of questioning, she was arrested and put in pre-trial detention for two months in the Kurdakhani Detention Centre.

On 6 December 2014 the Prosecutor General's Office made a public statement entitled "Khadija Ismayilova's illegal acts have been exposed" ("Xədicə İsmayilovanın qanunazidd fəhşəli ifşası") which was published in the media. The statement officially informed the public of the institution of criminal proceedings against Khadija Ismayilova under Article 125 of the Criminal Code.

On 11 December 2014 the Baku Court of Appeal dismissed Khadija Ismayilova's appeal against the decision to place her under pre-trial detention, finding that the detention order was justified. Both the Sabail District Court and the Baku Court of Appeal dismissed her requests to replace her pre-trial detention by house arrest by their decisions of 26 December 2014 and 30 December 2014 arguing that there was a risk of her absconding from and obstructing the investigation.

On 27 December 2014, Tural Mustafayev publicly announced his intention to withdraw his complaint. He was detained for several days shortly after although no charges were brought against him.

### *Additional charges*

On 13 February 2015, four additional charges of large-scale misappropriation (Art. 179(3)(2) CC), illegal entrepreneurship (Art. 192(2)(2) CC), tax evasion (Art. 213(1) CC), and abuse of power (Art. 308(2) CC) were

filed against Khadija Ismayilova following the publication of the audit report by experts of the Ministry of Taxes. The report referred to the intermediate act prepared by the Ministry of Taxes on 19 January 2015.

Both criminal cases against Khadija Ismayilova were joined on 27 February 2015.

On 6 March 2015 the Nasimi District Court extended Khadija Ismayilova's pre-trial detention until 24 May 2015 arguing that due to the complexity of the case and the fact that a number of investigative steps needed to be carried out more time was needed to complete the investigation. On 12 March 2015 the Baku Court of Appeal dismissed the appeal lodged by Khadija Ismayilova's lawyers.

On 8 April 2015, Tural Mustafayev indicated in an interview with RFE/RL that he had finally withdrawn his complaint against Khadija Ismayilova<sup>14</sup>. He denied that she had any involvement in his suicide attempt. However, despite this, the charges of "incitement to suicide" have not been dropped.

On 14 May 2015 the Nasimi District Court again extended the pre-trial detention for three months, until 24 August 2015, a decision which was upheld by the Baku Court of Appeal on 21 May 2015 after Khadija Ismayilova submitted an appeal. Her request for replacement of the preventive measure by house arrest was also dismissed by both courts on 15 May 2015 and 21 May 2015.

## **TRIAL AND JUDGEMENT**

The trial commenced on 7 August 2015 and continued throughout eight hearings, four of which were held on consecutive days, which is not common practice in Azerbaijan. Although many of Khadija Ismayilova's supporters including diplomats, journalists, human rights defenders and friends and family gathered outside the court building before each hearing, only a few of them were let into the court room due to the very limited space there. For example, on 7 August 2015, no family members, independent journalists or activists were allowed inside the court while no diplomats were allowed on 31 August 2015. Those who attended the hearing later reported that there were many observers who neither Khadija Ismayilova nor those present at the hearing could identify. When asked for an interview, they refused and insisted on not being filmed. Orkhan Rustamzadeh, colleague of Khadija Ismayilova, was arrested and taken to a police station for two hours after he tried to prepare a video report on the hearing outside the building.

During the same hearing, Khadija Ismayilova filed motions requesting to allow her to familiarise herself with case files and learn what evidence was provided in support of the accusations. This request was dismissed. As Khadija Ismayilova was accused of illegally signing service agreements with 11 individuals as a Chief of Baku Bureau, which she denied, she demanded that the prosecution provide copies of such agreements as evidence in the case. Such agreements were never added to the case file. The defence team also argued that entering into service agreements rather than employment agreements is neither criminal nor illegal and therefore Khadija Ismayilova should not be prosecuted for that in any case.

The defence also requested to record proceedings; to ensure the compulsory participation of a victim; to release Ms Ismayilova from the glass cell in the dock and allow her to sit next to her lawyers; to file a request for information to the International Bank of Azerbaijan; to include the tax inspection documents carried out into the radio station into the case file; and to allow independent media to attend a court hearing. All motions

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<sup>14</sup> <http://www.azadliq.org/content/article/26944722.html>

were dismissed by the judges without any substantive argumentation. Khadija Ismayilova then filed a petition objecting to the court composition, which was similarly dismissed as lacking evidence.

During the hearing of 10 August 2015, Tural Mustafayev stated that he had no claims and that Khadija Ismayilova had played no role in his suicide attempt.

21 witnesses and the victim Tural Mustafayev were interrogated during the hearings. Only 4 out of 11 individuals who allegedly signed service agreements with Khadija Ismayilova were called for questioning by the court, which argued that the presence of such agreements is sufficient as evidence but copies of such agreements were never added to the case file. All the individuals questioned denied they signed such agreements with Khadija Ismayilova.

On 7 August 2015, Aynur Imranova, a journalist and a colleague of Khadija Ismayilova was questioned as a witness and later gave an interview to the media where she stated that she had come under pressure from officials of the prosecutor's office to testify against Khadija Ismayilova.

On 12-13 August 2015, Khadija Ismayilova requested that these media interviews to the case file and to call additional witnesses and add evidence proving her innocence.

The additional witnesses suggested by the defence included representatives of National Council of Television and Radio and Ministry of Communication to clarify the issue regarding the license.

On 19 August 2015, the defence team requested the court to initiate a new examination into issues related to the accusations, such as the differences between employment and services agreements, the issue of whether RFE/RL was subject to profit tax, accreditation of journalistic activity by the Ministry of Foreign Affairs and others. Khadija Ismayilova requested calling officials of the Ministry of Taxes and experts who prepared the report for questioning and to include a submission by the Free Europe Corporation concerning the charges against her. Only the first request was partly upheld and two officials were invited to the court.

On 31 August 2015, Khadija Ismayilova delivered her final speech, which was interrupted by the judges who left the court/room without allowing her to finish comparing her charges with her journalistic investigations revealing high level corruption cases.

On 1 September 2015, Baku Serious Crimes Court sentenced Ms Ismayilova to seven years in prison under the charges of large-scale misappropriation, illegal entrepreneurship, tax evasion and abuse of power. She was acquitted of the charges of incitement to commit suicide.

On 18 September 2015, Ms Ismayilova appealed the decision of the first instance court arguing that there was no legitimate basis for the charges and no evidence was provided to prove such accusations. On 25 November 2015, the Baku Court of Appeal dismissed her appeal.

## 4. PRESSURE AGAINST THE DEFENCE LAWYERS OF HUMAN RIGHTS DEFENDERS

Defence lawyers representing persecuted human rights defenders in both domestic courts and the ECtHR have now become targets of suppression by the Azerbaijani authorities. They are being subjected to disciplinary proceedings leading to suspension and disbarment, criminal defamation charges, involved as witnesses in criminal cases of human rights defenders and subjected to excessive checks upon arrival at detention centres and prisons. Such repressive actions against those few lawyers who dare to defend political prisoners have a chilling effect on others who remain silent fearing similar repercussions.

### *Disciplinary proceedings and disbarment of lawyers*

Two lawyers of imprisoned human rights defenders and journalists were subjected to disciplinary proceedings leading to disbarment for statements they made about the cases of their clients, others were prevented from defending their clients, and NGO employees were banned from leaving Azerbaijan.

Khalid Baghirov acted as defence lawyer for Leyla Yunus, Arif Yunus and Rasul Jafarov and many other defendants from civil society before his disbarment. Prior to his engagement in these cases he had defended Ilgar Mammadov, an opposition politician prosecuted for his critical writings about the Azerbaijani Government and for alleged involvement in the organization of riots in Ismayili in early 2013.<sup>15</sup> At the appeal hearing Khalid Baghirov told the Court of Appeal that the trial court judgment would have been very different if there were justice and rule of law in Azerbaijan, referring to the fact that the Government failed to implement the ECtHR judgment on Ilgar Mammadov which called his detention was politically motivated. His remarks were treated as offensive to the authority of the judiciary, so the Court of Appeal referred the matter to the Presidium of the Bar Association. Khalid Baghirov's licence to practice was immediately suspended and a request for his disbarment was sent to court, which upheld the request and disbarred Mr Baghirov indefinitely on 10 July 2015.

Alayif Hasanov was one of the defence lawyers of Leyla Yunus. After visiting her in the pre-trial detention centre he publicly declared that his client was facing pressure from one of her cellmates, Nuriya Huseynova, apparently acting on instructions from the penitentiary administration. Nuriya Huseynova filed a criminal complaint for libel against Alayif Hasanov. On 6 November 2014 the Yasamal District Court (Judge Azer Taghiyev presiding) found Alayif Hasanov guilty of libel and sentenced him to 240 hours of community service. The appeal against the conviction was dismissed. But while the appeal on points of law was pending before the Supreme Court, on 3 July 2015 the Presidium of the Bar Association of Azerbaijan initiated disciplinary proceedings and requested the court to disbar Alayif Hasanov on the same grounds.

Neither Mr Hasanov nor Mr Baghirov are now able to represent clients in criminal cases domestically as

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<sup>15</sup> The ECtHR has found a violation of Article 5 ECHR with regard to the pre-trial detention in his case, of Article 6(2) ECHR (presumption of innocence) and of Article 18 ECHR (restriction of rights for the purposes other than indicated in the ECHR, in this case – to silence or punish the applicant for criticising the Government) (see Ilgar Mammadov v. Azerbaijan, no. 15172/13, 22.05.2014).

legislation requires membership at the Bar Association as a condition for lawyers to practice law in criminal cases. It is widely believed such actions were taken against both lawyers to prevent them continuing their human rights defence work.

#### *Restrictions on defence and lawyer-client communications*

Lawyers defending imprisoned human rights defenders, journalists, activists and other critical voices are subjected to discriminatory and abusive treatment upon arrival to and departure from detention centres and prisons. They are being extensively searched and their notes and other material are often reviewed by prison officials. Such abusive behaviour violates the core principle of lawyer-client confidentiality and prevents the political prisoners from effective defence.

For example, prior to the disciplinary proceedings against them, Khalid Baghirov and Alayif Hasanov were prevented from visiting Leyla Yunus in detention on a number of occasions. On 23 September 2014 three lawyers defending Leyla Yunus (the third was Javad Javadov) told the press that the previous day Khalid Baghirov had gone to see Leyla Yunus in pre-trial detention, but was refused permission to see her by the penitentiary administration, on the grounds that she had allegedly been ill and had been unwilling to see her lawyer – improbable according to her counsel.

A number of lawyers of imprisoned human rights defenders were prevented from continuing their defence work as they were called in as witnesses in the criminal proceedings against Intigam Aliyev and Leyla Yunus. On 30 September 2014, Fariz Namazli, Alayif Hasanov, Adil Ismayilov and Anar Gasimli, four of the five lawyers who have been representing the high-profile human rights lawyer Intigam Aliyev since his detention on 8 August 2014, were removed, and summoned as witnesses in the case.

On 29 October, Javad Javadov, a lawyer who has been representing human rights defender Leyla Yunus since her arrest on 30 July was removed from the case and summoned as a witness by the prosecutor. On 5 November, Khalid Bagirov was also banned from defending her and was informed that he was removed from the case because of a purported conflict of interest as he defended both defendants – Leyla Yunus and her husband Arif Yunus - in the case. They were not given any official explanation of this decision.

## **5. VIOLATIONS OF HUMAN RIGHTS, FUNDAMENTAL FREEDOMS AND LAW IN INDIVIDUAL CASES**

This chapter aims to provide credible and evidence-based information on numerous substantive and procedural violations in selected cases and demonstrate how domestic legislation, its abusive application, and the judicial system served as the key tools enabling the authorities to silence critical voices.

The Azerbaijani authorities have been systematically oppressing independent civil society and media figures and reducing the space in which they can operate. Criminal law has become the main tool by which those who defend the rule of law and human rights are suppressed. In this way, the government criminalizes their

legitimate work.

The key methods include:

- Abusive and selective application of the already restrictive legislation on NGOs and grants, often in violation with Azerbaijani law and outright forgery by the authorities;
- Bringing ungrounded criminal charges with inconsistent evidence;
- Abusive recourse to pre-trial detention as a preventive measure;
- Gross violations of the right to fair trial during judicial proceedings;
- Detention of defendants in inhuman and degrading conditions;
- Failure to provide adequate medical assistance;

## **ABUSIVE AND SELECTIVE APPLICATION OF THE ALREADY RESTRICTIVE LEGISLATION ON NGOS AND GRANTS**

### *NGO registration*

The overly restrictive legislation establishing registration systems for NGOs and grants provides a framework for the government's systemic suppression of civil society in recent years. The state's actions allow situations where the normal functioning of civic organizations may, as soon as the state wishes, be post factum described as a criminal offence.

The majority of the criminal cases examined in this report stem from the domestic authorities' failure to register independent human rights NGOs and/or their grants, in violation of Azerbaijani municipal laws or obligations under international treaties, such as the ECHR and the ICCPR.

For example, the Ministry of Justice refused to register Human Rights Club, an NGO whose co-founders included Rasul Jafarov and Emin Huseynov, on three occasions. The reasons given for these refusals were: failure to provide copies of the founders' IDs; failure to sign the application for registration; and failure to appoint a single representative (despite this being optional under the provisions of article 5.4 of the State Registration and Register of Legal Entities Act). This stance was deemed legal by the Azerbaijani courts, including the Supreme Court, which did not even consider the NGO founders' submissions that their basic right to freedom of association was at stake.<sup>16</sup>

Another example is the case of Leyla Yunus where the charges against her are based around the fact that the Institute for Peace and Democracy lacked state registration and failed to register its grants. The IPD was established in 2002 and unsuccessfully attempted to get the state registration in 2003 and in later years.

Without a status of a legal entity in Azerbaijan, an NGO cannot open bank accounts, receive funds, employ

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16 Jafarov and others v. Azerbaijan, application no. 27309/14, communicated on 14 October 2015.



staff, nor can it pay taxes. Any paid activity is thus legally impossible, which resulted in the situation where the Azerbaijani authorities forced activists to rely on the bank accounts of other registered NGOs (as in the case of Anar Mammadli) or on their personal bank accounts (as in the case of Rasul Jafarov).

This state of affairs grossly violates the right to freedom of association, as confirmed by both the ECtHR and the UN Human Rights Committee. The ECtHR has held that the ECHR does not prevent state authorities from laying down 'reasonable legal formalities' as to the 'establishment, functioning or internal organisational structure' of NGOs.<sup>17</sup> Nevertheless, the Court has frequently found that restrictions placed on civil society organisations have breached the ECHR, notably arising from the authorities' failure<sup>18</sup> or refusal<sup>19</sup> to register an organisation, or resulting from direct interference with their activities<sup>20</sup>, or from the dissolution of an NGO.<sup>21</sup>

In its Views on the communication of *Pinchuk v. Belarus*, which concerned the imprisonment of the applicant's husband, Ales Byalyatski convicted on charges of tax evasion after the Belarusian authorities had refused to register the Human Rights Centre "Viasna" of which he was director the Committee found that "the refusal of registration led directly to the unlawfulness of operation of the unregistered organization on the State party's territory and directly precluded [Mr. Byalyatski] from enjoying his freedom of association with the other members of the association", as guaranteed by Article 22 of the ICCPR<sup>22</sup>.

The Azerbaijani system of NGO registration was described as "retrograde" by the Council of Europe Conference of International NGOs back in 2011.<sup>23</sup> In the same year, referring to the closure of the Human Rights House in Baku, the Venice Commission of the Council of Europe had the impression that "the monitoring of human rights situation in Azerbaijan by NGOs is not truly desired by the Azerbaijani authorities" and that 'the 2009 amendments and the 2011 decree unfortunately overturn the previous efforts to meet with the requirements of international standards'<sup>24</sup>.

In its opinion of 15 December 2014 on the latest restrictive amendments to laws regulating NGO activities which practically disabled any NGO activity, and with key NGO leaders already in detention, the Venice Commission concluded that 'globally, the cumulative effect of those stringent requirements, in addition to the wide discretion given to the executive authorities regarding the registration, operation and funding of NGOs, is likely to have a chilling effect on the civil society, especially on those associations that are devoted to key

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17 Tebieti Mühafize Cəmiyyəti and İsrailov v Azerbaijan, No. 37083/03, 8.10.2009, para. 72.

18 See, e.g., *Ramzanova and Others v Azerbaijan*, No. 44363/02, 1.2.2007

19 See, e.g., *Zhechev v Bulgaria*

20 See, e.g., *United Macedonian Organisation Ilinden and Others v Bulgaria (No. 2)* (No. 34960/04), 18.10.2011.

21 See, e.g., *Tebieti Mühafize Cəmiyyəti and İsrailov v Azerbaijan*, No. 37083/03, 8.10.2009.

22 No. 2165/2012, 17 November 2014, UN Doc. CCPR/C/112/D/2165/2012, para 8.5

23 Recommendation on the Opinion of the Expert Council on NGO Law on the amendments in 2009 to the NGO law in Azerbaijan and their application, Adopted by the Standing Committee on behalf of the Conference of INGOs, 3 October 2011, CONF/PLE(2011)REC4.

24 Opinion No 636/2011 on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011), paras 17 and 102

issues such as human rights, democracy and the rule of law.’<sup>25</sup>

As noted by the Council of Europe’s Commissioner for Human Rights in the third party intervention in the case of Rasul Jafarov v Azerbaijan in April 2015, “the problems relating to the registration of NGO’s had not abated. In this respect, the Commissioner stressed that the cumbersome requirements for registration inevitably drive a number of NGO’s to operate on the fringes of the law. He also expressed worries about new amendments to the law on NGOs and the law on grants. These amendments which were adopted on 17 December 2013 and signed into law by the President of Azerbaijan on 3 February 2014, introduce additional administrative requirements with regard to the registration of NGO’s as legal entities, the receipt and use of grants by those NGO’s and their reporting obligations to the government...The Commissioner noted that due to the very broad and vague wording of the majority of the provisions... excessive discretion was left in applying the new provisions”<sup>26</sup>

The refusals to register NGOs and their grants and the criminal proceedings initiated against their leaders went far beyond the assessments of the Council of Europe bodies.

### *Registration of grants*

The obligation for NGOs to register grants was established in 2003<sup>27</sup> by Presidential Decree. The Decree, of 2 January 2003, #834, stipulated that the Ministry of Justice would register contracts signed by non-governmental legal persons (entities). On 12 February 2004, the President of Azerbaijan adopted the Rules on registration of contracts (decisions) awarding grants”, #27.<sup>28</sup> They did not contain any provisions requiring the registration of grants received by individuals, nor did they define the executive agency in charge of registration.

All that was required from an NGO that received foreign funding was to send a copy of a grant agreement and an Azerbaijani translation to the Ministry of Justice. This already meant that NGOs had to pay for costly translation services. The Ministry would then publish information on the registration of the grant agreement on its web-site. There was however no other confirmation of a “grant registration” on the part of the Ministry. Yet another legislative amendment was introduced in 2009 whereby NGO could not engage in any activity unless the grant was registered by the Ministry of Justice.

In March 2013, the government introduced further legislative amendments which increased sanctions for NGOs receiving donor funding but not registering their grants agreements with the Ministry. The highly punitive nature of the fines serves as a pretext for government harassment of NGOs. The following amendments were introduced into the Code of Administrative Offences (2000):

- a) 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 of between 5,000 and 7,000 AZN; a founder may be held personally liable and fined from 1,000 to 2,500 AZN;

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<sup>25</sup> Opinion on the Law on non-governmental Organisations (Public Associations and Funds) as amended of the Republic of Azerbaijan, adopted by the Venice Commission at its 101st Plenary Session (Venice, 12-13 December 2014), para 93.

<sup>26</sup> Commissioner for Human Rights, Third Party Intervention in the case of Rasul Jafarov v Azerbaijan, Application No. 69981/14, CommDH(2015)8 paragraph 21

<sup>27</sup> Article 4.4 of the Law on Grants

<sup>28</sup> [http://www.justice.gov.az/images/grantin\\_alinmasi.doc](http://www.justice.gov.az/images/grantin_alinmasi.doc)

- b) Absence of a grant agreement may result in fines of between 8,000 to 15,000 AZN and/or confiscation of the NGO's property; individuals may be held personally liable and fined from between 2,500 to 5,000 AZN;
- c) Failure to include the requisite information on donations received by an NGO or persons donating the funds in financial reports submitted to the relevant government agencies can lead to a fine ranging from 5,000 to 8,000 AZN for NGOs and between 1,500 to 3,000 AZN for NGO managers;
- d) 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;
- e) 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.

On 3 February 2014, new amendments placing additional restrictions on independent NGOs were signed into law<sup>29</sup>. The amendments introduced a number of new obligations for Azerbaijani and foreign organizations, including a requirement for individual recipients of grants to register grants with the Ministry of Justice in the same way as organisations, the registration of sub-grants as well as original grants, and the requirement that agreements between foreign NGOs and the Ministry of Justice must include an expiry date. Significantly, the provisions of the NGO law also apply to branches and representations of foreign NGOs.

The February 2014 amendments specify the following additional grounds for suspension of an NGO's activities: when the NGO's activities impede measures to resolve emergency situations; when the NGO has been penalised for failure to rectify deficiencies identified by the Ministry of Justice and has not done so; and when the NGO breaches the rights of its members.

These amendments have clearly established burdensome obligations for NGOs and strict administrative liability with punitive fines for legislative violations. This has also opportunities for the abusive application of legislation by the authorities.

Furthermore, whereas Azerbaijani legislation provides for the obligation to register both NGO and personal grants, it was only the registration procedure for NGOs that was adopted. Despite the existence of the obligation to register, those receiving personal grants as Rasul Jafarov did, could not have been required to provide the registration paperwork as no procedure for such registration was established in legislation (which documents are to be provided; when and where to send the documents, etc). Only after the Presidential Decree #99 of 1 February 2014, On implementation of the "Law on amendments to the Law of Azerbaijan Republic on Grants" of 17 December 2013, #852-IVQD", was it established for the first time that the Ministry of Justice would register contracts received by non-commercial entities and physical persons<sup>30</sup>. Since February 2014, Rasul Jafarov, for example, did not disperse any grant funds fearing administrative liability as foreseen in the laws.

In the case of the NGOs of Intigam Aliyev (LES) and Emin Huseynov (IRFS), both were registered, but found out in the course of 2014 that the lack of any hard copies in evidence of the registration of their grants meant that the Ministry of Justice simply deleted the relevant information from its web-site and stated in writing that the impugned grant agreements had never been registered. While the defence relied on cached confirmations

<sup>29</sup> Law on "State Registration and State Register of Legal Entities" of 2003, Law on Non-governmental organizations (public unions and funds) of 2009, Law on Grants of 1998; Code of Administrative Offences of 2000.

<sup>30</sup> <http://www.president.az/articles/10914>

that had indeed been published on the Ministry's web-site, the Azerbaijani courts simply dismissed this evidence without ever discussing its probative value. The Ministry's post factum confirmation that there had been no registration of the grant agreements was instead accepted by the courts at face value.

The authorities have clearly established a legal framework which restricts the space for civil society and makes it practically impossible to operate for those that cannot acquire state and/or grant registration as a result of the abusive application of the existing procedures by the authorities. This clearly allows the authorities to suppress NGOs which are critical of the government by using administrative liability, which may even lead to closure of NGOs, as stipulated in the provisions above. Violations of relevant laws however do not foresee any criminal liability, which sharply contrasts with the criminal persecution of the individuals whose cases figure in this report.

## **BRINGING UNFOUNDED CRIMINAL CHARGES WITH INCONSISTENT EVIDENCE**

The government of Azerbaijan has clearly adopted a strategy of applying vague and perplexing administrative requirements combined with criminal laws to imprison human rights defenders. While this strategy is not initially obvious at face value, upon further scrutiny the government's "legal theory" is exposed.

First, the government alleges that the NGO has failed to comply with some provision of Azerbaijani administrative law. In particular, the authorities have repeatedly relied on alleged failures to register foreign grants.

Then, authorities charge the individual NGO leader with unrelated violations of the Criminal Code such as laws against illegal business activity, tax evasion, and abuse of office.

The government essentially relies upon the legal theory that violations of the administrative code, of whatever type, render the activity of an NGO "commercial" thereby subjecting it to a different set of regulatory and tax requirements. The government then accuses the individuals of failing to comply with commercial regulations and alleges associated criminal liability while failure to comply with NGO regulations does not impose any criminal liability.

As a general rule, authorities cannot, at their own discretion, change the tax regime from a non-for-profit to a commercial one even if there is a failure to comply with some provisions, even if the non-compliance results into a criminal sanction. After a close examination, it becomes clear that the use of organisational charges, like the use of allegedly politically motivated charges, are a blatant attempt to put independent NGOs out of operation and punish their leaders by criminalising their work and putting them to prison.

Anar Mammadli, Rasul Jafarov, Intigam Aliyev, Emin Huseynov, Leyla Yunus and Arif Yunus faced criminal charges stemming from their NGO activities; Khadija Ismayilova faced criminal charges in relation to her work as Chief of Baku Bureau of the Radio Free Europe / Radio Liberty. They all faced charges of illegal entrepreneurship, tax evasion and misappropriation. Some of them were also charged with abuse of power, forgery, falsification of official documents and fraud.

The extensive examination of the domestic legislation and the nature of the charges show that such criminal charges are ungrounded and inconsistent; and that no credible evidence has been provided to substantiate the allegations.

Charges such as ‘illegal entrepreneurship’ have no legal basis in national law: the law clearly distinguishes between commercial legal entities aimed at profit-making and non-commercial, legal entities which do not aim to generate profit<sup>31</sup>. Individual entrepreneurial activity is also defined by the aim of profit-making. <sup>32</sup>. NGOs are not prohibited from profit-making as long as any profits made are used to further the aims of the organisation. The Taxation Code defines when non-commercial organizations can engage in business activities, and establishes that an activity qualifies as non-commercial if the received income is used for purposes referred to in the founding charter. However, the NGO leaders who have been charged made no financial gain out of the NGOs’ activities, and operated solely on the basis of grants from donors, which would therefore exclude them from the definition of business activity. Their activities were clearly non-commercial.

In its’ 16 April 2014 judgment in the case of Rasul Jafarov, Baku Serious Crimes Court stated that ‘Rasul Jafarov was appointed to the position of the chairman of the Human Rights Club on 10 December 2010 and contrary to Article 16 of the Law of the Republic of Azerbaijan on non-governmental organisations adopted on 13 June 2000 operated as a legal entity under the status of an NGO without being registered by the state, received large sums from foreign donors through agreements not registered with relevant state bodies <...> was engaged in illegal entrepreneurship through forgery and evaded paying taxes to the state budget’. The court directly linked the charges of illegal entrepreneurship as stemming from the fact of non-registration of the HRC and its grants. There was however no obligation to register an NGO and/ individuals grants or prohibition to operate without a registration during the period of operation of Rasul Jafarov and the HRC. There was (and is) no criminal liability foreseen for such actions either.

In *Ramazanov and others v. Azerbaijan*, the ECtHR noted that: “The Government argued that the delay in registration only resulted in the association's temporary inability to acquire the status of a legal entity. However, under the domestic law, lack of the status of a legal entity did not prevent the association from continuing its activities and entering into various contracts, such as the lease of premises, opening a bank account, and other activities.”<sup>33</sup>

In the case of *Khadija Ismayilova*, she was accused of illegal entrepreneurship for allegedly entering into service agreements (rather than concluding employment agreements) with individuals who provided services for the radio as that carries lower income taxes. In that way, she allegedly misappropriated the funds that would have been spent on taxes on employees and therefore engaged in illegal entrepreneurship. However, *Khadija Ismayilova* claims that her duties did not include recruitment or any other managerial tasks and that she was merely responsible for the content of the programs of the radio as the Chief of Baku Bureau. Although the prosecution countered that it is in a possession of such service agreements, they have never provided these to the court as evidence. The witnesses questioned during the court hearing confirmed that they have never concluded any agreements with *Ms Ismayilova*.

In the cases of *Intigam Aliyev* and *Emin Huseynov*, the charges of tax evasion and illegal entrepreneurial activity were based on the fact that the evidence of grant registration was no longer accessible on the

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31 Article 43.5 of the Civil Code of the Republic of Azerbaijan

32 Article 12 of the Civil Code of the Republic of Azerbaijan

33 *Ramazanov and others v. Azerbaijan*, 44363/02, § 48

Ministry's website where such information used to be published. Having deleted the information about grant registration, the authorities started to automatically treat all money received under grant agreements as commercial income subject to VAT. Not only was this a post factum reclassification of the nature of contracts on purely formal and false grounds, the authorities also pretended that the nature of the contract somehow depended on its registration by the Ministry of Justice.

The substance of the activities under grant agreements – that remained unchangeably non-commercial – was never taken into account by the Azerbaijani courts. The fact of deletion of data on grant registration cannot turn a non-commercial activity into a commercial one, so the charge of illegal entrepreneurship was, again, simply invented by the Azerbaijani authorities.

Comparable actions of the Belarusian authorities against Ales Byalyatski have already been condemned by the Human Rights Committee as a violation of Article 22 of the ICCPR (freedom of association). The Committee took into account that the “tax charges arose from the fact that [Mr. Byalyatski] had maintained a bank account in his own name on behalf of the association because the refusal of the State party to register the association prevented him from opening accounts in the association’s name; that in his trial the court did not take into account evidence that the funds were received and spent for the legitimate purposes of the association” (para. 8.6 of the above-cited Views in *Pinchuk v. Belarus*).

The actions of Azerbaijani authorities cannot be qualified any differently. The same conclusions apply to the charges against Leyla Yunus, who never tried to formally register an NGO. If she failed, she would have been in a situation where her activities were precluded by the absence of a registered legal entity. If she succeeded, she could have found her in a situation where the NGO's activities would be post factum described as commercial by the Azerbaijani authorities.

All the examples clearly demonstrate that the charges of illegal entrepreneurship were legally unfounded and no substantiated evidence was provided.

#### *Tax evasion*

The charges of tax evasion follow from the activities of alleged illegal entrepreneurship. The fact that the grants received by NGOs cannot be treated as commercial activities automatically makes tax evasion charges void. Moreover, the domestic legislation explicitly establishes that funds received through grants are not taxable. According to Article 5.2 of Tax Code, money and (or) other pecuniary aid received in accordance with this law as a grant should not be a subject to fees and relevant compulsory payments to the State budget. According to the Article 165.1.2 of Tax Code, for import of goods, provision of goods, implementation of works and provision of services to grant recipients on the expense of financial aid (grants) received from abroad on the basis of grant contract (decision) zero (0) rate VAT shall be applied. The official site of the Ministry of Taxes, in the “Questions and Answers” section establishes that someone who received a grant as a physical person is not considered as engaged in entrepreneurship. 34

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34 <http://taxes.gov.az/modul.php?name=faq&bolme=axtar>

### *Misappropriation of funds*

The funds from non-registered grants cannot be considered as misappropriated if they were dispersed to support the activities as defined in the grant agreements. Moreover, if the prosecution came to the conclusion that the funds were misappropriated, it should have identified the victims of such actions, which, in these cases, would have been the foreign donors. This was never done and more importantly, the defence team presented official statements from the foreign donors in the cases of Rasul Jafarov, Intigam Aliyev and Leyla Yunus confirming that they have no complaints against the defendants and that the grants were dispersed in compliance with the grant agreements. However, for technical reasons the courts refused to include such statements to the case material (due to the absence of official translation into a required language).

The charge of misappropriation requires that there be a victim: a person or legal entity whose money was misappropriated. Given that the charges refer to the misappropriation of the donors' money, it is irregular that the donors themselves were neither consulted on whether they suffered any damage, nor granted victim status in the proceedings. The charges were pressed despite the donors' statements that they did not object to the ways in which money was spent.

If the donors were not recognised as victims, the authorities had to identify other victims. In the case of Intigam Aliyev, the NGO's accountant turned to be a victim. If the latter's statements are to be believed, she was aware of the sham transfers to her sister's account and even initially had come up with the idea of the scheme. If the charges against Intigam Aliyev were consistent, the accountant should have been a co-defendant, not a victim. However, there was no prosecution against her – not even one dropped of her cooperation with the investigation.

Admittedly, the Legal Education Society accountant also testified that she was unable to receive her full salary as she had to return a part of it to Intigam Aliyev. This testimony could have made her a *prima facie* victim, but only with regard to the amount of the allegedly non-received salary. The Azerbaijani authorities, however, treated her as a victim of misappropriation of the entire amounts of over 20 grants from a variety of international donors – as if those sums of money had ever belonged to her – just to proceed with the prosecution regardless of its plausibility.

Consequently, the misappropriation charges against the Azerbaijani human rights defenders were clearly trumped up and fail on their own evidence.

### *Abuse of power*

In the cases analysed, abuse of power is understood as being illegal entrepreneurship activity in the name of a non-registered NGO or activities on behalf of a registered NGO without having the requisite authority to do so. This charge is directly related to the charges discussed above and therefore the illegality of any of those makes the accusations of abuse of power invalid. Both the investigative authorities and the courts referred to 'serious consequences' caused by such actions but none of them explain how the human rights defenders abused their power and which 'serious consequences' entailed.



Intigam Aliyev and Rasul Jafarov were charged with and convicted of official forgery stemming from allegations by the prosecution that the signatures in various cash receipts and payment orders were forged and did not belong to the individuals under whose names receipts were issued.

In the case of Rasul Jafarov, the prosecution claimed that the signatures of five victims in the case were forged despite the fact that the victims themselves claimed these were their signatures and filed requests to the court to revoke their victim status. Furthermore, an alternative forensic expertise of the victims' signatures conducted by an independent expert in Poland at the request of the defence, confirmed that the signatures were authentic. The Baku Serious Crimes Court however dismissed alternative expert's report arguing that a second opinion was unnecessary given the existence of the initial expertise report organised by the Ministry of Justice. The Court included the latter forensic expertise report confirming the forgery of signatures as evidence in the case used to substantiate the conviction of Rasul Jafarov.

In the case of Intigam Aliyev, the prosecution claimed that 29 payment orders were signed by him, which he denied and claimed that they were forged to prove his guilt. The prosecution based its case on the results of the forensic expertise and dismissed the alternative forensic report conducted by an independent expert in Poland concluding that there are significantly different characteristics in the signatures on investigated receipts and copies of signature provided for alternative examination by Intigam Aliyev.

### **ABUSIVE RECOURSE TO PRE-TRIAL DETENTION**

Once charged, all the human rights defenders in the cases analysed were placed in pre-trial detention as a preventive measure for the period of further investigation. Analysis of the case documents showed that all of them were detained in the absence of any reasonable suspicion that they had committed a criminal offence. The authorities were not in possession of sufficient evidence to establish reasonable suspicion, which is required by both domestic legislation and ECtHR case law. For example, in the cases of Intigam Aliyev and Rasul Jafarov, the courts merely referred to it being 'clear from the case materials', without providing any further basis for the assertion of alleged crimes. No access to case material as evidence was provided to them.

As can be seen from the court decisions ordering the pre-trial detention (rather than other preventive measures such as house arrest), that the courts failed to examine all of the facts arguing for or against the necessity for the individuals' detention, and failed to provide sufficient reasons justifying the necessity for their detention. In all cases, the domestic courts had failed to provide relevant and sufficient reasons for detention and merely stated that there was a danger of them absconding, interfering with the investigation, forging or hiding documents, relying solely on the gravity of the charge and the severity of the possible sentence. The courts did not consider any relevant factors such as character, occupation, family ties, place of residence, clean criminal record, and earlier conduct in connection with the prosecution's requests, and so on.

As for the argument of absconding, the passports of the human rights defenders were seized, and travel bans imposed, which would have prevented them of leaving the country. House arrest would have been a sufficient restrictive measure. Instead, the court decisions repeated the arguments of the prosecutor and used vague arguments to back their decisions, which cannot be considered as a genuine verification of the

lawfulness of the detention.

Similarly, the conclusion that they were likely to obstruct the investigation was not based on a review of any relevant facts. All individuals are well known and highly respected in Azerbaijan and their good reputation is essential to their effective work. Therefore, there was no reason for them to negatively impact other persons involved in the case.

As for the forging or hiding of documents, this would not have been possible for any of the individuals as all the material has been seized during the search of their homes and offices which were then sealed in some cases. .

Furthermore, the courts failed to address any of the relevant arguments repeatedly raised against the detention of the human rights defenders and merely reiterated abstract assumptions without any verification. The domestic courts limited their role to one of mere automatic endorsement of the requests of the prosecution and cannot be considered to have conducted a genuine review of the “lawfulness” of the detention.

All individuals in the cases analysed raised the unlawfulness of their pre-trial detention and the absence of reasonable suspicion with the European Court of Human Rights, arguing that their pre-trial detention was politically motivated and aimed at preventing them from continuing their human rights work. The European Court is currently examining their applications and the judgements are awaited.

In some cases, the charges on which the detention was ordered differed significantly from the charges that were actually brought against the defendants. This was particularly true in the cases of Khadija Ismailova and Leyla and Arif Yunus. In the first case the charges related to an alleged incitement to suicide, which, as the alleged victim later confirmed, never happened. But while Khadija Ismailova was in pre-trial detention, financial documentation concerning her was searched and seized by the investigation. In the case of Leyla and Arif Yunus the charges even-more absurdly amounted to high treason. While the defendants were in pre-trial detention fighting those grave and ill-founded charges, the investigation was going through their financial documentation in order to find a way to charge them with the crimes of which they would eventually be convicted.

## **VIOLATIONS OF THE RIGHT TO A FAIR TRIAL**

The judicial proceedings in the cases of those human rights defenders who were brought before the court were carried out with numerous gross violations of fair trial principles, as documented by lawyers and independent trial observers present at the court hearings.

### *Prevention of effective communication with and representation by defence lawyers of one's choice*

In the initial hearings in January 2015, both Intigam Aliyev and Rasul Jafarov were held in a metal cage in the dock, which prevented them from effective and confidential communication with their defence lawyers who were sitting some distance from them. This amounts to inhuman and degrading treatment as found by the ECtHR Grand Chamber in *Svinarenko and Slyadnev v. Russia* (nos. 32541/08 and 43441/08, 17 July 2014). They were allowed to sit next to their lawyers for most of the court hearings in the first instance court after a

request was filed with the court.

Khadija Ismayilova, Leyla and Arif Yunus were held in a glass cage in the dock during the hearings, which made it difficult to communicate both with the lawyers and the judges and the prosecution. At times, a microphone was turned off in several of the court hearings of Leyla and Arif Yunus, which prevented them from effectively participating in their own court process. Rasul Jafarov and Intigam Aliyev were held in the same glass cage in their appeal hearings.

Both the Criminal Procedure Code and the ECHR clearly establish the right of a defendant to effective defence, which encompasses receiving legal assistance at any time during the criminal proceedings and the right to confidential communication, to organize defence and personally participate in the defence. Furthermore, the treatment of individuals accused of economic crimes in such a way is degrading and violates the principle of presumption of innocence as it creates the impression of guilt before the trial has even begun.

A number of defence lawyers in the cases of Intigam Aliyev, Rasul Jafarov, Leyla and Arif Yunus, and Khadija Ismayilova were prevented from defending them for reasons such as their involvement as witnesses in the cases of human rights defenders or due to the initiation of disciplinary proceedings leading to disbarment or criminal defamation charges. For more details, please see Chapter IV 'Pressure Against the Defense Lawyers of Human Rights Defenders'.

#### *Absence of adequate evidence and violations of equality of arms*

In all the cases analysed, the prosecution failed to provide adequate and, at times, any evidence to prove the guilt of the convicted human rights defenders and blatantly dismissed the evidence provided by the defence.

For example, in the case of Intigam Aliyev, the prosecution argued the charges of illegal entrepreneurship, tax evasion and misappropriation due to the fact that the defendant failed to register a number of grants with the Ministry of Justice and referred to letters from the Ministry confirming this fact. Intigam Aliyev claimed that the grants were registered but was not in a position to provide any documentation as he was in detention, his office was sealed and all material seized. Furthermore, his lawyers presented cached information confirming the registration of the grants received by LES from the website of the Ministry of Justice, which, for a few months prior to Intigam Aliyev's arrest was not available. However, this evidence was not included by the courts as evidence to the case material.

In the cases of Rasul Jafarov and Intigam Aliyev, forensic examination of signatures was conducted by a forensic examination centre under the Ministry of Justice and its reports were used as evidence to support the charges of forgery. The courts however rejected the reports of an independent forensic expertise of the same signatures, whose conclusion was that the signatures were authentic. The courts argued that there was no need for a second independent expertise as the one conducted by a body under the Ministry of Justice was available, which clearly cannot be considered objective or independent. The courts however considered it to be 'reliable evidence'.

Testimonies of witnesses in favor of accused human rights defenders were ignored by the courts. In the case of Rasul Jafarov, four witnesses testified in support of Rasul Jafarov and formally requested the court to revoke

their victim status. Despite this, the court dismissed their requests and included their testimonies as evidence against the defendant.

As stated above, no victims were identified in relation to charges of misappropriation, meaning that foreign donors should have been included into the investigation as those who allegedly suffered from the misappropriation of funds by human rights defenders. Moreover, the courts refused to include official letters from donors who gave grants to Rasul Jafarov, Intigam Aliyev and Leyla Yunus confirming that they had no claims against the defendants and that all their funds were dispersed in accordance to grant agreements.

As provided in greater detail under the 'case studies' section of this report, the courts dismissed most of the defendants' petitions which raised multiple substantive and procedural issues. The courts failed to provide any substantiated explanation and discriminately and systematically violated the principle of equality of arms, which raises serious doubts about the lack of independence of the judiciary.

#### *Assigning the defence with the burden of proof of innocence*

In a number of cases, the prosecution and the courts claimed in their decisions that the defendants failed to provide evidence that the accused had not committed the crimes of which they were accused. For example, in the case of Rasul Jafarov, the courts claimed that he failed to provide financial documentation for some of the grants received from foreign donors, which allegedly supported the prosecution's accusations that he had misappropriated the funds. The prosecution clearly violated the principle of the burden of proof and the presumption of innocence, as the burden is on the claimant to prove the guilt of a defendant.

### **FAILURE TO PROVIDE ADEQUATE MEDICAL ASSISTANCE TO THOSE IN URGENT NEED**

Intigam Aliyev, Leyla Yunus and Arif Yunus were placed in pre-trial detention despite their poor health prior to arrest. The courts rejected all requests for replacement of the preventive measure with house arrest for medical reasons. None of the three individuals were provided with adequate medical treatment while in prison despite numerous requests.

#### *Leyla and Arif Yunus*

As documented by medical reports produced before the arrest, Leyla Yunus and Arif Yunus were suffering from poor health and in need of urgent medical treatment. Leyla Yunus suffers from a severe form of mellitus type 2 diabetes requiring particular medication and diet, without which she is at risk of damage to her eyesight, renal failure or a stroke. She also suffers from Hepatitis C, and has been found to have high levels of enzymes in her blood, which causes decomposition of the liver. Arif Yunus suffers from high blood pressure and chronic hypertension and has experienced several hypertonic episodes in the past.

The detention conditions are incompatible with their state of health and only aggravate their medical problems. As Leyla and Arif Yunus were not provided with any adequate medical care, and in the light of their deteriorating health, in September 2014, they applied to the ECtHR requesting it to take 'interim measures' in their case, in accordance with Rule 39 of the Rules of the Court. The Court only applies interim measures in exceptional cases, where an applicant's life is at risk, or there is a substantial risk of serious ill-treatment. In response, the ECtHR instructed the Government of Azerbaijan on 1 October 2014 to address the couple's

health situation. The ECtHR stipulated the need for urgent medical treatment to prevent irreversible deterioration to Leyla and Arif Yunus' health and said the Government should provide adequate medical treatment in prison, and, if such treatment is not available, ensure the immediate transfer of Leyla Yunus to a specialised medical establishment. It also asked the Government to inform the Court on a monthly basis of the state of health of the Leyla and Arif Yunus and their medical treatment.

The Government continues to fail to comply with the ECtHR's decision as Leyla Yunus remains without adequate medical treatment in poor conditions of detention. On 12 November 2015, Arif Yunus was released from prison and placed under house arrest as his health has deteriorated so much that the prison doctors were not able to provide with medical care in detention. Leyla Yunus, despite the medical examinations and the medication provided by the German doctor Christian Witt, remains in a very poor state of health and even fears fatal consequences as she believes that the conditions in prison to which she is exposed are such that medication alone may not be sufficient to safeguard her life.

#### *Intigam Aliyev*

Before his arrest, Intigam Aliyev was suffering from serious medical conditions such as spinal alternation, poor circulation and kidney disorders and had undergone extensive medical examinations. Poor detention conditions, such as lack of proper ventilation, limited access to water and fresh air, lack of adequate lighting and passive smoking have only aggravated his condition as his numerous requests for medical assistance have been denied. The over-crowded vehicle in which he was transported to/from court hearings led to his physical collapse. Intigam Aliyev has also been denied access to an independent doctor, a right guaranteed by domestic legislation.

The Government of Azerbaijan contests to the ECtHR that Intigam Aliyev does not need any treatment, which is contradictory to the independent medical examination of reports by doctors in Prague, who were treating Mr Aliyev before his arrest and who concluded that his health condition may lead to 'a life threatening situation' if immediate and adequate medical attention is not provided.

Intigam Aliyev remains in prison without adequate medical treatment, an issue which he has raised with the ECtHR whose judgment is currently awaited.

### **HINDRANCE WITH THE RIGHT OF APPLICATION TO THE EUROPEAN COURT OF HUMAN RIGHTS**

During the searches of the LES office and at Intigam Aliyev's home dozens of case-files concerning applicants to the ECtHR were confiscated by the authorities, which clearly interferes with the applicants' proceedings before the ECtHR. This has been brought to the ECtHR's attention and in the recent case of Annagi Hajibeyli v. Azerbaijan (no. 2204/11, 22.10.2015) the ECtHR condemned the searches and seizure of case files and found it in violation of applicants' right to effectively run their applications before ECtHR:

"74. ...The prosecution authorities and the Nasimi District Court were aware or ought to have been aware that Mr Aliyev was representing numerous clients in domestic civil proceedings and before the Court. However, no reservation was put in place in the search warrant with regard to privileged client documents that were kept in his office... [The Court] notes that the search warrant specified that the documents and other material to be seized were to be related only to the Legal Education Society's

establishment, structure, functioning, membership registration and financial activities. Whereas the documents in the applicant's case file did not relate to any of the above, it appears that the prosecution authorities overstepped the scope of the search warrant by seizing the applicant's case file. Moreover, it does not appear that the search was conducted in the presence of an independent observer capable of identifying, independently of the investigation team, which documents were covered by professional privilege. No adequate inventory of the seized privileged documents was made in the search and seizure records of 8 and 9 August 2014.

75. The Court finds that neither the Government nor the domestic authorities or courts have demonstrated any justification for seizing the documents concerning the present application in the context of the criminal proceedings against the applicant's lawyer.

76. Furthermore, no safeguards or compensatory measures were offered to the applicant. Even if there existed some sort of justification for seizing the case file, the Court considers that, at the very least, the applicant should have been informed of the seizure in a timely manner and given an opportunity to make and retain copies of all the material in the case file, to enable him to participate effectively in the Court proceedings after the seizure.

77. Having regard to the above, the Court takes the view that lack of access to the applicant's case file must have had a "chilling effect" on the exercise of the right of individual petition by the applicant and his representative, and that it cannot realistically be argued otherwise...

78. The Court... finds immaterial the Government's argument that no correspondence or activity relating to the applicant's case had actually taken place during the period when his case file was in the authorities' possession. The Court considers that, at the time of the seizure, it could not be foreseen by the applicant, or by any other party, for how long his case file would remain in the authorities' possession and whether any correspondence would take place during that period. The very fact that the applicant and his lawyer were deprived of access to their copy of the case file for a lengthy period of time, without any justification and without any compensatory measures, constituted in itself an undue interference with the integrity of the proceedings and a serious hindrance to the effective exercise of the applicant's right of individual petition."

Azerbaijan is now under obligation to remedy the violation of Article 34 of the Convention – which it must do under the monitoring of the Committee of Ministers of the Council of Europe.

## 6. CONCLUSIONS AND RECOMMENDATIONS

Already prior to the current unprecedented crackdown on civil society in Azerbaijan, local and international NGOs, as well as international human rights bodies warned of growing repression in the country. Among others, a number of Council of Europe bodies published reports highlighting concerns in this area, including the Commissioner for Human Rights, the Venice Commission, and the Conference of International NGOs. At the same time, the European Court of Human Rights issued numerous judgments finding Azerbaijan in violation of its obligations under the European Convention on Human Rights, including with respect to due process and fair trial rights. However, the Azerbaijani authorities systematically failed to implement the recommendations received and the rulings of the European Court of Human Rights. Instead, they not only continued but also stepped up their repressive policies against civil society, including at the time of

Now when the civil society crackdown in Azerbaijan has reached a previously unprecedented level and most independent civil society leaders in the country are imprisoned, it is clear that continued, unconditional dialogue with its authorities will not work. Azerbaijan's international partners must take concrete action to show that they are serious about upholding human rights values in their engagement with Azerbaijan and that Azerbaijan's national resource wealth does not mean its authorities can continue their appalling disregard of international human rights obligations and commitments without consequences. As other approaches tried have failed, it is time to resort to the threat or use of sanctions to help put an end to the alarming trend of closing space for independent civil society in Azerbaijan and to ensure freedom for human rights defenders and journalists who have been imprisoned in retaliation for their work.

As shown in this report, the criminal cases against leading civil society figures are not merely ordinary economic crimes cases, as the Azerbaijani authorities have tried to argue. These cases are bogus, unfair, unjust and politically motivated and have been initiated in an attempt to punish and silence the targeted individuals because of their advocacy and defence of human rights and the rule of law. Azerbaijan's international partners should use the sanctions tool to push for measures to:

- Drop all charges against Anar Mammadli, Rasul Jafarov, Intigam Aliyev, Leyla and Arif Yunus and Khadija Ismayilova and unconditionally release them, and drop all charges against Emin Huseynov and allow him to return to Azerbaijan without repercussions, if he so wishes;
- Immediately release Leyla Yunus and Intigam Aliyev from detention on humanitarian grounds due to their very poor health condition, which is further deteriorating due to lack of proper medical care in detention;
- Put an end to repression of lawyers defending the rights of these and other civil society representatives;
- Implement the rulings of the European Court of Human Rights, in particular those pertaining to due process rights and the right to a fair trial (such as the case of Ilgar Mammadov who was found to have been deprived of liberty on political grounds) as well as the recommendations of Council of Europe and other international human rights bodies.
- Stop persecuting critical human rights NGOs and allow them to renew their work without repercussions;
- Roll back the repressive NGO legislation that has been used to target the individuals whose cases are covered by this report; and
- Address the serious flaws in the judicial system highlighted by their cases.





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